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As filed with the Securities and Exchange Commission on September 13, 2010

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form S-11
REGISTRATION STATEMENT

FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933
OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES

American Assets Trust, Inc.

(Exact Name of Registrant as Specified in Its Governing Instruments)

11455 El Camino Real, Suite 200, San Diego, California 92130
(858) 350-2600
(Address, Including Zip Code and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

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Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement becomes effective.

If any of the Securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, check the following box: ☐

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement of the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check One):

Large accelerated filer ☐
Non-accelerated filer ☒
(Do not check if a smaller reporting company)

Accelerated filer ☐
Smaller reporting company ☐

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount Of Registration Fee
Common Stock, par value $.01 per share	$ 500,000,000	$ 35,650

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) of the Securities Act of 1933, as amended.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion,
Preliminary Prospectus dated September 13, 2010

PROSPECTUS

Shares

American Assets Trust, Inc.

Common Stock

This is the initial public offering of American Assets Trust, Inc. We are selling shares of our common stock.

We expect the initial public offering price of our common stock to be between $ and $ per share. Currently, no public market exists for our shares. We intend to apply to have our common stock listed on the New York Stock Exchange under the symbol "AAT." We intend to elect to be taxed and to operate in a manner that will allow us to qualify as a real estate investment trust for federal income tax purposes commencing with our taxable year ending December 31, 2010.

As described herein, concurrently with this offering, we will complete formation transactions pursuant to which we will acquire interests in entities that own our portfolio consisting of 21 retail, office, mixed-use and multifamily properties with approximately 3.0 million rentable square feet of retail space; 2.2 million rentable square feet of office space; a mixed-use property comprised of 97,000 rentable square feet of retail space and a 369-room all-suite hotel; and 922 multifamily units, in exchange for cash, shares of our common stock and common units of limited partnership interest in our operating partnership. Upon completion of the formation transactions, 20 of these 21 properties will be wholly owned, directly or indirectly, by us, and one office property will be held through an unconsolidated joint venture. Upon completion of this offering and the formation transactions, our Executive Chairman, Ernest S. Rady and his affiliates, together with our other directors and executive officers, will beneficially own an approximate % interest in our company on a fully diluted basis.

Investing in our common stock involves risks. You should read the section entitled "Risk Factors" beginning on page 28 of this prospectus for a discussion of certain risk factors that you should consider before investing in our common stock.

	Per Share	Total
Public Offering Price	$	$
Underwriting Discount	$	$
Proceeds, before expenses, to us	$	$

The underwriters may also exercise their option to purchase up to an additional shares from us, at the public offering price, less the underwriting discount, for 30 days after the date of this prospectus to cover overallotments, if any.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The shares will be ready for delivery on or about , 2010.

BofA Merrill Lynch **Wells Fargo Securities** **Morgan Stanley**

The date of this prospectus is , 2010.

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You should rely only on the information contained in this document or to which we have referred you. We have not, and the underwriters have not, authorized anyone to provide you with information that is different. This document may only be used where it is legal to sell these securities. The information in this document may only be accurate on the date of this document.

We use market data, demographic data, industry forecasts and projections throughout this prospectus. Unless otherwise indicated, we derived such information from the market study prepared for us by Rosen Consulting Group, or RCG, a nationally recognized real estate consulting firm. We have paid RCG a fee of $32,500 for such services. In addition, we have obtained certain market and industry data from publicly available industry publications. These sources generally state that the information they provide has been obtained from sources believed to be reliable, but that the accuracy and completeness of the information are not guaranteed. The forecasts and projections are based on historical market data and the preparers' experience in the industry, and there is no assurance that any of the projected amounts will be achieved. We believe that the market and industry research others have performed are reliable, but we have not independently verified this information.

Unless the context indicates otherwise, the terms "portfolio" and "properties" as used in this prospectus include 21 properties, consisting of our 20 wholly owned properties and one property, Fireman's Fund Headquarters, owned through an unconsolidated joint venture. The term "pro rata portfolio" as used in this prospectus and the statistical information presented in this prospectus regarding our pro rata portfolio includes our 20 wholly owned properties and our 25% equity interest in the unconsolidated joint venture that owns Fireman's Fund Headquarters. The term "pro rata office portfolio" and the statistical information presented in this prospectus regarding our pro rata office portfolio includes our five wholly owned office properties and our 25% equity interest in the unconsolidated joint venture that owns Fireman's Fund Headquarters.

For purposes of this prospectus, recreational vehicle, or RV, spaces are counted as multifamily units.

PROSPECTUS SUMMARY

You should read the following summary together with the more detailed information regarding our company and the historical and pro forma financial statements appearing elsewhere in this prospectus, including under the caption "Risk Factors." References in this prospectus to "we," "our," "us" and "our company" refer to American Assets Trust, Inc., a Maryland corporation, together with our consolidated subsidiaries, including American Assets Trust, L.P., a Maryland limited partnership, of which we are the sole general partner and which we refer to in this prospectus as our operating partnership. Ernest S. Rady, our Executive Chairman, is our promoter. Unless otherwise indicated, the information contained in this prospectus is as of June 30, 2010 and assumes (1) that the underwriters' overallotment option is not exercised, (2) the formation transactions described under the caption "Structure and Formation of Our Company" are consummated, (3) the common stock to be sold in this offering is sold at $ per share, which is the mid-point of the range of prices indicated on the front cover of this prospectus, and (4) the common units of limited partner interest in our operating partnership, or common units, to be issued in the formation transactions are valued at $ per unit. Each common unit is redeemable for cash equal to the then-current market value of one share of common stock or, at our option, one share of our common stock, commencing 14 months following the completion of this offering.

American Assets Trust, Inc.

Overview

We are a full service, vertically integrated and self-administered real estate investment trust, or REIT, that owns, operates, acquires and develops high quality retail and office properties in attractive, high-barrier-to-entry markets primarily in Southern California, Northern California and Hawaii. We were formed to succeed to the real estate business of American Assets, Inc., a privately held corporation founded in 1967 and, as such, we have significant experience, long-standing relationships and extensive knowledge of our core markets, submarkets and asset classes. Our senior management team's operational experience includes overseeing the acquisition or development of more than 9.5 million square feet of retail and office properties and more than 4,600 multifamily units, as well as the disposition of over 4.2 million square feet of retail and office properties and more than 3,600 multifamily units. Based on our experience, and given our focused market strategy, we believe our multi-asset class strategy positions us to maximize the value of our portfolio and pursue our growth strategies.

Upon consummation of this offering, we expect that our portfolio will be comprised of ten retail shopping centers; six office properties (including one owned pursuant to a joint venture); a mixed-use property consisting of a 369-room all-suite hotel and a retail shopping center; and four multifamily properties. A summary of certain information regarding our portfolio, as of June 30, 2010, is set forth below. The following information excludes revenue from the hotel portion of our mixed-use property.

- ***Retail:*** Ten properties comprising approximately 3.0 million rentable square feet, which are approximately 96.0% leased and constitute approximately 43.9% of the total annualized base rent of our pro rata portfolio as of June 30, 2010;
- ***Office:*** Six properties comprising approximately 2.2 million rentable square feet (including a 25% interest in a 710,000 square foot office property owned pursuant to an unconsolidated joint venture), which properties are approximately 94.4% leased and represent approximately 39.8% of the total annualized base rent of our pro rata portfolio as of June 30, 2010;
- ***Mixed-use:*** Our Waikiki Beach Walk property is comprised of approximately 97,000 rentable square feet of retail space and a 369-room all-suite hotel, which was redeveloped in 2007. The retail space represents approximately 6.5% of the total annualized base rent of our pro rata portfolio as of June 30, 2010; and

- ***Multifamily:*** Three apartment communities with stabilized occupancy rates, as well as an RV resort, which is currently operated as part of our multifamily portfolio, in aggregate comprising 922 multifamily units, which are approximately 93.2% leased and represent approximately 9.9% of the total annualized base rent of our pro rata portfolio as of June 30, 2010.

We believe our core markets, which historically have included San Diego, the San Francisco Bay Area and Oahu, Hawaii, are characterized by some of the highest barriers to entry for new real estate construction in the United States, as well as strong demographics and dynamic, diversified economies that will continue to generate jobs and future demand for commercial real estate. We anticipate that the depth and breadth of our real estate experience will allow us to capitalize on revenue-enhancing opportunities in our portfolio and source and execute new acquisition and development opportunities in our core markets, while maintaining stable cash flows throughout various business and economic cycles.

We were formed as a Maryland corporation in July 2010. Ernest S. Rady, our Executive Chairman, when combined with his affiliates, including the Ernest Rady Trust U/D/T March 10, 1983, is our largest stockholder. Mr. Rady has over 40 years of experience in the commercial real estate industry and has extensive public company experience, including acting as the founder, Chief Executive Officer and director of Westcorp Inc. and WFS Financial Inc., two financial services companies, in addition to serving on the board of three other public companies. Upon completion of this offering, Mr. Rady and his affiliates, including the Ernest Rady Trust U/D/T March 10, 1983, or the Rady Trust, will own approximately % of our common stock, approximately % of our common units and approximately % of our company on a fully diluted basis (assuming the exchange of all common units for shares of our common stock). In addition to Mr. Rady, our highly experienced senior management team also includes, among others, John W. Chamberlain and Robert F. Barton, our Chief Executive Officer and Chief Financial Officer, respectively. Messrs. Chamberlain and Barton, who have worked alongside Mr. Rady for 22 and 12 years, respectively, are responsible, along with Mr. Rady, for our strategic planning and day-to-day operations. Our senior management team has been integrally involved in the acquisition, development and redevelopment, management, leasing and financing of, and the joint venture activity relating to, our portfolio. Furthermore, our senior management team has significant real estate experience, long-standing industry, corporate and institutional relationships, and extensive knowledge of our core markets, submarkets and assets classes, which we believe provide us with a significant competitive advantage that will enhance our ability to source leasing and acquisition opportunities and access capital.

Our Competitive Strengths

We believe the following competitive strengths distinguish us from other owners and operators of commercial real estate and will enable us to take advantage of new acquisition and development opportunities, as well as growth opportunities, within our portfolio:

- ***Irreplaceable Portfolio of High Quality Retail and Office Properties.*** We have acquired and developed a high quality portfolio of retail and office properties located in affluent neighborhoods and sought-after business centers in Southern California, Northern California, Oahu, Hawaii and San Antonio, Texas. We believe many of our properties currently achieve rental and occupancy rates equal to or above those typically prevailing in their respective markets due to their desirable and competitively advantageous locations within their submarkets, as well as our hands-on management approach. Many of our properties are located in in-fill locations where developable land is scarce. In addition, even where land is available near our properties, we believe current zoning, environmental and entitlement regulations significantly restrict new or additional development. Accordingly, we believe that our portfolio of properties cannot be replicated.

- ***Experienced and Committed Senior Management Team with Strong Sponsorship.*** The members of our senior management team have an average of approximately 28 years of commercial real

estate experience and have worked at American Assets, Inc. for an average of approximately 15 years. During their tenure at American Assets, Inc., our senior management has overseen the acquisition or development and operation of more than 9.5 million rentable square feet of retail and office properties and more than 4,600 multifamily units, including all of the properties in our portfolio. Our senior management team and real estate professionals have in-depth knowledge of our assets, core markets and future growth opportunities, as well as substantial expertise in all aspects of leasing, asset and property management, marketing, acquisitions, redevelopment and facility engineering and financing. Upon the completion of this offering and our formation transactions, our senior management team will own approximately % of our company on a fully diluted basis (assuming the exchange of all common units for shares of our common stock), which we believe will align their interests with those of our stockholders.

- ***Properties Located in High-Barrier-to-Entry Markets with Strong Real Estate Fundamentals.*** Our core markets currently include San Diego, the San Francisco Bay Area and Oahu, Hawaii, which we believe have attractive long-term real estate fundamentals driven by favorable supply and demand characteristics. According to RCG, our core markets have high barriers to entry resulting from the limited supply of developable land, high construction costs and rigorous zoning and entitlement processes, which will limit new real estate construction. Additionally, we believe our markets have strong economic and demographic fundamentals, which will support continued demand for real estate. We believe that the combination of limited supply of developable land in our markets, together with the continued demand for real estate generated by long-term economic growth, will increase rental rates at our properties and enable us to achieve internal cash flow growth over time.

- ***Extensive Market Knowledge and Long-Standing Relationships Facilitate Access to a Pipeline of Acquisition and Leasing Opportunities.*** We believe that our in-depth market knowledge and extensive network of long-standing relationships with real estate owners, developers, brokers, national and regional lenders and other market participants will provide us access to an ongoing pipeline of attractive acquisition and investment opportunities in and near our core markets. In addition, we have an extensive network of relationships with numerous national and regional tenants in our markets, many of whom currently are tenants in our retail and office buildings, which we expect will enhance our ability to retain and attract high quality tenants, facilitate our leasing efforts and provide us with opportunities to increase occupancy rates at our properties, thereby allowing us to maximize cash flows from our properties. We have successfully converted many of our strong relationships with our retail tenants into leasing opportunities at our properties.

- ***Internal Growth Prospects through Development, Redevelopment and Repositioning.*** We believe that the development and redevelopment potential at several of our properties presents compelling growth prospects. We currently have entitlements to support approximately 140,000 additional square feet of office and retail space at our properties. In addition, we expect to obtain entitlements and approvals for a further 845,000 square feet of space, including an approximately 766,000 square foot mixed-use project at our joint venture property, Fireman's Fund Headquarters in Novato, California, incorporating retail, residential and hospitality uses. We also intend to exercise our option to purchase an approximately 80,000 square foot building located on our Carmel Mountain Plaza property. We will use a portion of the proceeds from this offering to fund the purchase of this building, which we intend to reposition and re-lease. Our senior management team successfully completed significant repositioning and redevelopment projects at many of our properties, including Del Monte Center, Solana Beach Towne Centre and Waikele Center. In addition, our senior management team has significant experience with the development and redevelopment of retail and office properties in our core markets, having developed or redeveloped

over 5.4 million square feet of commercial and residential properties while at American Assets, Inc. Accordingly, we believe our expertise enhances our ability to capitalize on these internal growth opportunities.

- ***Broad Real Estate Expertise with Retail and Office Focus.*** Our senior management team has strong experience and capabilities across the real estate sector with significant experience and expertise in the retail and office asset classes, which we believe provides for flexibility in pursuing attractive acquisition, development, and repositioning opportunities. Since varying market conditions create opportunities at different times across property types, we believe our expertise enables us to target relatively more attractive investment opportunities throughout economic cycles. We believe that our ability to pursue these types of opportunities differentiates us from many competitors in our core markets.

Business and Growth Strategies

Our primary business objectives are to increase operating cash flows, generate long-term growth and maximize stockholder value. Specifically, we intend to pursue the following strategies to achieve these objectives:

- ***Capitalizing on Acquisition Opportunities in High-Barrier-to-Entry Markets.*** We intend to pursue growth through the strategic acquisition of high quality properties that are well-located in their submarkets. Our overall acquisition strategy focuses on acquiring properties in markets that generally are characterized by strong supply and demand characteristics, including high barriers to entry and diverse industry bases, that appeal to institutional investors. We target attractively priced properties that complement our existing portfolio from a risk management and diversification perspective. For retail properties, we intend to focus on acquiring and operating properties that are well positioned in their respective markets and are a primary shopping destination for local residents. For office properties, we intend to focus on acquiring and operating properties in the most prominent submarkets and that offer high quality amenities and superior access to transportation. We believe that properties located in the most prominent retail or business district of a high-barrier-to-entry market will experience greater value appreciation, greater rental rate increases and more stable occupancy rates than similar properties in less-prominent locations of high-barrier-to-entry markets or than properties generally in lower-barrier-to-entry markets.

- ***Repositioning/Redevelopment and Development of Office and Retail Properties.*** We intend to selectively reposition and redevelop several of our existing or newly-acquired properties, and we will also selectively pursue ground-up development of undeveloped land where we believe we can generate attractive risk-adjusted returns. As of June 30, 2010, we have approved entitlements for approximately 140,000 additional square feet of development at our properties and expect to obtain entitlements and approvals for approximately 845,000 additional square feet of development, including approximately 766,000 square feet at our joint venture property. By repositioning and redeveloping these properties and pursuing ground-up development of undeveloped land, we seek to increase occupancy and rental rates, thereby producing favorable risk-adjusted returns on our invested capital.

- ***Disciplined Capital Recycling Strategy.*** We intend to pursue an efficient asset allocation strategy that maximizes the value of our investments by selectively disposing of properties whose returns appear to have been maximized and redeploying capital into acquisition, repositioning, redevelopment and development opportunities with higher return prospects, in each case in a manner that is consistent with our qualification as a REIT. We have an extensive track record of completing many significant commercial real estate acquisitions and dispositions and remain thorough in our underwriting, carefully analyzing potential acquisitions to determine which best fit our investment criteria. We employ a rigorous underwriting process that leverages our extensive

knowledge of our local markets to acquire assets that we believe will generate attractive risk-adjusted returns. An integral part of our disciplined approach to acquisitions involves focusing primarily on long-term growth potential rather than short-term cash returns, in order to maximize our long-term return on invested capital.

- ***Proactive Asset and Property Management.*** We intend to continue to actively manage our properties, employ targeted leasing strategies, leverage our existing tenant relationships and focus on reducing operating expenses to increase occupancy rates at our properties, attract high quality tenants and increase property cash flows, thereby enhancing the value of our properties. We have a centralized senior management team in our San Diego headquarters, in addition to on-site professionals handling day-to-day property management, including anticipating and satisfying our tenants' needs and delivering customized space solutions to potential tenants. In addition, we utilize our extensive tenant relationships and leasing strategies to optimize our tenant mix to meet the needs of the local market and to maintain high occupancies across our portfolio.

Industry Background and Market Opportunity

We currently own assets in the San Diego, the San Francisco Bay Area, Los Angeles, Oahu, Hawaii and San Antonio, Texas markets. We intend to primarily target high-barrier-to-entry markets in Southern and Northern California and Hawaii that exhibit attractive economic fundamentals and have favorable long term supply-demand characteristics. Our target markets in California include the metropolitan areas of San Diego, Los Angeles and Orange County as well as the San Francisco Bay Area. In Hawaii, our core markets include the greater Honolulu area, where our existing assets are located, but may include other markets and submarkets within Hawaii that exhibit similar attractive investment fundamentals.

California Overview

California is the largest state economy in the United States and represents the equivalent of the world's eighth largest economy, producing $1.8 trillion in goods and services in 2008 and accounting for approximately 13% of the national gross domestic product. California is a highly attractive place to live and work and tends to recover more quickly from recessions as population growth fuels economic expansion. As a result of California's attractive economic fundamentals, we believe that California is well positioned for meaningful growth in the coming years and presents a compelling commercial real estate investment opportunity and environment. Additionally, the state's diverse industry mix has historically lead to stronger economic growth during periods of national economic expansion. According to RCG, California is emerging from the recent recession with employment gains in recent months serving as a leading indicator. RCG expects job growth to be moderate in 2010, at 0.9% or 124,000 jobs, but to accelerate in 2011 and 2012 to 1.3% and 1.6%, respectively, adding 394,000 jobs during the two-year period. Our current core markets in California include San Diego where we own six retail properties and two office properties totaling 1.8 million rentable square feet and four multifamily properties totaling 922 units, the San Francisco Bay Area where we own one retail property, two office properties and a 25% joint venture interest in an office property totaling 2.0 million rentable square feet, and Los Angeles where we own one office property totaling approximately 194,000 rentable square feet.

Oahu, Hawaii Overview

The State of Hawaii, which has a total population of approximately 1.9 million, consists of the eight major islands of Oahu, Maui, Kauai, Molokai, Lanai, Kahoolawe, Niihau and the Island of Hawaii. The Island of Oahu, which has a population of approximately 1.3 million, is the most populous, with approximately 74.3% of Hawaii's 587,900 jobs as of June 2010 and 70.1% of Hawaii's civilian workforce. According to RCG, the unemployment rate in Honolulu fell to 5.9% in March 2010 from 6.1% at year-end 2009. However, RCG expects total employment growth in Honolulu will accelerate to 1.3% in 2011 and 2012. Given Hawaii's low rate of

population growth (0.4% annually since 1990) and consequently smaller labor force, historically, the unemployment rate has trended much lower than the national average. We currently own a mixed-use property in Waikiki totaling approximately 97,000 rentable square feet of retail space and 369 all-suite hotels rooms, a retail property on Kalakaua Avenue in Waikiki, totaling approximately 11,700 rentable square feet, and a retail center in Waipahu totaling approximately 538,000 rentable square feet.

San Antonio, Texas Overview

Home to a large military and student population, San Antonio was ranked by Forbes magazine as one of the fastest-recovering cities in the United States. RCG expects job growth for the area to be slightly positive for 2010 at 0.7% and increase to 1.7% in 2011. San Antonio's job growth is forecast to outpace that of the broader country in each year, through 2014. Over the same time period, San Antonio personal income growth is projected to average 6.3% annually and household income growth is projected to average 4.5% annually. We currently own a retail shopping center in San Antonio that totals approximately 590,000 rentable square feet.

The foregoing market data and industry forecasts and projections were derived from the market study prepared for us by RCG.

Summary Risk Factors

An investment in common stock involves various risks, and prospective investors are urged to carefully consider the matters discussed under "Risk Factors" prior to making an investment in our common stock. Such risks include, but are not limited to:

- Our portfolio of properties is dependent upon regional and local economic conditions and is geographically concentrated in California, Hawaii and Texas, which may cause us to be more susceptible to adverse developments in those markets.
- We expect to have approximately $879.9 million ($924.1 million including our pro rata share of joint venture debt) of indebtedness outstanding following this offering, which may expose us to the risk of default under our debt obligations.
- We depend on significant tenants in our office properties.
- Our retail shopping center properties depend on anchor stores or major tenants to attract shoppers and could be adversely affected by the loss of, or a store closure by, one or more of these tenants.
- We may be unable to renew leases, lease vacant space or re-let space as leases expire.
- We may be unable to identify and complete acquisitions of properties that meet our criteria, which may impede our growth.
- We have no operating history as a REIT or a publicly traded company and may not be able to successfully operate as a REIT or a publicly traded company.
- Our success depends on key personnel, including Ernest S. Rady, John W. Chamberlain and Robert F. Barton, our Executive Chairman, Chief Executive Officer and Chief Financial Officer, respectively, whose continued service is not guaranteed, and the loss of one or more of our key personnel could adversely affect our ability to manage our business and to implement our growth strategies, or could create a negative perception in the capital markets.
- Mr. Rady will continue to be involved in outside businesses, which may interfere with his ability to devote time and attention to our business and affairs.
- We may not be able to rebuild our existing properties to their existing specifications if we experience a substantial or comprehensive loss of such properties.
- Joint venture investments, including our 25% interest in Fireman's Fund Headquarters, could be adversely affected by our lack of sole decision making authority, our reliance on co-venturers' financial condition and disputes between us and our co-venturers.
- Upon completion of this offering and the formation transactions, Ernest S. Rady and his affiliates, directly or indirectly, will own a substantial beneficial interest in our company on a fully diluted basis and will have the ability to exercise significant influence on our company and our operating partnership.
- Messrs. Rady, Chamberlain and Barton will receive benefits in connection with this offering, which create a conflict of interest because they have interests in the successful completion of this offering that may influence their decisions affecting the terms and circumstances under which the offering and formation transactions are completed.

- Our charter and bylaws, the partnership agreement of our operating partnership and Maryland law contain provisions that may delay, defer or prevent a change of control transaction.
- Tax protection agreements could limit our ability to sell or otherwise dispose of certain properties.
- Failure to qualify as a REIT would have significant adverse consequences to us and the value of our common stock.
- To maintain our REIT status, we may be forced to borrow funds during unfavorable market conditions.
- There has been no public market for our common stock prior to this offering and an active trading market for our common stock may not develop following this offering.
- We may be unable to make distributions at expected levels, and we may be required to borrow funds to make distributions.
- Differences between the book value of the assets to be acquired in the formation transactions and the price paid for our common stock will result in an immediate and material dilution of the book value of our common stock.

Our Properties

Our Portfolio

Upon completion of this offering and consummation of the formation transactions, we will own full or partial interests in 21 properties located in the San Diego, San Francisco, Los Angeles, Honolulu and San Antonio markets, containing a total of approximately 3.0 million rentable square feet of retail space, 2.2 million rentable square feet of office space, a mixed-use property comprised of approximately 97,000 rentable square feet of retail space and a 369-room all-suite hotel, and 922 multifamily units, which we refer to as our portfolio. The following tables present an overview of our portfolio, based on information as of June 30, 2010.

Retail and Office Portfolios

Property	Location	Ownership Percentage	Year Built/ Renovated	Number of Buildings	Net Rentable Square Feet[1][2]	Percentage Leased[3]	Annualized Base Rent[4]	Annualized Base Rent per Leased Square Foot[5]	Average Net Effective Annual Base Rent per Leased Square Foot[6]
Retail Properties									
Carmel Country Plaza	San Diego, CA	100%	1991	9	77,813	100.0%	$ 3,398,160	$ 43.67	$ 42.50
Carmel Mountain Plaza[7]	San Diego, CA	100%	1994	13	440,228	97.2	8,648,658	20.21	20.48
South Bay Marketplace[8]	San Diego, CA	100%	1997	9	132,873	100.0	2,031,718	15.29	15.18
Rancho Carmel Plaza	San Diego, CA	100%	1993	3	30,421	69.3	673,911	31.98	34.97
Lomas Santa Fe Plaza	Solana Beach, CA	100%	1972/1997	9	209,569	93.7	5,028,573	25.60	24.85
Solana Beach Towne Centre	Solana Beach, CA	100%	1973/2000/2004	12	246,730	98.2	5,335,039	22.01	21.72
Del Monte Center[9]	Monterey, CA	100%	1967/1984/2006	16	674,224	97.4	8,956,064	13.63	12.58
The Shops at Kalakaua	Honolulu, HI	100%	1971/2006	3	11,671	100.0	1,535,028	131.52	136.07
Waikele Center	Waipahu, HI	100%	1993/2008	9	537,965	94.3	16,391,804	32.30	32.36
Alamo Quarry[10]	San Antonio, TX	100%	1997/1999	16	589,479	94.9	11,500,141	20.56	20.86
Subtotal/Weighted Average Retail Portfolio				99	2,950,973	96.0%	$ 63,499,095	$ 22.41	$ 22.28
Office Properties									
Wholly Owned									
Torrey Reserve Campus	San Diego, CA	100%	1996-2000	9	456,801	93.0%	$ 14,627,721	$ 34.44	$ 34.91
Solana Beach Corporate Centre	Solana Beach, CA	100%	1982/2005	4	211,796	88.6	6,665,555	35.51	33.86
Valencia Corporate Center	Santa Clarita, CA	100%	1999-2007	3	194,304	76.9	4,238,162	28.37	29.38
160 King Street[11]	San Francisco, CA	100%	2002	1	167,985	88.1	5,442,609	36.77	37.54
The Landmark at One Market[12]	San Francisco, CA	100%	1917/2000	1	421,934	100.0	21,504,396	50.97	48.74
Joint Ventures									
Fireman's Fund Headquarters[13]	Novato, CA	25%	1983/1993	3	710,330	100.0	20,227,880	28.48	28.48
Subtotal/Weighted Average Office Portfolio				21	2,163,150	94.4%	$ 72,706,323	$ 35.60	$ 35.10
Total/Weighted Average Retail and Office Portfolio				**120**	**5,114,123**	**95.3%**	**$136,205,418**	**$ 27.94**	**$ 27.70**
Retail and Pro Rata Office Portfolio									
Subtotal/Weighted Average Retail Portfolio				99	2,950,973	96.0%	$ 63,499,095	$ 22.41	$ 22.28
Subtotal/Weighted Average Pro Rata Office Portfolio[14]				21	1,630,403	92.6%	$ 57,535,413	$ 38.12	$ 37.26
Total/Weighted Average Retail and Pro Rata Office Portfolio[15]				**120**	**4,581,376**	**94.8%**	**$121,034,508**	**$ 27.87**	**$ 26.84**

Mixed-Use Portfolio

Retail Portion	Location	Ownership Percentage	Year Built/ Renovated	Number of Buildings	Net Rentable Square Feet[1]	Percentage Leased[3]	Annualized Base Rent[4]	Annualized Base Rent per Leased Square Foot[5]	Average Net Effective Annual Base Rent per Leased Square Foot[6]
Waikiki Beach Walk—Retail[16]	Honolulu, HI	100%	2006	1	96,569	96.5%	$9,400,219	$ 100.84	$ 99.75

Hotel Portion	Location	Ownership Percentage	Year Built/ Renovated	Number of Buildings	Units[17]	Average Occupancy[18]	Average Daily Rate[19]	Revenue per Available Room[20]	Total Revenue[21]
Waikiki Beach Walk—Hotel	Honolulu, HI	100%	2008	2	369	83.6%	$ 221.97	$ 185.46	$25,529,494

Multifamily Portfolio

Property	Location	Ownership Percentage	Year Built/ Renovated	Number of Buildings	Units[22]	Percentage Leased[3]	Annualized Base Rent[23]	Average Monthly Base Rent per Leased Unit[24]
Loma Palisades	San Diego, CA	100%	1958/2001-2008	80	548	93.4%	$ 9,573,349	$1,561
Imperial Beach Gardens	Imperial Beach, CA	100%	1959/2008-present	26	160	99.4	2,584,020	1,358
Mariner's Point	Imperial Beach, CA	100%	1986	8	88	97.7	1,140,795	1,101
Santa Fe Park RV Resort[25]	San Diego, CA	100%	1971/2007-2008	1	126	81.0	975,528	653
Total/Weighted Average Multifamily Portfolio				**115**	**922**	**93.2%**	**$14,273,692**	**$1,358**

(1) The net rentable square feet for each of our retail properties and the retail portion of our mixed-use property is the sum of (i) the square footages of existing leases, plus (ii) for available space, the field verified square footage.

(2) The net rentable square feet for each of our office properties is the sum of (i) the square footages of existing leases, plus (ii) for available space, management's estimate of net rentable square feet based, in part, on past leases. The net rentable square feet included in such leases is generally determined consistently with the Building Owners and Managers Association, or BOMA, 1996 measurement guidelines.

(3) Percentage leased for each of our retail and office properties is calculated as (i) square footage under commenced leases as of June 30, 2010, divided by (ii) net rentable square feet, expressed as a percentage. Percentage leased for our multifamily properties is calculated as (i) total units rented as of June 30, 2010, divided by (ii) total units available, expressed as a percentage.

(4) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010, by (ii) 12. Total abatements for leases in effect as of June 30, 2010 for our retail and office portfolio will equal approximately $237,000 for the 12 months ending June 30, 2011. Total abatements for leases in effect as of June 30, 2010 for our mixed-use portfolio will be zero for the 12 months ending June 30, 2011. In the case of triple net or modified gross leases, annualized base rent does not include tenant reimbursements for real estate taxes, insurance, common area or other operating expenses.

(5) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent, by (ii) square footage under commenced leases as of June 30, 2010.

(6) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of June 30, 2010, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of June 30, 2010.

(7) Net rentable square feet for Carmel Mountain Plaza includes 119,000 square feet leased pursuant to four ground leases for an aggregate annualized base rent of $821,075. See "—Ground Leases of Retail Portfolio."

(8) Net rentable square feet for South Bay Marketplace includes 2,824 square feet leased pursuant to a ground lease to McDonald's for an annualized base rent of $81,540. See "—Ground Leases of Retail Portfolio."

(9) Net rentable square feet for Del Monte Center includes 295,100 square feet leased pursuant to two ground leases for an aggregate annualized base rent of $201,291. See "—Ground Leases of Retail Portfolio."

(10) Net rentable square feet for Alamo Quarry includes 32,000 square feet leased pursuant to four ground leases for an aggregate annualized base rent of $428,250. See "—Ground Leases of Retail Portfolio."
(11) We have executed one lease at 160 King Street for 7,385 net rentable square feet and annualized base rent of $310,184, which commenced subsequent to June 30, 2010. Assuming inclusion of this lease, percentage leased would be 92.5%.
(12) This property contains 421,934 net rentable square feet consisting of The Landmark at One Market (377,714 net rentable square feet) as well as a separate long-term leasehold interest in approximately 44,220 net rentable square feet of space located in an adjacent six-story leasehold known as the Annex. We currently lease the Annex from Paramount Group pursuant to a long-term master lease effective through June 30, 2016, which we have the option to extend until 2026 pursuant to two five-year extension options.
(13) Fireman's Fund Headquarters is held through a joint venture in which we are a 25% owner. The remaining 75% interest in the joint venture is held, indirectly, by General Electric Pension Trust.
(14) Subtotals/weighted averages include our five wholly owned office properties and our pro rata share of Fireman's Fund Headquarters, in which we own a 25% joint venture interest.
(15) Total/weighted averages include our retail properties, our five wholly owned office properties and our pro rata share of Fireman's Fund Headquarters, in which we own a 25% joint venture interest.
(16) Waikiki Beach Walk—Retail contains 96,569 net rentable square feet consisting of 93,955 net rentable square feet that we own in fee and approximately 2,614 net rentable square feet of space in which we have a subleasehold interest pursuant to a sublease from First Hawaiian Bank effective through December 31, 2021.
(17) Units represent the total number of units available for sale at June 30, 2010.
(18) Average occupancy represents the percentage of available units that were sold during the 12-month period ended June 30, 2010, and is calculated by dividing (i) the number of units sold by (ii) the product of the total number of units and the total number of days in the period.
(19) Average daily rate represents the average rate paid for the units sold, and is calculated by dividing (i) the total room revenue (i.e., excluding food and beverage revenues or other hotel operations revenues such as telephone, parking and other guest services) for the 12-month period ended June 30, 2010, by (ii) the number of units sold.
(20) Revenue per available room, or RevPAR, represents the total unit revenue per total available units for the 12-month period ended June 30, 2010 and is calculated by multiplying average occupancy by the average daily rate. RevPAR does not include food and beverage revenues or other hotel operations revenues such as telephone, parking and other guest services.
(21) Total revenue is total revenue for Waikiki Beach Walk—Hotel for the 12-month period ended June 30, 2010.
(22) Units represent the total number of units available for rent at June 30, 2010.
(23) Annualized base rent is calculated by multiplying (i) base rental payments for the month ended June 30, 2010, by (ii) 12. Total abatements for leases in effect as of June 30, 2010 for our multifamily portfolio equaled approximately $897,636 for the 12 months ended June 30, 2010.
(24) Average monthly base rent per leased unit represents the average monthly base rent per leased units for the 12-month period ended June 30, 2010.
(25) The Santa Fe Park RV Resort is subject to seasonal variation, with higher rates of occupancy occurring during the summer months. During the 12 months ended June 30, 2010, the highest average monthly occupancy rate for this property was 100%, occurring in July 2009, and the lowest average monthly occupancy rate for this property was 68.0%, occurring in April 2010. For the 12-month period ended June 30, 2010, the total base rent for this property was $848,913. The number of units at the Santa Fe Park RV Resort includes 122 units and four apartments.

Structure and Formation of Our Company

Our Operating Entities

Our Operating Partnership

Following the completion of this offering and the formation transactions, substantially all of our assets will be held by, and our operations will be conducted through, our operating partnership. We will contribute the net proceeds from this offering to our operating partnership in exchange for common units therein. Our interest in our operating partnership will generally entitle us to share in cash distributions from, and in the profits and losses of, our operating partnership in proportion to our percentage ownership. As the sole general partner of our operating partnership, we will generally have the exclusive power under the partnership agreement to manage and conduct its business and affairs, subject to certain limited approval and voting rights of the limited partners, which are described more fully below in "Description of the Partnership Agreement of American Assets Trust, L.P." Our board of directors will manage our business and affairs.

Beginning on or after the date which is 14 months after the completion of this offering, each limited partner of our operating partnership will have the right to require our operating partnership to redeem part or all of its common units for cash, based upon the value of an equivalent number of shares of our common stock at the time of the redemption, or, at our election, shares of our common stock on a one-for-one basis, subject to certain adjustments and the restrictions on ownership and transfer of our stock set forth in our charter and described under the section entitled "Description of Securities—Restrictions on Ownership and Transfer." With each redemption of common units, our percentage ownership interest in our operating partnership and our share of our operating partnership's cash distributions and profits and losses will increase. See "Description of the Partnership Agreement of American Assets Trust, L.P."

Our Services Company

As part of the formation transactions, we formed American Assets Trust Services, Inc., a Maryland corporation that is wholly owned by our operating partnership and that we refer to as our services company. We will elect with our services company to treat it as a taxable REIT subsidiary for federal income tax purposes. A taxable REIT subsidiary generally may provide non-customary and other services to our tenants and engage in activities that we may not engage in directly without adversely affecting our qualification as a REIT, provided a taxable REIT subsidiary may not operate or manage a lodging facility or provide rights to any brand name under which any lodging facility is operated.

Formation Transactions

Each property that will be owned by us through our operating partnership upon the completion of this offering and the formation transactions is currently owned directly or indirectly by partnerships, limited liability companies or corporations in which Ernest S. Rady and his affiliates, including the Ernest Rady Trust U/D/T March 10, 1983, or the Rady Trust, our other directors and executive officers and their affiliates and/or other third parties own a direct or indirect interest. We refer to these partnerships, limited liability companies and corporations collectively as the "ownership entities." With the exception of our joint venture partner in Fireman's Fund Headquarters, the current owners of the ownership entities, whom we refer to as the "prior investors," have (1) entered into contribution agreements with us or our operating partnership, pursuant to which they will contribute their interests in the ownership entities to us or our operating partnership or its subsidiaries, or (2) caused the ownership entities to enter into merger agreements pursuant to which the ownership entities will merge with and into us, our operating partnership or certain of our or our operating partnership's subsidiaries (or, in the case of reverse mergers, certain subsidiaries of our operating partnership will merge with and into such entities), in each case substantially concurrently with the completion of this offering. To the extent that we are

party directly to certain mergers in the formation transactions, we will contribute the assets received in such merger transactions to our operating partnership in exchange for common units. In addition, in connection with such transactions, American Assets, Inc. will contribute its property management business, which we refer to as the "property management business," to our operating partnership in exchange for common units pursuant to a contribution agreement. The prior investors will receive cash, shares of our common stock and/or common units in exchange for their interests in the ownership entities. See "Certain Relationships and Related Transactions." These formation transactions are designed to:

- consolidate the ownership of our portfolio under our company and our operating partnership;
- cause us to succeed to the property management business;
- facilitate this offering;
- enable us to raise necessary capital to repay existing indebtedness related to certain properties in our portfolio;
- enable us to qualify as a REIT for federal income tax purposes commencing with the taxable year ending December 31, 2010;
- defer the recognition of taxable gain by certain prior investors; and
- enable prior investors to obtain liquidity for their investments.

Pursuant to the formation transactions, the following have occurred or will occur substantially concurrently with the completion of this offering.

- We were formed as a Maryland corporation on July 16, 2010.
- American Assets Trust, L.P., our operating partnership, was formed as a Maryland limited partnership on July 16, 2010.
- We will sell shares of our common stock in this offering and an additional shares if the underwriters exercise their overallotment option in full, and we will contribute the net proceeds from this offering to our operating partnership in exchange for common units (or common units if the underwriters exercise their overallotment option in full).
- We will succeed to the property management business as a result of the contribution by American Assets, Inc. of the assets and liabilities associated with the property management business to its wholly owned subsidiary, American Assets Trust Management, LLC, and the subsequent contribution of its interest in that entity to our operating partnership in exchange for common units.
- We and our operating partnership will consolidate the ownership of our portfolio of properties by acquiring the entities that directly or indirectly own such properties or by acquiring interests in such entities through a series of forward and reverse merger transactions and contributions pursuant to merger agreements and contribution agreements each dated September 13, 2010, with such entities or the owners thereof. The value of the consideration to be paid to each of the owners of such entities in the formation transactions will be determined according to the terms of such merger agreements and contribution agreements.

- Prior investors in the merged and contributed entities will receive as consideration for such mergers and contributions shares of our common stock, common units, or in the case of non-accredited investors in such entities, $ in cash in accordance with the terms of the relevant merger and/or contribution agreements. The aggregate value of common stock and common units to be paid to prior investors in such entities at the mid-point of the range of prices shown on the cover of this prospectus is $. This value will increase or decrease if our common stock is priced above or below the mid-point of the range of prices shown on the cover of this prospectus.

- The Rady Trust has entered into a representation, warranty and indemnity agreement, pursuant to which it has made certain representations and warranties to us regarding the entities and assets being acquired in the formation transactions and agreed to indemnify us and our operating partnership for breaches of such representations and warranties for one year after the completion of this offering and the formation transactions. For purposes of satisfying any indemnification claims, the Rady Trust will deposit into escrow shares of our common stock and common units with an aggregate value equal to ten percent of the consideration payable to the Rady Trust and its affiliates in the formation transactions. The Rady Trust has no obligation to increase the amount of common stock or common units in the escrow in the event the trading price of our common stock declines below the initial public offering price. Any and all amounts remaining in the escrow one year from the closing of the formation transactions will be distributed to the Rady Trust to the extent that indemnity claims have not been made against such amounts. This indemnification is subject to a one-time aggregate deductible equal to one percent of the consideration payable to the Rady Trust and its affiliates in the formation transactions and a cap equal to the value of the consideration deposited in the escrow. Other than the Rady Trust, none of the prior investors or the entities that we are acquiring in the formation transactions will provide us with any indemnification.

- The current management team of American Assets, Inc. will become our senior management team, and the current real estate professionals employed by American Assets, Inc. will become our employees.

- Our operating partnership intends to use a portion of the net proceeds of this offering to repay approximately $341.4 million of outstanding indebtedness, including applicable prepayment costs, exit fees and defeasance costs of $24.3 million. As a result of the foregoing uses of proceeds, we expect to have approximately $879.9 million ($924.1 million including our pro rata share of joint venture debt) of total debt outstanding upon completion of this offering and the formation transactions.

- In conjunction with this offering, we anticipate entering into an agreement for a $ million revolving credit facility. We expect to use this facility to fund future capital expenditures related to lease-up, acquisitions and for general corporate purposes.

- In connection with the foregoing transactions, we expect to adopt a cash and equity-based incentive award plan and other incentive plans for our directors, officers, employees and consultants. We expect that an aggregate of shares of our common stock will be available for issuance under awards granted pursuant to our 2010 Equity Incentive Award Plan. See “Executive Compensation—Equity Incentive Award Plan.”

Consequences of this Offering and the Formation Transactions

The completion of this offering and the formation transactions will have the following consequences. All amounts are based on the mid-point of the range set forth on the cover of this prospectus:

- Through our interest in our operating partnership and its wholly owned subsidiaries, we will indirectly own a 100% fee simple interest in all of the properties in our portfolio other than Fireman's Fund Headquarters, in which we will own a 25% joint venture interest, and will operate all of the properties in our portfolio other than Waikiki Beach Walk, which will be operated by Outrigger Hotels & Resorts, or Outrigger.

- We will indirectly own our services company through our operating partnership, which will own 100% of its common stock.

- Purchasers of shares of our common stock in this offering will own % of our outstanding common stock, or % on a fully diluted basis (% of our outstanding common stock, or % on a fully diluted basis, if the underwriters' overallotment option is exercised in full).

- The prior investors in the entities that own the properties in our portfolio, including Mr. Rady and his affiliates and our executive officers, will own % of our outstanding common stock, or % on a fully diluted basis (% of our outstanding common stock, or % on a fully diluted basis, if the underwriters' overallotment option is exercised in full).

- We will be the sole general partner of our operating partnership. We will own % of the outstanding common units of partnership interest in our operating partnership, and the prior investors in the entities that own the properties in our portfolio, including Mr. Rady and his affiliates and our executive officers, will own % of the outstanding common units. If the underwriters' overallotment option is exercised in full, we will own % of the outstanding common units and the prior investors in the entities that own the properties in our portfolio, including Mr. Rady and his affiliates and our executive officers, will own %.

- We expect to have total consolidated indebtedness of approximately $879.9 million ($924.1 million including our pro rata share of joint venture debt).

Benefits of the Formation Transactions to Related Parties

In connection with this offering and the formation transactions, Mr. Rady, our Executive Chairman, and certain of our other directors and executive officers will receive material benefits described in "Certain Relationships and Related Transactions," including the following. All amounts are based on the mid-point of the range set forth on the cover page of this prospectus:

- Mr. Rady, our Executive Chairman, and his affiliates, including the Rady Trust, will receive shares of our common stock and common units in connection with the formation transactions, with an aggregate value of approximately $ million. As a result, Mr. Rady and his affiliates will own approximately % of our company on a fully diluted basis, or % if the underwriters' overallotment option is exercised in full.

- Mr. Chamberlain, our Chief Executive Officer and director, and his affiliates will receive shares of our common stock and common units in connection with the formation transactions, with an aggregate value of approximately $ million. As a result, Mr. Chamberlain and his affiliates will own approximately % of our company on a fully diluted basis, or % if the underwriters' overallotment option is exercised in full.

- Mr. Barton, our Chief Financial Officer, and his affiliates will receive shares of our common stock and common units in connection with the formation transactions, with an aggregate value of approximately $ million. As a result, Mr. Barton and his affiliates will own approximately % of our company on a fully diluted basis, or % if the underwriters' overallotment option is exercised in full.

- In connection with the formation transactions, we will repay in cash from the proceeds of this offering approximately $4.9 million in notes payable to certain of the prior investors in Del Monte Center. Mr. Rady and his affiliates will receive approximately $3.8 million of this amount in their capacity as direct or indirect owners of the entities that own Del Monte Center.

- In connection with the formation transactions, we will repay in cash from the proceeds of this offering approximately $350,000 in notes payable to certain prior investors in Torrey Reserve Campus. Mr. Rady and his affiliates will receive approximately $30,000 of this amount in their capacity as direct or indirect owners of the entities that own Torrey Reserve Campus.

- To the extent that an ownership entity has an excess of net working capital over target net working capital (as set forth below) as determined by us within 45 days prior to the date of the preliminary prospectus in connection with this offering, the amount of such excess shall be due to the prior owners of such ownership entity following the completion of the offering, including Mr. Rady and his affiliates and our other directors and executive officers and their affiliates who are prior investors. To the extent not distributed or paid by such ownership entity prior to the completion of this offering, our operating partnership shall pay such amounts on behalf of each such ownership entity promptly after the completion of this offering. For purposes of this calculation the target net working capital of each ownership entity will be zero, other than with respect to certain ownership entities holding interests in Waikiki Beach Walk – Retail and the Waikiki Beach Walk – Hotel. With respect to Waikiki Beach Walk – Retail, ABW Lewers LLC will have a target net working capital of $5,000,000, and with respect to the Waikiki Beach Walk – Hotel, each of EBW Hotel, LLC, Broadway 225 Sorrento Holdings, LLC, Broadway 225 Stonecrest Holdings, LLC and Waikele Venture Holdings, LLC will have a target net working capital of $2,050,000, $766,500, $470,000 and $1,713,500, respectively. Therefore, any such amounts will not be included in the assets that we acquire in the formation transactions. We estimate that the aggregate amount of such excess of net working capital will be $, of which $ will be payable to Mr. Rady and his affiliates, $ will be payable to John W. Chamberlain and his affiliates, and $ will be payable to Robert F. Barton and his affiliates.

- The Rady Trust and certain other affiliates of Mr. Rady are guarantors of approximately $75.4 million of indebtedness, in the aggregate, with respect to Waikele Center, Waikiki Beach Walk – Hotel, 160 King Street, The Landmark at One Market and Valencia Corporate Center. All of the indebtedness underlying the foregoing guaranteed amounts will be repaid with proceeds from this offering and, as a result, the Rady Trust and these other affiliates of Mr. Rady will be released from these guarantee obligations. In addition, the Rady Trust and certain other affiliates of Mr. Rady are guarantors of approximately $879.9 million ($924.1 million including our pro rata share of joint venture debt) of indebtedness, in the aggregate, that will be assumed by us upon completion of this offering. The guarantees with respect to substantially all of this indebtedness are limited to losses incurred by the applicable lender arising from a borrower's fraud, intentional misrepresentation or other "bad acts," a borrower's bankruptcy, a prohibited transfer under the loan documents or losses arising from a borrower's breach of certain environmental covenants. In connection with this assumption, we will seek to have the Rady Trust and such other affiliates of Mr. Rady released from such guarantees and to have our operating partnership assume any such guarantee obligations as replacement guarantor. To the extent lenders do not consent to the release of the Rady Trust and/or

such other affiliates of Mr. Rady and the Rady Trust, and such other affiliates remain guarantors on assumed indebtedness following the IPO, our operating partnership will enter into a reimbursement agreement with the Rady Trust and such affiliates, pursuant to which our operating partnership will be obligated to reimburse the Rady Trust and such other affiliates of Mr. Rady for any amounts paid by them under guarantees with respect to the assumed indebtedness.

- We will enter into a tax protection agreement with certain limited partners of our operating partnership, including Mr. Rady and his affiliates and an affiliate of Mr. Chamberlain, pursuant to which we agree to indemnify such limited partners against adverse tax consequences in connection with: (1) our sale of an interest in seven specified properties in a taxable transaction until the seventh anniversary of the closing of the formation transactions; and (2) our failure to provide certain limited partners the opportunity to guarantee certain debt of our operating partnership during such period, or following such period, our failure to use commercially reasonable efforts to provide such opportunities; provided that, subject to certain exceptions and limitations, such indemnification rights will terminate for any such protected partner that sells, exchanges or otherwise disposes of more than 50% of his or her common units. Notwithstanding the foregoing the operating partnership's indemnification obligations under the tax protection agreement will terminate upon the later of the death of Mr. Rady and the death of his wife. Mr. Rady and his affiliates and an affiliate of Mr. Chamberlain will have the opportunity to guarantee up to $ million and $ million, respectively, of our outstanding indebtedness, pursuant to the tax protection agreement.

- In connection with the completion of this offering, we will enter into a registration rights agreement with the various persons receiving shares of our common stock and/or common units in the formation transactions, including Mr. Rady, his affiliates, immediate family members and related trusts and certain of our other directors and executive officers and their affiliates. Under the registration rights agreement, subject to certain limitations, commencing not later than 14 months after the date of this offering, we will file one or more registration statements covering the resale of the shares of our common stock issued in the formation transactions and the resale of the shares of our common stock issued or issuable, at our option, in exchange for common units issued in the formation transactions. We may, at our option, satisfy our obligation to prepare and file a resale registration statement by filing a registration statement registering the issuance by us of shares of our common stock registered under the Securities Act in lieu of our operating partnership's obligation to pay cash for such units. Commencing one year after the date of this offering (but prior to the date upon which the registration statement described above is effective) or 16 months after the date of this offering if the shelf registration statement described above is not then effective, Mr. Rady and his affiliates, immediate family members and related trusts will have demand rights to require us to undertake an underwritten offering under a resale registration statement (so long as a majority-in-interest of such group makes such a demand). In addition, if we file a registration statement with respect to an underwritten offering for our own account, any of Mr. Rady and his affiliates, immediate family members and related trusts will have the right, subject to certain limitations, to register such number of shares of our common stock issued to him or her pursuant to the formation transactions as each such person requests. Commencing upon our filing of a resale registration statement not later than 14 months after the date of this offering, under certain circumstances, we will also be required to undertake an underwritten offering upon the written request of holders of at least 10% in the aggregate of the securities originally issued in the formation transactions, provided the securities to be registered in such offering shall (1) have a market value of at least $25 million or (2) shall represent all of the remaining securities acquired in the formation transactions by Mr. Rady and his affiliates, immediate family members and related trusts and such securities shall have a market value of at least $10 million, and provided further that

we are not obligated to effect more than three such underwritten offerings. We will agree to pay all of the expenses relating to the securities registrations described above. See “Shares Eligible for Future Sale—Registration Rights.”

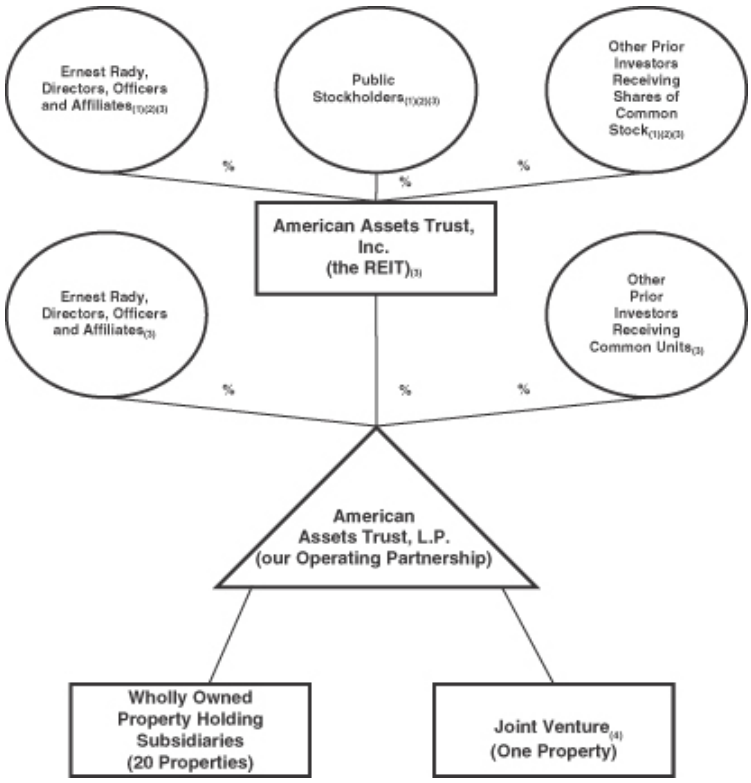
- We may enter into employment agreements with certain of our executive officers that would become effective as of the closing of this offering, which would be expected to provide for salary, bonus and other benefits, including accelerated equity vesting upon a change in control and severance upon a termination of employment under certain circumstances. The material terms of the agreements with our named executive officers are described under “Executive Compensation—Employment Agreements” and “Executive Compensation—Compensation Tables—Narrative Disclosure to Summary Compensation Table.”

- We intend to enter into indemnification agreements with directors and executive officers at the closing of this offering, providing for procedures for indemnification by us to the fullest extent permitted by law and advancements by us of certain expenses and costs relating to claims, suits or proceedings arising from their service to us or, at our request, service to other entities, as officers or directors.

- We intend to adopt our 2010 Equity Incentive Award Plan, under which we may grant cash or equity incentive awards to our directors, officers, employees and consultants. See “Executive Compensation—Equity Incentive Award Plan.”

Our Structure

The following diagram depicts our expected ownership structure upon completion of this offering and the formation transactions. Our operating partnership will own the various properties in our portfolio directly or indirectly, and in some cases through special purpose entities that were created in connection with various financings.



(1) On a fully diluted basis, our public stockholders will own % of our outstanding common stock, Mr. Rady and his affiliates, our other executive officers and directors and their affiliates will own % of our outstanding common stock and the other prior investors in the entities that own the properties in our portfolio as a group will own % of our outstanding common stock.

(2) If the underwriters exercise their overallotment option in full, on a fully diluted basis, our public stockholders will own % of our outstanding common stock, Mr. Rady and his affiliates, our other executive officers and directors and their affiliates will own % of our outstanding common stock and the other prior investors in the entities that own properties in our portfolio as a group will own % of our outstanding common stock.

(3) If the underwriters exercise their overallotment option in full, our public stockholders, Mr. Rady and his affiliates, our other executive officers and directors and their affiliates and the other prior investors in the entities that own the properties in our portfolio will own %, % and %, respectively, of our outstanding common stock, and we, Mr. Rady and his affiliates, our other executive officers and directors and their affiliates and other prior investors in the entities that own the properties in our portfolio will own %, %, and %, respectively, of the outstanding common units.

(4) Fireman's Fund Headquarters is held through a joint venture in which we are a 25% owner. The remaining 75% interest in the joint venture is held, indirectly, by General Electric Pension Trust.

Restrictions on Transfer

Under our partnership agreement, holders of common units do not have redemption or exchange rights, except under limited circumstances, for a period of 14 months, and may not otherwise transfer their units, except under certain limited circumstances, for a period of 14 months, from completion of this offering. After the expiration of this 14-month period, transfers of units by limited partners and their assignees are subject to various conditions, including our right of first refusal, described under "Description of the Partnership Agreement of American Assets Trust, L.P.—Transfers and Withdrawals." In addition, each of our executive officers, directors and director nominees and their affiliates, as well as the prior investors have agreed not to sell or otherwise transfer or encumber any shares of our common stock or securities convertible or exchangeable into our common stock (including common units) owned by them at the completion of this offering or thereafter acquired by them for a period of 365 days (with respect to our executive officers, directors and director nominees and their affiliates) and 180 days (with respect to other prior investors) after the date of this prospectus without the written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated, Wells Fargo Securities, LLC and Morgan Stanley & Co. Incorporated.

Restrictions on Ownership of our Stock

Due to limitations on the concentration of ownership of REIT stock imposed by the Internal Revenue Code of 1986, as amended, or the Code, our charter generally prohibits any person from actually, beneficially or constructively owning more than % in value or number of shares, whichever is more restrictive, of the outstanding shares of our common stock or more than % in value of the aggregate outstanding shares of all classes and series of our stock. We refer to these restrictions as the "ownership limits." Our charter permits our board of directors, in its sole and absolute discretion, to exempt a person, prospectively or retroactively, from one or both of the ownership limits if, among other limitations, the person's ownership of our stock in excess of the ownership limits could not cause us to fail to qualify as a REIT. Our board of directors will grant to Mr. Rady (and certain of his affiliates) an exemption from the ownership limits, subject to various conditions and limitations, as described under "Description of Securities—Restrictions on Ownership and Transfer."

Conflicts of Interest

Following the completion of this offering and the formation transactions, conflicts of interest may arise between the holders of units and our stockholders with respect to certain transactions. In particular, the consummation of certain business combinations, the sale of any properties or a reduction of indebtedness could have adverse tax consequences to holders of units, which would make those transactions less desirable to certain holders of such units. Mr. Rady will hold both common units and shares of our common stock upon completion of this offering and the formation transactions.

The Rady Trust and other affiliates of Mr. Rady and/or our other directors and executive officers own interests, directly or indirectly, in the entities that own the properties that are included in our portfolio and that we will acquire in the formation transactions and as such are parties to or, have interests in, contribution and/or merger agreements with us. In addition, certain of our executive officers may become parties to employment agreements with us. We may choose not to enforce, or to enforce less vigorously, our rights under these agreements because of our desire to maintain our ongoing relationships with members of our senior management or our board of directors and their affiliates, with possible negative impact on stockholders.

The Rady Trust has entered into a representation, warranty and indemnity agreement with us, pursuant to which it made certain representations and warranties to us regarding the entities and assets being acquired in the formation transactions and agreed to indemnify us and our operating partnership for breaches of such representations and warranties for one year after the completion of this offering and the formation transactions. For purposes of satisfying any indemnification claims, the Rady Trust will deposit into escrow shares of our

common stock and common units with an aggregate value equal to ten percent of the consideration payable to the Rady Trust and its affiliates in the formation transactions. The Rady Trust has no obligation to increase the amount of common stock or common units in the escrow in the event the trading price of our common stock declines below the initial public offering price. Any and all amounts remaining in the escrow one year from the closing of the formation transactions will be distributed to the Rady Trust to the extent that indemnity claims have not been made against such amounts. This indemnification is subject to a one-time aggregate deductible equal to one percent of the consideration payable to the Rady Trust and its affiliates in the formation transactions and a cap equal to the value of the consideration deposited in the escrow. Other than the Rady Trust, none of the prior investors or the entities that we are acquiring in the formation transactions will provide us with any indemnification. We may choose not to enforce, or to enforce less vigorously, our rights under this agreement due to our ongoing relationship with Mr. Rady. See "Risk Factors—Risks Related to Our Organizational Structure—We may pursue less vigorous enforcement of terms of the contribution and other agreements with members of our senior management and our affiliates because of our dependence on them and conflicts of interest."

In addition, pursuant to a tax protection agreement, we have agreed to indemnify certain limited partners of our operating partnership, including Mr. Rady and his affiliates and an affiliate of Mr. Chamberlain, against adverse tax consequences to them in the event that we sell, exchange or otherwise dispose of any interest in seven specified properties in a taxable transaction prior to the seventh anniversary of the closing of the formation transactions. Furthermore, we will also be required to indemnify Mr. Rady and certain of his affiliates and certain other limited partners of our operating partnership against any resulting taxes to them if we fail to offer them an opportunity to guarantee, in the aggregate, up to $ million of certain of our outstanding indebtedness during such time period or if we fail to use commercially reasonable efforts to provide such debt guarantee opportunities to such continuing limited partners following such time period. Subject to certain exceptions and limitations, such indemnification rights will terminate for any protected partner that sells, exchanges or otherwise disposes of more than 50% of his or her common units. Notwithstanding the foregoing the operating partnership's indemnification obligations under the tax protection agreement will terminate upon the later of the death of Mr. Rady and the death of his wife. Mr. Rady and his affiliates and an affiliate of Mr. Chamberlain will have the opportunity to guarantee up to $ million and $ million, respectively, of our outstanding indebtedness. The tax indemnities granted to Mr. Rady, an affiliate of Mr. Chamberlain and certain other limited partners of our operating partnership may affect the way in which we conduct our business, including when and under what circumstances we sell restricted properties or interests therein during the restriction period. If we were to trigger the tax protection provisions under these agreements, we would be required to pay an amount equal to the taxes owed by these investors (plus an additional amount equal to the taxes incurred as a result of such payment).

We did not conduct arm's-length negotiations with Mr. Rady with respect to the terms of the formation transactions. In the course of structuring the formation transactions, Mr. Rady had the ability to influence the type and level of benefits that he and the Rady Trust will receive from us. In addition, we have not obtained any third-party appraisals of the properties and other assets to be acquired by us from the prior investors, including Mr. Rady, in connection with the formation transactions. As a result, the price to be paid by us to the prior investors, including Mr. Rady, for the acquisition of the properties and assets in the formation transactions may exceed the fair market value of those properties and assets.

We have adopted policies that are designed to eliminate or minimize certain potential conflicts of interests, and the limited partners of our operating partnership have agreed that, in the event of a conflict between the interests of us or our stockholders and the interests of our operating partnership or any of its limited partners, we are under no obligation not to give priority to the separate interests of our company or our stockholders. See "Policies with respect to Certain Activities—Conflict of Interest Policies" and "Description of the Partnership Agreement of American Assets Trust, L.P."

Affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated, one of the underwriters in this offering, are lenders under two outstanding loans totaling approximately $31.6 million in the aggregate, each of which will be repaid with a portion of the proceeds of this offering. Additionally, affiliates of Wells Fargo Securities, LLC, another underwriter in this offering, are lenders under three outstanding loans totaling approximately $44.8 million in the aggregate, each of which will be repaid with a portion of the proceeds of this offering. As a result, these affiliates will receive the portion of the net proceeds of this offering that are used to prepay such indebtedness. In addition, certain affiliates of the underwriters will participate as lenders under the $ million revolving credit facility that we anticipate entering into upon the completion of this offering. In their capacity as lenders, these affiliates of the underwriters will receive certain financing fees in connection with the credit facility in addition to the underwriting discounts and commissions that may result from this offering. These transactions create potential conflicts of interest because the underwriters have an interest in the successful completion of this offering beyond the underwriting discounts and commissions they will receive. These interests may influence the decision regarding the terms and circumstances under which the offering and formation transactions are completed.

Distribution Policy

We intend to pay cash dividends to holders of our common stock. We intend to pay a pro rata dividend with respect to the period commencing on the completion of this offering and ending , 2010 based on $ per share for a full quarter. On an annualized basis, this would be $ per share, or an annual dividend rate of approximately %, based on the mid-point of the range set forth on the cover page of this prospectus. We intend to maintain our initial dividend rate for the 12-month period following completion of this offering unless actual results of operations, economic conditions or other factors differ materially from the assumptions used in our estimate. We intend to make dividend distributions that will enable us to meet the distribution requirements applicable to REITs and to eliminate or minimize our obligation to pay income and excise taxes. Dividends declared by us will be authorized by our board of directors in its sole discretion out of funds legally available for such and will depend upon a number of factors, including restrictions under applicable law and the requirements for our qualification as a REIT for federal income tax purposes. We do not intend to reduce the expected dividend per share if the underwriters' overallotment option is exercised.

Our Tax Status

We intend to elect to be taxed and to operate in a manner that will allow us to qualify as a REIT for federal income tax purposes commencing with our taxable year ending December 31, 2010. We believe that our organization and proposed method of operation will enable us to meet the requirements for qualification and taxation as a REIT. To maintain REIT status, we must meet a number of organizational and operational requirements, including a requirement that we annually distribute at least 90% of our REIT taxable income to our stockholders. As a REIT, we generally will not be subject to federal income tax on our REIT taxable income we currently distribute to our stockholders. If we fail to qualify as a REIT in any taxable year, we will be subject to federal income tax at regular corporate rates. Even if we qualify for taxation as a REIT, we may be subject to some federal, state and local taxes on our income or property. In addition, the income of any taxable REIT subsidiary that we own will be subject to taxation at regular corporate rates. See "Federal Income Tax Considerations."

Corporate Information

Our principal executive office is located at 11455 El Camino Real, Suite 200, San Diego, California 92130. Our telephone number is (858) 350-2600. We have reserved the website located at *www.americanassetstrust.com.* The information on, or accessible through, our Web site is not incorporated into and does not constitute a part of this prospectus or any other report or document we file with or furnish to the Securities and Exchange Commission, or SEC. We have included our Web site address as an inactive textual reference and do not intend it to be an active link to our Web site.

This Offering	
Common stock offered by us	shares (plus up to an additional shares of our common stock that we may issue and sell upon the exercise of the underwriters' overallotment option in full).
Common stock to be outstanding after this offering	shares[1]
Common stock and common units to be outstanding after this offering	shares and common units[1][2]
Use of proceeds	We estimate that the net proceeds of this offering, after deducting the underwriting discount and commissions and estimated expenses, will be approximately $ million ($ million if the underwriters exercise their overallotment option in full). We will contribute the net proceeds of this offering to our operating partnership. Our operating partnership intends to use the net proceeds of this offering as follows: • $341.4 million to repay outstanding indebtedness, including applicable prepayment costs, exit fees and defeasance costs of $24.3 million; • $13.2 million to exercise our option to purchase the approximately 80,000 square foot building vacated by Mervyn's located in Carmel Mountain Plaza; • up to $8.5 million for tenant improvements and leasing commissions at The Landmark at One Market; • $ million to pay unaccredited prior investors in connection with the formation transactions; • up to $2.0 million to pay costs related to the renovation of Solana Beach Towne Centre; and • the remaining amounts for general corporate purposes, including future acquisitions and, potentially, paying distributions.
Risk Factors	Investing in our common stock involves a high degree of risk. You should carefully read and consider the information set forth under the heading "Risk Factors" beginning on page 28 and other information included in this prospectus before investing in our common stock.
Proposed New York Stock Exchange symbol	"AAT"

(1) Includes (a) shares of common stock to be issued in this offering, (b) the shares of common stock to be issued in connection with the formation transactions, (c) shares of restricted stock to be granted to our officers and certain other employees concurrently with the completion of this offering and (d) shares of restricted stock to be granted to our non-employee

directors concurrently with the completion of this offering. Excludes (a) shares of our common stock issuable upon the exercise of the underwriters' overallotment option in full, (b) shares of our common stock available for future issuance under our 2010 Equity Incentive Award Plan, and (c) shares that may be issued, at our option, upon exchange of common units to be issued in the formation transactions.

(2) Includes common units expected to be issued in the formation transactions, which may, subject to certain limitations, be redeemed for cash or, at our option, exchanged for shares of common stock on a one-for-one basis.

Summary Selected Financial Data

The following table sets forth summary selected financial and operating data on a historical combined basis for our "Predecessor." Our Predecessor is comprised of certain entities and their consolidated subsidiaries that own directly or indirectly 17 retail, office and multifamily properties, and unconsolidated equity interests in four retail, mixed-use and office properties. We refer to these entities and their subsidiaries collectively as the "ownership entities." Each of the ownership entities currently owns, directly or indirectly, one or more retail, office, mixed-use or multifamily properties. Upon completion of this offering and the formation transactions, we will acquire the 17 retail, office and multifamily properties owned directly or indirectly by our Predecessor, as well as our Predecessor's unconsolidated equity interests in four other retail, office and mixed-use properties, and assume the ownership and operation of its business. As a result of the completion of the formation transactions we will have acquired direct or indirect ownership of a total of 20 retail, office, mixed-use and multifamily properties and an equity investment in one unconsolidated office property. We have not presented historical information for American Assets Trust, Inc. because we have not had any corporate activity since our formation other than the issuance of 1,000 shares of common stock to the Rady Trust in connection with the initial capitalization of the company and activity in connection with this offering, and because we believe that a discussion of the results of American Assets Trust, Inc. would not be meaningful.

You should read the following summary selected financial data in conjunction with our combined historical consolidated financial statements and the related notes and with "Management's Discussion and Analysis of Financial Condition and Results of Operations," which are included elsewhere in this prospectus.

The historical combined balance sheet information as of June 30, 2010 of our Predecessor and the combined statements of operations for the six months ended June 30, 2010 and 2009 of our Predecessor have been derived from the historical unaudited combined financial statements included elsewhere in this prospectus and includes all adjustments consisting of normal recurring adjustments, which management considers necessary for a fair presentation of the historical financial statements for such periods. The historical combined balance sheet information as of December 31, 2009 and 2008 of our Predecessor and the combined statements of operations information for each of the years ended December 31, 2009, 2008 and 2007 of our Predecessor have been derived from the historical audited combined financial statements included elsewhere in this prospectus.

Our unaudited summary selected pro forma consolidated financial statements and operating information as of and for the six months ended June 30, 2010 and for the year ended December 31, 2009 assumes completion of this offering and the formation transactions as of the beginning of the periods presented for the operating data and as of the stated date for the balance sheet data. Our pro forma financial information is not necessarily indicative of what our actual financial position and results of operations would have been as of the date and for the periods indicated, nor does it purport to represent our future financial position or results of operations.

The Company (Pro Forma) and Our Predecessor (Historical)

	Six Months Ended June 30,			Year Ended December 31,			
	Pro Forma Consolidated	Historical Combined		Pro Forma Consolidated	Historical Combined		
	2010	2010	2009	2009	2009	2008	2007
	(Unaudited)	(Unaudited)	(Unaudited)	(Unaudited)			
	(In thousands, except per share data)						
Statement of Operations Data:							
Rental income	$ 94,043	$ 56,509	$ 55,252	$ 189,150	$ 113,080	$ 117,104	$ 113,324
Other property income	3,074	1,710	1,691	6,768	3,963	3,839	4,184
Total revenue	97,117	58,219	56,943	195,918	117,043	120,943	117,508
Expenses:							
Rental expenses	24,068	9,864	9,854	49,277	20,336	22,029	21,674
Real estate taxes	8,471	5,948	2,463	13,298	8,306	10,890	10,878
General and administrative	4,465	3,408	3,756	9,050	7,058	8,690	10,471
Depreciation and amortization	25,465	14,739	14,902	51,309	29,858	31,089	31,376
Total operating expenses	62,469	33,959	30,975	122,934	65,558	72,698	74,399
Operating income	34,648	24,260	25,968	72,984	51,485	48,245	43,109
Interest income and other, net	(121)	31	109	(113)	173	1,167	2,462
Interest expense	(26,752)	(21,278)	(21,489)	(53,825)	(43,290)	(43,737)	(42,902)
Fee income from real estate joint ventures	126	1,943	871	254	1,736	1,538	2,721
Income (loss) from real estate joint ventures	113	1,407	(2,503)	173	(4,865)	(19,272)	(7,191)
Income (loss) from continuing operations	8,014	6,363	2,956	19,473	5,239	(12,059)	(1,801)
Discontinued operations:							
Loss from discontinued operations	—	—	—	—	—	(2,071)	(2,874)
Gain on sale of real estate property	—	—	—	—	—	2,625	—
Results from discontinued operations	—	—	—	—	—	554	(2,874)
Net income (loss)	8,014	6,363	2,956	19,473	5,239	(11,505)	(4,675)
Net income (loss) attributable to noncontrolling interests	—	(899)	(656)	—	(1,205)	(4,488)	(2,140)
Net income (loss) attributable to Predecessor	$ 8,014	$ 7,262	$ 3,612	$ 19,473	$ 6,444	$ (7,017)	$ (2,535)
Balance Sheet Data (at period end)							
Net real estate	$1,290,391	$ 928,831			$ 774,208	$ 793,237	$ 802,605
Investment in real estate ventures, net	12,225	30,668			55,361	67,661	108,240
Total assets	1,528,472	1,099,549			938,991	971,118	1,039,909
Notes payable	859,316	895,346			744,451	755,189	729,174
Total liabilities	905,424	944,335			768,028	781,944	763,717
Noncontrolling interests	73,694	36,285			37,790	40,310	60,881
Stockholders'/owners' equity	623,048	155,214			170,963	189,174	276,192
Total liabilities and stockholders'/ owners' equity	1,528,472	1,099,549			938,991	971,118	1,039,909
Per Share Data:							
Pro forma basic earnings per share	—			—			
Pro forma diluted earnings per share	—			—			
Pro forma weighted average common shares outstanding—basic	—			—			
Pro forma weighted average common shares outstanding—diluted	—			—			
Other Data:							
Pro forma funds from operations[1]	$ 34,727			$ 73,279			
Cash flows from:							
Operating activities		$ 23,408	$ 27,613		$ 47,501	$ 47,592	$ 31,179
Investing activities		(11,422)	(4,306)		(7,544)	2,111	(44,441)
Financing activities		(4,583)	(13,737)		(34,746)	(49,957)	18,850

(1) We calculate funds from operations, or FFO, in accordance with the standards established by the National Association of Real Estate Investment Trusts, or NAREIT. FFO represents net income (loss) (computed in accordance with U.S. generally accepted accounting principles, or GAAP), excluding gains (or losses) from sales of depreciable operating property, real estate related depreciation and amortization (excluding amortization of deferred financing costs) and after adjustments for unconsolidated partnerships and joint ventures. FFO is a supplemental non-GAAP financial measure. Management uses FFO as a supplemental performance measure because it believes that FFO is beneficial to investors as a starting point in measuring our operational performance. Specifically, in excluding real estate related depreciation and amortization and gains and losses from property dispositions, which do not relate to or are not indicative of operating performance, FFO provides a performance measure that, when compared year over year, captures trends in occupancy rates, rental rates and operating costs. We also believe that, as a widely recognized measure of the performance of REITs, FFO will be used by investors as a basis to compare our operating performance with that of other REITs. However, because FFO excludes depreciation and amortization and captures neither the changes in the value of our properties that result from use or market conditions nor the level of capital expenditures and leasing commissions necessary to maintain the operating performance of our properties, all of which have real economic effects and could materially impact our results from operations, the utility of FFO as a measure of our performance is limited. In addition, other equity REITs may not calculate FFO in accordance with the NAREIT definition as we do, and, accordingly, our FFO may not be comparable to such other REITs' FFO. Accordingly, FFO should be considered only as a supplement to net income as a measure of our performance. FFO should not be used as a measure of our liquidity, nor is it indicative of funds available to fund our cash needs, including our ability to pay dividends or service indebtedness. FFO also should not be used as a supplement to or substitute for cash flow from operating activities computed in accordance with GAAP. The following table sets forth a reconciliation of our pro forma FFO to net income, the nearest GAAP equivalent, for the periods presented:

	Pro Forma	
	Six Months Ended June 30, 2010	Year Ended December 31, 2009
	(In Thousands)	
Pro forma net income	$ 8,014	$ 19,473
Plus: pro forma real estate depreciation and amortization	25,465	51,309
Plus: pro forma depreciation of joint venture real estate assets	1,248	2,497
Pro forma funds from operations	$ 34,727	$ 73,279

RISK FACTORS

Investing in our common stock involves risks. In addition to other information contained in this prospectus, you should carefully consider the following factors before acquiring shares of our common stock offered by this prospectus. The occurrence of any of the following risks could materially and adversely affect our business, prospects, financial condition, results of operations and our ability to make cash distributions to our stockholders, which could cause you to lose all or a part of your investment in our common stock. Some statements in this prospectus, including statements in the following risk factors, constitute forward-looking statements. Please refer to the section entitled "Forward-Looking Statements."

Risks Related to Our Business and Operations

Our portfolio of properties is dependent upon regional and local economic conditions and is geographically concentrated in California, Hawaii and Texas, which may cause us to be more susceptible to adverse developments in those markets.

Our properties are located in California, Hawaii and Texas, and substantially all of our properties (20 out of the total 21) are concentrated in California and Hawaii, which exposes us to greater economic risks than if we owned a more geographically diverse portfolio. As of June 30, 2010, our properties in the California and Hawaii markets represented approximately 73.2% and 18.9%, respectively, of the total annualized base rent of the properties in our pro rata portfolio. As a result, we are particularly susceptible to adverse economic or other conditions in these markets (such as periods of economic slowdown or recession, business layoffs or downsizing, industry slowdowns, relocations of businesses, increases in real estate and other taxes and the cost of complying with governmental regulations or increased regulation), as well as to natural disasters that occur in these markets (such as earthquakes, wildfires and other events). Both of these markets experienced downturns within recent years. If there is a further downturn in the economy in either of these markets, our operations and our revenue and cash available for distribution, including cash available to pay distributions to our stockholders, could be materially adversely affected. We cannot assure you that these markets will grow or that underlying real estate fundamentals will be favorable to owners and operators of retail properties, office properties or multifamily properties. Our operations may also be affected if competing properties are built in either of these markets. Moreover, submarkets within any of our core markets may be dependent upon a limited number of industries. In addition, the State of California continues to suffer from severe budgetary constraints and is regarded as more litigious and more highly regulated and taxed than many other states, all of which may reduce demand for retail, office, mixed-use or multifamily space in California. Any adverse economic or real estate developments in the California or Hawaii markets, or any decrease in demand for retail, office, mixed-use or multifamily space resulting from the regulatory environment, business climate or energy or fiscal problems, could adversely impact our financial condition, results of operations, cash flow, our ability to satisfy our debt service obligations and our ability to pay distributions to our stockholders.

We expect to have approximately $879.9 million of indebtedness, or $924.1 million including our pro rata share of joint venture debt, outstanding following this offering, which may expose us to the risk of default under our debt obligations.

Upon completion of this offering and consummation of the formation transactions, we anticipate that our total indebtedness will be approximately $879.9 million ($924.1 million including our pro rata share of joint venture debt), a substantial portion of which will be guaranteed by our operating partnership, and we may incur significant additional debt to finance future acquisition and development activities. Concurrently with the completion of this offering, we expect to enter into a revolving credit facility.

Payments of principal and interest on borrowings may leave us with insufficient cash resources to operate our properties or to pay the dividends currently contemplated or necessary to maintain our REIT qualification. Our level of debt and the limitations imposed on us by our debt agreements could have significant adverse consequences, including the following:

- our cash flow may be insufficient to meet our required principal and interest payments;
- we may be unable to borrow additional funds as needed or on favorable terms, which could, among other things, adversely affect our ability to meet operational needs;
- we may be unable to refinance our indebtedness at maturity or the refinancing terms may be less favorable than the terms of our original indebtedness;
- we may be forced to dispose of one or more of our properties, possibly on unfavorable terms or in violation of certain covenants to which we may be subject;
- we may violate restrictive covenants in our loan documents, which would entitle the lenders to accelerate our debt obligations; and
- our default under any loan with cross default provisions could result in a default on other indebtedness.

If any one of these events were to occur, our financial condition, results of operations, cash flow and per share trading price of our common stock could be adversely affected. Furthermore, foreclosures could create taxable income without accompanying cash proceeds, which could hinder our ability to meet the REIT distribution requirements imposed by the Code. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Consolidated Indebtedness to be Outstanding After this Offering.”

We depend on significant tenants in our office properties.

As of June 30, 2010, the three largest tenants in our pro rata office portfolio—salesforce.com, inc., Del Monte Corporation and Fireman’s Fund—represented approximately 12.4% of the total annualized base rent in our pro rata portfolio. In December 2010, Del Monte Corporation’s lease will end and salesforce.com, inc. will expand into Del Monte Corporation’s vacated space. At that time Insurance Company of the West will become our third largest tenant. The inability of a significant tenant to pay rent or the bankruptcy or insolvency of a significant tenant may adversely affect the income produced by our office properties. If a tenant becomes bankrupt or insolvent, federal law may prohibit us from evicting such tenant based solely upon such bankruptcy or insolvency. In addition, a bankrupt or insolvent tenant may be authorized to reject and terminate its lease with us. Any claim against such tenant for unpaid, future rent would be subject to a statutory cap that might be substantially less than the remaining rent owed under the lease. As of June 30, 2010, salesforce.com, inc., Del Monte Corporation, Fireman’s Fund and Insurance Company of the West represented approximately 12.9%, 9.5%, 8.8% and 7.5%, respectively, of the total pro rata office portfolio annualized base rent. If any of these tenants were to experience a downturn in its business or a weakening of its financial condition resulting in its failure to make timely rental payments or causing it to default under its lease, we may experience delays in enforcing our rights as landlord and may incur substantial costs in protecting our investment. Any such event could have an adverse effect on our financial condition, results of operations, cash flow and the per share trading price of our common stock. Furthermore, Fireman’s Fund leases 100% of the Fireman’s Fund Headquarters property in Novato, California in which we own a 25% joint venture interest, and, as such, to the extent that Fireman’s Fund vacated the premises, we can provide no assurance that we will be able to re-lease such premises, or generate an equivalent amount of net rental revenue by leasing the vacated space to new third party tenants.

Our retail shopping center properties depend on anchor stores or major tenants to attract shoppers and could be adversely affected by the loss of, or a store closure by, one or more of these tenants.

Our retail shopping center properties are typically anchored by large, nationally recognized tenants. At any time, our tenants may experience a downturn in their business that may weaken significantly their financial condition. As a result, our tenants, including our anchor and other major tenants, may fail to comply with their contractual obligations to us, seek concessions in order to continue operations or declare bankruptcy, any of which could result in the termination of the tenant's leases and the loss of rental income attributable to the terminated leases. In addition, certain of our tenants may cease operations while continuing to pay rent, which could decrease customer traffic, thereby decreasing sales for our other tenants at the applicable retail property. If sales of our other tenants decrease, they may be unable to pay their minimum rents or expense recovery charges. In addition to these potential effects of a business downturn, mergers or consolidations among large retail establishments could result in the closure of existing stores or duplicate or geographically overlapping store locations, which could include stores at our retail properties. Any of the foregoing would adversely affect the value of the applicable retail property.

In addition, any of the foregoing also could trigger co-tenancy provisions contained in many of our retail leases. These co-tenancy provisions may condition a tenant's obligation to remain open, the amount of rent payable by the tenant or the tenant's obligation to continue occupancy on any of the following: (1) the presence of a certain anchor tenant or tenants; (2) the continued operation of an anchor tenant's store; and (3) minimum occupancy levels at the applicable retail property. If a co-tenancy provision is triggered by a failure of any of these or other applicable conditions, a tenant could have the right to terminate its lease early or to a reduction of its rent. In periods of prolonged economic decline, there is a higher than normal risk that co-tenancy provisions will be triggered as there is a higher risk of tenants closing stores or terminating leases during these periods.

Loss of, or a store closing by, an anchor or major tenant and the resulting potential adverse effects of co-tenancy provisions in our leases could significantly reduce our occupancy level or the rent we receive from our retail properties, and we may be unable to re-lease vacated space at attractive rents or at all. Moreover, in the event of default by a major tenant or anchor store, we may experience delays and costs in enforcing our rights as landlord to recover amounts due to us under the terms of our agreements with those parties. The occurrence of any of the situations described above, particularly if it involves an anchor tenant with leases in multiple locations, could seriously harm our performance.

As of June 30, 2010, our largest anchor tenants were Lowe's, Kmart and Foodland Super Market, Ltd., which together represented approximately 6.7% of our total annualized base rent of our pro rata portfolio in the aggregate, and 6.3%, 5.5% and 3.5%, respectively, of the annualized base rent generated by our retail properties. Foodland Super Market, Ltd. has ceased all operations in its leased premises and has subleased the premises to International Church of the Foursquare Gospel. Although we are currently collecting the rent for the leased premises, Foodland Super Market, Ltd.'s lease expires in 2014 and it is unlikely that it will renew its lease with us. In the event that Foodland Super Market, Ltd. does not renew its lease with us, there can be no assurances that we will be able to re-lease such premises at market rents, or at all, which may materially adversely affect our financial condition, results of operations, cash flow and cash available for distribution and our ability to satisfy our debt service obligations.

We may be unable to renew leases, lease vacant space or re-let space as leases expire.

As of June 30, 2010, leases representing 5.2% of the square footage of the properties in our pro rata office and retail portfolios will expire in the remainder of 2010, and an additional 4.4% of the square footage of the properties in our pro rata office and retail portfolios was available (taking into account uncommenced leases signed as of June 30, 2010). We cannot assure you that leases will be renewed or that our properties will be re-let at net effective rental rates equal to or above the current average net effective rental rates or that substantial rent abatements, tenant improvements, early termination rights or below-market renewal options will not be offered to

attract new tenants or retain existing tenants. In addition, our ability to lease our multifamily properties at favorable rates, or at all, may be adversely affected by the increase in supply and deterioration in the multifamily market stemming from the ongoing recession, and is dependent upon the overall level of spending in the economy, which is adversely affected by, among other things, job losses and unemployment levels, recession, personal debt levels, the downturn in the housing market, stock market volatility and uncertainty about the future. If the rental rates for our properties decrease, our existing tenants do not renew their leases or we do not re-let a significant portion of our available space and space for which leases will expire, our financial condition, results of operations, cash flow and per share trading price of our common stock could be adversely affected.

We may be unable to identify and complete acquisitions of properties that meet our criteria, which may impede our growth.

Our business strategy involves the acquisition of retail, office, mixed-use and multifamily properties. These activities require us to identify suitable acquisition candidates or investment opportunities that meet our criteria and are compatible with our growth strategies. We continue to evaluate the market of available properties and may attempt to acquire properties when strategic opportunities exist. However, we may be unable to acquire properties identified as potential acquisition opportunities. Our ability to acquire properties on favorable terms, or at all, may be exposed to the following significant risks:

- we may incur significant costs and divert management attention in connection with evaluating and negotiating potential acquisitions, including ones that we are subsequently unable to complete;
- even if we enter into agreements for the acquisition of properties, these agreements are subject to conditions to closing, which we may be unable to satisfy; and
- we may be unable to finance the acquisition on favorable terms or at all.

If we are unable to finance property acquisitions or acquire properties on favorable terms, or at all, our financial condition, results of operations, cash flow and per share trading price of our common stock could be adversely affected. In addition, failure to identify or complete acquisitions of suitable properties could slow our growth.

We face significant competition for acquisitions of real properties, which may reduce the number of acquisition opportunities available to us and increase the costs of these acquisitions.

The current market for acquisitions continues to be extremely competitive. This competition may increase the demand for the types of properties in which we typically invest and, therefore, reduce the number of suitable acquisition opportunities available to us and increase the prices paid for such acquisition properties. We also face significant competition for attractive acquisition opportunities from an indeterminate number of investors, including publicly traded and privately held REITs, private equity investors and institutional investment funds, some of which have greater financial resources than we do, a greater ability to borrow funds to acquire properties and the ability to accept more risk than we can prudently manage, including risks with respect to the geographic proximity of investments and the payment of higher acquisition prices. This competition will increase if investments in real estate become more attractive relative to other forms of investment. Competition for investments may reduce the number of suitable investment opportunities available to us and may have the effect of increasing prices paid for such acquisition properties and/or reducing the rents we can charge and, as a result, adversely affecting our operating results.

Our future acquisitions may not yield the returns we expect.

Our future acquisitions and our ability to successfully operate the properties we acquire in such acquisitions may be exposed to the following significant risks:

- even if we are able to acquire a desired property, competition from other potential acquirers may significantly increase the purchase price;
- we may acquire properties that are not accretive to our results upon acquisition, and we may not successfully manage and lease those properties to meet our expectations;
- our cash flow may be insufficient to meet our required principal and interest payments;
- we may spend more than budgeted amounts to make necessary improvements or renovations to acquired properties;
- we may be unable to quickly and efficiently integrate new acquisitions, particularly acquisitions of portfolios of properties, into our existing operations, and as a result our results of operations and financial condition could be adversely affected;
- market conditions may result in higher than expected vacancy rates and lower than expected rental rates; and
- we may acquire properties subject to liabilities and without any recourse, or with only limited recourse, with respect to unknown liabilities such as liabilities for clean-up of undisclosed environmental contamination, claims by tenants, vendors or other persons dealing with the former owners of the properties, liabilities incurred in the ordinary course of business and claims for indemnification by general partners, directors, officers and others indemnified by the former owners of the properties.

If we cannot operate acquired properties to meet our financial expectations, our financial condition, results of operations, cash flow and per share trading price of our common stock could be adversely affected.

We may not be able to control our operating costs or our expenses may remain constant or increase, even if our revenues do not increase, causing our results of operations to be adversely affected.

Factors that may adversely affect our ability to control operating costs include the need to pay for insurance and other operating costs, including real estate taxes, which could increase over time, the need periodically to repair, renovate and re-lease space, the cost of compliance with governmental regulation, including zoning and tax laws, the potential for liability under applicable laws, interest rate levels and the availability of financing. If our operating costs increase as a result of any of the foregoing factors, our results of operations may be adversely affected.

The expense of owning and operating a property is not necessarily reduced when circumstances such as market factors and competition cause a reduction in income from the property. As a result, if revenues decline, we may not be able to reduce our expenses accordingly. Costs associated with real estate investments, such as real estate taxes, insurance, loan payments and maintenance, generally will not be reduced even if a property is not fully occupied or other circumstances cause our revenues to decrease. If we are unable to decrease operating costs when demand for our properties decreases and our revenues decline, our financial condition, results of operations and our ability to make distributions to our stockholders may be adversely affected.

High mortgage rates and/or unavailability of mortgage debt may make it difficult for us to finance or refinance properties, which could reduce the number of properties we can acquire, our net income and the amount of cash distributions we can make.

If mortgage debt is unavailable at reasonable rates, we may not be able to finance the purchase of properties. If we place mortgage debt on properties, we may be unable to refinance the properties when the loans become due, or to refinance on favorable terms. If interest rates are higher when we refinance our properties, our income could be reduced. If any of these events occur, our cash flow could be reduced. This, in turn, could reduce cash available for distribution to our stockholders and may hinder our ability to raise more capital by issuing more stock or by borrowing more money. In addition, to the extent we are unable to refinance the properties when the loans become due, we will have fewer debt guarantee opportunities available to offer under our tax protection agreement.

Mortgage debt obligations expose us to the possibility of foreclosure, which could result in the loss of our investment in a property or group of properties subject to mortgage debt.

Incurring mortgage and other secured debt obligations increases our risk of property losses because defaults on indebtedness secured by properties may result in foreclosure actions initiated by lenders and ultimately our loss of the property securing any loans for which we are in default. Any foreclosure on a mortgaged property or group of properties could adversely affect the overall value of our portfolio of properties. For tax purposes, a foreclosure on any of our properties that is subject to a nonrecourse mortgage loan would be treated as a sale of the property for a purchase price equal to the outstanding balance of the debt secured by the mortgage. If the outstanding balance of the debt secured by the mortgage exceeds our tax basis in the property, we would recognize taxable income on foreclosure, but would not receive any cash proceeds, which could hinder our ability to meet the REIT distribution requirements imposed by the Code.

Some of our financing arrangements involve balloon payment obligations, which may adversely affect our ability to make distributions.

Some of our financing arrangements require us to make a lump-sum or “balloon” payment at maturity. Our ability to make a balloon payment at maturity is uncertain and may depend upon our ability to obtain additional financing or our ability to sell the property. At the time the balloon payment is due, we may or may not be able to refinance the existing financing on terms as favorable as the original loan or sell the property at a price sufficient to make the balloon payment. The effect of a refinancing or sale could affect the rate of return to stockholders and the projected time of disposition of our assets. In addition, payments of principal and interest made to service our debts may leave us with insufficient cash to pay the distributions that we are required to pay to maintain our qualification as a REIT.

Failure to hedge effectively against interest rate changes may adversely affect financial condition, results of operations, cash flow and per share trading price of our common stock.

Subject to maintaining our qualification as a REIT, we may enter into hedging transactions to protect us from the effects of interest rate fluctuations on floating rate debt. Our hedging transactions may include entering into interest rate cap agreements or interest rate swap agreements. These agreements involve risks, such as the risk that such arrangements would not be effective in reducing our exposure to interest rate changes or that a court could rule that such an agreement is not legally enforceable. In addition, interest rate hedging can be expensive, particularly during periods of rising and volatile interest rates. Hedging could reduce the overall returns on our investments. Failure to hedge effectively against interest rate changes could materially adversely affect our financial condition, results of operations, cash flow and per share trading price of our common stock. In addition, while such agreements would be intended to lessen the impact of rising interest rates on us, they could also expose us to the risk that the other parties to the agreements would not perform, we could incur significant costs associated with the settlement of the agreements or that the underlying transactions could fail to qualify as highly-effective cash flow hedges under Financial Accounting Standards Board, or FASB, Accounting Standards Codification, or ASC, Topic 815, Derivative and Hedging.

Our proposed revolving credit facility will restrict our ability to engage in some business activities.

We anticipate that our proposed revolving credit facility will contain customary negative covenants and other financial and operating covenants that, among other things:

- restrict our ability to incur additional indebtedness;
- restrict our ability to make certain investments;
- limit our ability to make capital expenditures;
- restrict our ability to merge with another company;
- restrict our ability to make distributions to stockholders; and
- require us to maintain financial coverage ratios.

These limitations will restrict our ability to engage in some business activities, which could adversely affect our financial condition, results of operations, cash flow and per share trading price of our common stock. In addition, our credit facility may contain specific cross-default provisions with respect to specified other indebtedness, giving the lenders the right to declare a default if we are in default under other loans in some circumstances.

Adverse economic and geopolitical conditions and dislocations in the credit markets could have a material adverse effect on our financial condition, results of operations, cash flow and per share trading price of our common stock.

Our business may be affected by market and economic challenges experienced by the U.S. economy or real estate industry as a whole, including the recent dislocations in the credit markets and general global economic downturn. These conditions, or similar conditions existing in the future, may adversely affect our financial condition, results of operations, cash flow and per share trading price of our common stock as a result of the following potential consequences, among others:

- decreased demand for retail, office, mixed-use and multifamily space, which would cause market rental rates and property values to be negatively impacted;
- reduced values of our properties may limit our ability to dispose of assets at attractive prices or to obtain debt financing secured by our properties and may reduce the availability of unsecured loans;
- our ability to obtain financing on terms and conditions that we find acceptable, or at all, may be limited, which could reduce our ability to pursue acquisition and development opportunities and refinance existing debt, reduce our returns from our acquisition and development activities and increase our future interest expense; and
- one or more lenders under our credit facility could refuse to fund their financing commitment to us or could fail and we may not be able to replace the financing commitment of any such lenders on favorable terms, or at all.

In addition, the economic downturn has adversely affected, and may continue to adversely affect, the businesses of many of our tenants. As a result, we may see increases in bankruptcies of our tenants and increased defaults by tenants, and we may experience higher vacancy rates and delays in re-leasing vacant space, which could negatively impact our business and results of operations.

We are subject to risks that affect the general retail environment.

A portion of our properties are in the retail real estate market. This means that we are subject to factors that affect the retail sector generally, as well as the market for retail space. The retail environment and the market for retail space have been, and could continue to be, adversely affected by weakness in the national, regional and local economies, the level of consumer spending and consumer confidence, the adverse financial condition of some large retailing companies, the ongoing consolidation in the retail sector, the excess amount of retail space in a number of markets and increasing competition from discount retailers, outlet malls, internet retailers and other online businesses. Increases in consumer spending via the internet may significantly affect our retail tenants' ability to generate sales in their stores. In addition, some of our retail tenants face competition from the expanding market for digital content and hardware, including without limitation electronic books, or "eBooks," and eBook readers and digital distribution of content. New and enhanced technologies, including new digital technologies and new web services technologies, may increase competition for certain of our retail tenants.

Any of the foregoing factors could adversely affect the financial condition of our retail tenants and the willingness of retailers to lease space in our shopping centers. In turn, these conditions could negatively affect market rents for retail space and could materially and adversely affect our financial condition, results of operations, cash flow, the trading price of our common shares and our ability to satisfy our debt service obligations and to pay distributions to our stockholders.

We have no operating history as a REIT or a publicly traded company and may not be able to successfully operate as a REIT or a publicly traded company.

We have no operating history as a REIT or a publicly traded company. We cannot assure you that the past experience of our senior management team will be sufficient to successfully operate our company as a REIT or a publicly traded company, including the requirements to timely meet disclosure requirements of the SEC, and comply with the Sarbanes-Oxley Act of 2002. Upon completion of this offering, we will be required to develop and implement control systems and procedures in order to qualify and maintain our qualification as a REIT and satisfy our periodic and current reporting requirements under applicable SEC regulations and comply with New York Stock Exchange, or NYSE, listing standards, and this transition could place a significant strain on our management systems, infrastructure and other resources. Failure to operate successfully as a public company or maintain our qualification as a REIT would have an adverse effect on our financial condition, results of operations, cash flow and per share trading price of our common stock. See "—Risks Related to Our Status as a REIT —Failure to qualify as a REIT would have significant adverse consequences to us and the value of our common stock."

We face significant competition in the leasing market, which may decrease or prevent increases of the occupancy and rental rates of our properties.

We compete with numerous developers, owners and operators of real estate, many of which own properties similar to ours in the same submarkets in which our properties are located. If our competitors offer space at rental rates below current market rates, or below the rental rates we currently charge our tenants, we may lose existing or potential tenants and we may be pressured to reduce our rental rates below those we currently charge or to offer more substantial rent abatements, tenant improvements, early termination rights or below-market renewal options in order to retain tenants when our tenants' leases expire. As a result, our financial condition, results of operations, cash flow and per share trading price of our common stock could be adversely affected.

We may be required to make rent or other concessions and/or significant capital expenditures to improve our properties in order to retain and attract tenants, causing our financial condition, results of operations, cash flow and per share trading price of our common stock to be adversely affected.

To the extent adverse economic conditions continue in the real estate market and demand for retail, office, mixed-use and multifamily space remains low, we expect that, upon expiration of leases at our properties,

we will be required to make rent or other concessions to tenants, accommodate requests for renovations, build-to-suit remodeling and other improvements or provide additional services to our tenants. As a result, we may have to make significant capital or other expenditures in order to retain tenants whose leases expire and to attract new tenants in sufficient numbers. Additionally, we may need to raise capital to make such expenditures. If we are unable to do so or capital is otherwise unavailable, we may be unable to make the required expenditures. This could result in non-renewals by tenants upon expiration of their leases, which could cause an adverse effect to our financial condition, results of operations, cash flow and per share trading price of our common stock.

The actual rents we receive for the properties in our portfolio may be less than our asking rents, and we may experience lease roll down from time to time.

As a result of various factors, including competitive pricing pressure in our submarkets, adverse conditions in the California, Hawaii and Texas real estate markets, a general economic downturn and the desirability of our properties compared to other properties in our submarkets, we may be unable to realize the asking rents across the properties in our portfolio. In addition, the degree of discrepancy between our asking rents and the actual rents we are able to obtain may vary both from property to property and among different leased spaces within a single property. If we are unable to obtain rental rates that are on average comparable to our asking rents across our portfolio, then our ability to generate cash flow growth will be negatively impacted. In addition, depending on asking rental rates at any given time as compared to expiring leases in our portfolio, from time to time rental rates for expiring leases may be higher than starting rental rates for new leases.

Our joint venture interest in Fireman's Fund Headquarters, as well as the property itself, are subject to certain rights of first offer that could interfere with the acquisition of our joint venture interests in this property in the formation transactions, and may limit our ability to sell our joint venture interest or to obtain the highest price possible for this property in connection with a future sale.

Our tenant, Fireman's Fund, has a right of first offer, pursuant to the terms of our lease agreement, to purchase Fireman's Fund Headquarters if we propose to sell all or a portion of the property, and our joint venture partner in this property his a similar right with respect to certain transfers of membership interests in the joint venture. The existence of these rights of first offer, which survive for the full term of the lease and for the duration of the joint venture, respectively, may limit our ability to sell our joint venture interests and could adversely impact the joint venture's ability to obtain the highest possible price for this property during such periods, as it would not be able to offer the property to potential purchasers through a competitive bid process or in a similar manner designed to maximize the value obtained without first offering to sell to Fireman's Fund.

Although we do not believe that Fireman's Fund's right of first offer applies to the acquisition of our joint venture interest, if Fireman's Fund disagreed with this view it could assert that we had violated the terms of the lease and that it should be entitled to purchase our equity interests in this property at a price equal to the price at which we acquired such equity interests from the prior investors. In the event that Fireman's Fund were to challenge our transaction with the prior investors and prevailed with respect to such claim, we could be required to sell our equity interests in this property to Fireman's Fund at a price equal to the amount that we paid to the prior investors for such equity interests in the formation transactions. If we are forced to transfer our equity interests in this property pursuant to either of these rights of first offer, our pro rata annualized base rent will not include the approximately $5.05 million representing our pro rata share of annualized base rent from this property.

In addition, we, together with our joint venture partner, recently elected to deliver an offer notice to Fireman's Fund for them to purchase the entire property, to which Fireman's Fund has not yet responded. Accordingly, until expiration of the 30-day notice period, we cannot predict whether Fireman's Fund will elect to purchase this property at the offer price.

We may acquire properties or portfolios of properties through tax deferred contribution transactions, which could result in stockholder dilution and limit our ability to sell such assets.

In the future we may acquire properties or portfolios of properties through tax deferred contribution transactions in exchange for partnership interests in our operating partnership, which may result in stockholder dilution. This acquisition structure may have the effect of, among other things, reducing the amount of tax depreciation we could deduct over the tax life of the acquired properties, and may require that we agree to protect the contributors' ability to defer recognition of taxable gain through restrictions on our ability to dispose of the acquired properties and/or the allocation of partnership debt to the contributors to maintain their tax bases. These restrictions could limit our ability to sell an asset at a time, or on terms, that would be favorable absent such restrictions.

We are subject to the business, financial and operating risks inherent to the hospitality industry.

Because we own the Waikiki Beach Walk – Hotel in Hawaii and the Santa Fe Park RV Resort in California, we are susceptible to risks associated with the hospitality industry, including:

- competition for guests with other hospitality properties, some of which may have greater marketing and financial resources than the managers of our hospitality properties;
- increases in operating costs from inflation, labor costs (including the impact of unionization), workers' compensation and healthcare related costs, utility costs, insurance and other factors that the managers of our hospitality properties may not be able to offset through higher rates;
- the fluctuating and seasonal demands of business travelers and tourism, which seasonality may cause quarterly fluctuations in our revenues;
- general and local economic conditions that may affect demand for travel in general;
- periodic oversupply resulting from excessive new development; and
- unforeseen events beyond our control, such as terrorist attacks, travel-related health concerns, including pandemics and epidemics, imposition of taxes or surcharges by regulatory authorities, travel-related accidents and unusual weather patterns, including natural disasters such as earthquakes or wildfires.

If our hospitality properties do not generate sufficient revenues, our financial position, results of operations, cash flow, per share trading price of our common stock and ability to satisfy our debt service obligations and to pay distributions to you may be adversely affected.

We must rely on third-party management companies to operate the Waikiki Beach Walk—Hotel in order to qualify as a REIT under the Code, and, as a result, we will have less control than if we were operating the hotel directly.

In order for us to qualify as a REIT, we must lease the Waikiki Beach Walk—Hotel to our services company, or one of its subsidiaries, or the TRS lessee, and a third party must operate our hotel. The TRS lessee will assume the existing management agreement with a third-party management company to operate the hotel. While we expect to have some input into operating decisions for the hotel leased by our TRS lessee and operated under a management agreement, we will have less control than if we were managing the hotel ourselves. Even if we believe that our hotel is not being operated efficiently, we may not have sufficient rights under the management agreement to enable us to force the management company to change its method of operation. We cannot assure you that the management company will successfully manage our hotel. A failure by the

management company to successfully manage the hotel could lead to an increase in our operating expenses or a decrease in our revenue, or both, which could adversely impact our financial condition, results of operations, cash flow, our ability to satisfy our debt service obligations and our ability to pay distributions to our stockholders.

If our relationship with the franchisor of the Waikiki Beach Walk—Hotel was to deteriorate or terminate, it could have a material adverse effect on our business, financial condition, results of operations and our ability to make distributions to our stockholders.

We cannot assure you that disputes between us and the franchisor of the Waikiki Beach Walk—Hotel will not arise. If our relationship with the franchisor were to deteriorate as a result of disputes regarding the franchise agreement under which our hotel operates and brand affiliation of our hotel property or for other reasons, the franchisor could, under certain circumstances, terminate our current license with them or decline to provide licenses for hotels that we may acquire in the future. If any of the foregoing were to occur, it could have a material adverse effect on our business, financial condition, results of operations and our ability to make distributions to our stockholders.

Our franchisor could cause us to expend additional funds on upgraded operating standards, which may adversely affect our results of operations and reduce cash available for distribution to stockholders.

Under the terms of our franchise license agreement, our hotel operator must comply with operating standards and terms and conditions imposed by the franchisor of the hotel brand. Failure by us, our TRS lessees or any hotel management company that we engage to maintain these standards or other terms and conditions could result in the franchise license being canceled or the franchisor requiring us to undertake a costly property improvement program. If the franchise license is terminated due to our failure to make required improvements or to otherwise comply with its terms, we also may be liable to the franchisor for a termination payment, which, as of June 30, 2010, could be as high as approximately $6 million. In addition, our franchisor may impose upgraded or new brand standards, such as substantially upgrading the bedding, enhancing the complimentary breakfast or increasing the value of guest awards under its “frequent guest” program, which can add substantial expense for the hotel. Furthermore, under certain circumstances, the franchisor may require us to make certain capital improvements to maintain the hotel in accordance with system standards, the cost of which can be substantial and may adversely affect our results of operations and reduce cash available for distribution to our stockholders.

Waikiki Beach Walk—Hotel’s franchisor has a right of first offer with respect to the Waikiki Beach Walk—Hotel, which may limit our ability to obtain the highest price possible for the hotel.

Pursuant to the terms of our franchise agreement for Waikiki Beach Walk—Hotel, the franchisor has a right of first offer to purchase the hotel if we propose to sell all or a portion of the hotel. In the event that we choose to dispose of the hotel, we would be required to notify the franchisor, prior to offering the hotel to any other potential buyer, of the price and conditions on which we would be willing to sell the hotel, and the franchisor would have the right, within 60 days of receiving such notice, to make an offer to purchase the hotel. If the franchisor makes an offer to purchase that is equal to or greater than the price and on substantially the same terms set forth in our notice, then we will be obligated to sell the hotel to the franchisor at that price and on those terms. If the franchisor makes an offer to purchase for less than the price stated in our notice or on less favorable terms, then we may reject the franchisor’s offer. The existence of this right of first offer could adversely impact our ability to obtain the highest possible price for the hotel as, during the term of the franchise agreement, we would not be able to offer the hotel to potential purchasers through a competitive bid process or in a similar manner designed to maximize the value obtained for the property without first offering to sell this property to the franchisor.

Our real estate development activities are subject to risks particular to development.

We may engage in development and redevelopment activities with respect to certain of our properties. To the extent that we do so, we will be subject to the following risks associated with such development and redevelopment activities:

- unsuccessful development or redevelopment opportunities could result in direct expenses to us;
- construction or redevelopment costs of a project may exceed original estimates, possibly making the project less profitable than originally estimated, or unprofitable;
- time required to complete the construction or redevelopment of a project or to lease up the completed project may be greater than originally anticipated, thereby adversely affecting our cash flow and liquidity;
- contractor and subcontractor disputes, strikes, labor disputes or supply disruptions;
- failure to achieve expected occupancy and/or rent levels within the projected time frame, if at all;
- delays with respect to obtaining or the inability to obtain necessary zoning, occupancy, land use and other governmental permits, and changes in zoning and land use laws;
- occupancy rates and rents of a completed project may not be sufficient to make the project profitable;
- our ability to dispose of properties developed or redeveloped with the intent to sell could be impacted by the ability of prospective buyers to obtain financing given the current state of the credit markets; and
- the availability and pricing of financing to fund our development activities on favorable terms or at all.

These risks could result in substantial unanticipated delays or expenses and, under certain circumstances, could prevent completion of development or redevelopment activities once undertaken, any of which could have an adverse effect on our financial condition, results of operations, cash flow and the per share trading price of our common stock.

The value of the common units and shares of our common stock to be issued as consideration for the properties and assets to be acquired by us in the formation transactions may exceed their aggregate fair market value and exceed their aggregate historical combined net tangible book value of approximately $126.6 million as of June 30, 2010.

We have not obtained any third-party appraisals of the properties and other assets to be acquired by us from the prior investors in connection with the formation transactions. The value of the cash, common units and shares of our common stock that we will pay or issue as consideration for the properties and assets that we will acquire will increase or decrease if our common stock is priced above or below the mid-point of the estimated price range set forth on the cover of this prospectus. The initial public offering price of our common stock will be determined in consultation with the underwriters. Among other factors that will be considered in determining the initial public offering price of our common stock are the history and prospects for the industry in which we compete, our results of operations, the ability of our management, our business potential and earning prospects, our estimated net income, our estimated funds from operations, our estimated cash available for distribution, our anticipated dividend yield, our growth prospects, the prevailing securities markets at the time of this offering, the

recent market prices of, and the demand for, publicly traded shares of companies considered by us and the underwriters to be comparable to us and the current state of the commercial real estate industry and the economy as a whole. The initial public offering price does not necessarily bear any relationship to the book value or the fair market value of such assets. As a result, the price to be paid by us for the acquisition of the assets in the formation transactions may exceed the fair market value of those assets. The aggregate historical combined net tangible book value of our Predecessor was approximately $126.6 million as of June 30, 2010.

Our success depends on key personnel whose continued service is not guaranteed, and the loss of one or more of our key personnel could adversely affect our ability to manage our business and to implement our growth strategies, or could create a negative perception in the capital markets.

Our continued success and our ability to manage anticipated future growth depend, in large part, upon the efforts of key personnel, particularly Messrs. Rady, Chamberlain and Barton, who have extensive market knowledge and relationships and exercise substantial influence over our operational, financing, acquisition and disposition activity. Among the reasons that these individuals are important to our success is that each has a national or regional industry reputation that attracts business and investment opportunities and assists us in negotiations with lenders, existing and potential tenants and industry personnel. If we lose their services, our relationships with such personnel could diminish.

Many of our other senior executives also have extensive experience and strong reputations in the real estate industry, which aid us in identifying opportunities, having opportunities brought to us and negotiating with tenants and build-to-suit prospects. The loss of services of one or more members of our senior management team, or our inability to attract and retain highly qualified personnel, could adversely affect our business, diminish our investment opportunities and weaken our relationships with lenders, business partners, existing and prospective tenants and industry participants, which could adversely affect our financial condition, results of operations, cash flow and per share trading price of our common stock.

Mr. Rady will continue to be involved in outside businesses, which may interfere with his ability to devote time and attention to our business and affairs.

We will rely on our senior management team, including Mr. Rady, for the day-to-day operations of our business. Our employment agreement with Mr. Rady will require him to devote a substantial portion of his business time and attention to our business. Following the completion of this offering, however, Mr. Rady will continue to serve as chairman of the board of directors and president of American Assets, Inc. and chairman of the board of directors of Insurance Company of the West. As such, Mr. Rady will have certain ongoing duties to American Assets, Inc. and Insurance Company of the West that could require a portion of his time and attention. We cannot accurately predict the amount of time and attention that will be required of Mr. Rady to satisfy perform such ongoing duties. To the extent that Mr. Rady is required to dedicate time and attention to American Assets, Inc. and/or Insurance Company of the West, his ability to devote a substantial portion of his business time and attention to our business and affairs may be limited and could adversely affect our operations.

Upon the completion of this offering and our formation transactions, we may be subject to on-going litigation, which could have a material adverse effect on our financial condition, results of operations, cash flow and per share trading price of our common stock.

Upon the completion of this offering and our formation transactions, we may be subject to on-going litigation, including existing claims relating to American Assets, Inc. or the entities that own the properties and operate the businesses described in this prospectus and otherwise in the ordinary course of business. Some of these claims may result in significant defense costs and potentially significant judgments against us, some of which are not, or cannot be, insured against. We generally intend to vigorously defend ourselves; however, we cannot be certain of the ultimate outcomes of currently asserted claims or of those that may arise in the future. Resolution of these types of matters against us may result in our having to pay significant fines, judgments, or settlements, which,

if uninsured, or if the fines, judgments, and settlements exceed insured levels, could adversely impact our earnings and cash flows, thereby having an adverse effect on our financial condition, results of operations, cash flow and per share trading price of our common stock. Certain litigation or the resolution of certain litigation may affect the availability or cost of some of our insurance coverage, which could adversely impact our results of operations and cash flows, expose us to increased risks that would be uninsured, and/or adversely impact our ability to attract officers and directors. American Assets, Inc., the Rady Trust and Mr. Rady are subject to on-going litigation, alleging, among other things, that Mr. Rady breached his fiduciary duties to the plaintiffs in his capacity as an officer, director and controlling shareholder of American Assets, Inc. The claims brought by the various plaintiffs include direct and derivative claims for an accounting, injunctive and declaratory relief, and involuntary dissolution of American Assets, Inc., in addition to claims for an unspecified amount of damages. To the extent these plaintiffs were prior investors, they have consented to the formation transactions.

Potential losses, including from adverse weather conditions, natural disasters and title claims, may not be covered by insurance.

Upon completion of this offering and consummation of the formation transactions, we will carry commercial property, liability and terrorism coverage on all the properties in our portfolio under a blanket insurance policy, in addition to other coverages, such as trademark and pollution coverage, that may be appropriate for certain of our properties. We will also carry earthquake insurance on certain of our properties located in Hawaii. We will select policy specifications and insured limits that we believe to be appropriate and adequate given the relative risk of loss, the cost of the coverage and industry practice. However, we will not carry insurance for losses such as loss from riots or war because such coverage is not available or is not available at commercially reasonable rates. Some of our policies, like those covering losses due to terrorism or earthquakes, will be insured subject to limitations involving large deductibles or co-payments and policy limits that may not be sufficient to cover losses, which could affect certain of our properties that are located in areas particularly susceptible to natural disasters. Many of the properties we currently own are located in California and Hawaii, which are areas especially subject to earthquakes. While we will carry earthquake insurance on certain of our properties in Hawaii, the amount of our earthquake insurance coverage may not be sufficient to fully cover losses from earthquakes. In addition, we may discontinue earthquake**,** terrorism or other insurance on some or all of our properties in the future if the cost of premiums for any such policies exceeds, in our judgment, the value of the coverage discounted for the risk of loss. As a result, we may be required to incur significant costs in the event of adverse weather conditions and natural disasters.

If we or one or more of our tenants experiences a loss that is uninsured or that exceeds policy limits, we could lose the capital invested in the damaged properties as well as the anticipated future cash flows from those properties. In addition, if the damaged properties are subject to recourse indebtedness, we would continue to be liable for the indebtedness, even if these properties were irreparably damaged. Furthermore, we may not be able to obtain adequate insurance coverage at reasonable costs in the future as the costs associated with property and casualty renewals may be higher than anticipated.

We may not be able to rebuild our existing properties to their existing specifications if we experience a substantial or comprehensive loss of such properties.

In the event that we experience a substantial or comprehensive loss of one of our properties, we may not be able to rebuild such property to its existing specifications. Further, reconstruction or improvement of such a property would likely require significant upgrades to meet zoning and building code requirements. Environmental and legal restrictions could also restrict the rebuilding of our properties. For example, if we experienced a substantial or comprehensive loss of Torrey Reserve Campus in San Diego, California, reconstruction could be delayed or prevented by the California Costal Commission, which regulates land use in the California coastal zone.

Joint venture investments, including our 25% interest in Fireman's Fund Headquarters, could be adversely affected by our lack of sole decision-making authority, our reliance on co-venturers' financial condition and disputes between us and our co-venturers.

We are currently invested in Fireman's Fund Headquarters through a joint venture arrangement with an affiliate of General Electric Pension Trust, and we may co-invest in the future with other third parties through partnerships, joint ventures or other entities, acquiring non-controlling interests in or sharing responsibility for managing the affairs of a property, partnership, joint venture or other entity. Consequently, with respect to our interest in the Fireman's Fund Headquarters joint venture, we are not and, with respect to any such arrangement we may enter into in the future, we would not be, in a position to exercise sole decision-making authority regarding the property, partnership, joint venture or other entity. Investments in partnerships, joint ventures or other entities may, under certain circumstances, involve risks not present were a third party not involved, including the possibility that partners or co-venturers might become bankrupt or fail to fund their share of required capital contributions. Partners or co-venturers may have economic or other business interests or goals which are inconsistent with our business interests or goals, and may be in a position to take actions contrary to our policies or objectives, and they may have competing interests in our markets that could create conflict of interest issues. Such investments may also have the potential risk of impasses on decisions, such as a sale, because neither we nor the partner or co-venturer would have full control over the partnership or joint venture. In addition, a sale or transfer by us to a third party of our interests in the joint venture may be subject to consent rights or, as in the case of our joint venture interest in Fireman's Fund Headquarters, rights of first refusal, in favor of our joint venture partners, which would in each case restrict our ability to dispose of our interest in the joint venture. Where we are a limited partner or non-managing member in any partnership or limited liability company, if such entity takes or expects to take actions that could jeopardize our status as a REIT or require us to pay tax, we may be forced to dispose of our interest in such entity. Disputes between us and partners or co-venturers may result in litigation or arbitration that would increase our expenses and prevent our officers and/or directors from focusing their time and effort on our business. Consequently, actions by or disputes with partners or co-venturers might result in subjecting properties owned by the partnership or joint venture to additional risk. In addition, we may in certain circumstances be liable for the actions of our third-party partners or co-venturers. Our joint ventures may be subject to debt and, in the current volatile credit market, the refinancing of such debt may require equity capital calls.

Increased competition and increased affordability of residential homes could limit our ability to retain our residents, lease apartment homes or increase or maintain rents at our multifamily apartment communities.

Our multifamily apartment communities compete with numerous housing alternatives in attracting residents, including other multifamily apartment communities and single-family rental homes, as well as owner occupied single- and multifamily homes. Competitive housing in a particular area and an increase in the affordability of owner occupied single and multifamily homes due to, among other things, declining housing prices, oversupply, mortgage interest rates and tax incentives and government programs to promote home ownership, could adversely affect our ability to retain residents, lease apartment homes and increase or maintain rents.

If we fail to maintain an effective system of integrated internal controls, we may not be able to accurately report our financial results.

Effective internal and disclosure controls are necessary for us to provide reliable financial reports and effectively prevent fraud and to operate successfully as a public company. If we cannot provide reliable financial reports or prevent fraud, our reputation and operating results would be harmed. As part of our ongoing monitoring of internal controls we may discover material weaknesses or significant deficiencies in our internal controls. As a result of weaknesses that may be identified in our internal controls, we may also identify certain deficiencies in some of our disclosure controls and procedures that we believe require remediation. If we discover weaknesses, we will make efforts to improve our internal and disclosure controls. However, there is no assurance that we will be successful. Any failure to maintain effective controls or timely effect any necessary

improvement of our internal and disclosure controls could harm operating results or cause us to fail to meet our reporting obligations, which could affect our ability to remain listed with the NYSE. Ineffective internal and disclosure controls could also cause investors to lose confidence in our reported financial information, which would likely have a negative effect on the per share trading price of our common stock.

Our growth depends on external sources of capital that are outside of our control and may not be available to us on commercially reasonable terms or at all.

In order to maintain our qualification as a REIT, we are required under the Internal Revenue Code of 1986, or the Code, among other things, to distribute annually at least 90% of our REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gain. In addition, we will be subject to income tax at regular corporate rates to the extent that we distribute less than 100% of our REIT taxable income, including any net capital gains. Because of these distribution requirements, we may not be able to fund future capital needs, including any necessary acquisition financing, from operating cash flow. Consequently, we intend to rely on third-party sources to fund our capital needs. We may not be able to obtain such financing on favorable terms or at all and any additional debt we incur will increase our leverage and likelihood of default. Our access to third-party sources of capital depends, in part, on:

- general market conditions;
- the market's perception of our growth potential;
- our current debt levels;
- our current and expected future earnings;
- our cash flow and cash distributions; and
- the market price per share of our common stock.

Recently, the capital markets have been subject to significant disruptions. If we cannot obtain capital from third-party sources, we may not be able to acquire or develop properties when strategic opportunities exist, meet the capital and operating needs of our existing properties, satisfy our debt service obligations or make the cash distributions to our stockholders necessary to maintain our qualification as a REIT.

Risks Related to the Real Estate Industry

Our performance and value are subject to risks associated with real estate assets and the real estate industry.

Our ability to pay expected dividends to our stockholders depends on our ability to generate revenues in excess of expenses, scheduled principal payments on debt and capital expenditure requirements. Events and conditions generally applicable to owners and operators of real property that are beyond our control may decrease cash available for distribution and the value of our properties. These events include many of the risks set forth above under "—Risks Related to Our Business and Operations," as well as the following:

- local oversupply or reduction in demand for retail, office, mixed-use or multifamily space;
- adverse changes in financial conditions of buyers, sellers and tenants of properties;
- vacancies or our inability to rent space on favorable terms, including possible market pressures to offer tenants rent abatements, tenant improvements, early termination rights or below-market renewal options, and the need to periodically repair, renovate and re-let space;
- increased operating costs, including insurance premiums, utilities, real estate taxes and state and local taxes;

- a favorable interest rate environment that may result in a significant number of potential residents of our multifamily apartment communities deciding to purchase homes instead of renting;
- rent control or stabilization laws, or other laws regulating rental housing, which could prevent us from raising rents to offset increases in operating costs;
- civil unrest, acts of war, terrorist attacks and natural disasters, including earthquakes and floods, which may result in uninsured or underinsured losses;
- decreases in the underlying value of our real estate;
- changing submarket demographics; and
- changing traffic patterns.

In addition, periods of economic downturn or recession, rising interest rates or declining demand for real estate, or the public perception that any of these events may occur, could result in a general decline in rents or an increased incidence of defaults under existing leases, which would adversely affect our financial condition, results of operations, cash flow and per share trading price of our common stock.

Illiquidity of real estate investments could significantly impede our ability to respond to adverse changes in the performance of our properties and harm our financial condition.

The real estate investments made, and to be made, by us are relatively difficult to sell quickly. As a result, our ability to promptly sell one or more properties in our portfolio in response to changing economic, financial and investment conditions is limited. Return of capital and realization of gains, if any, from an investment generally will occur upon disposition or refinancing of the underlying property. We may be unable to realize our investment objectives by sale, other disposition or refinancing at attractive prices within any given period of time or may otherwise be unable to complete any exit strategy. In particular, our ability to dispose of one or more properties within a specific time period is subject to certain limitations imposed by our tax protection agreement, as well as weakness in or even the lack of an established market for a property, changes in the financial condition or prospects of prospective purchasers, changes in national or international economic conditions, such as the current economic downturn, and changes in laws, regulations or fiscal policies of jurisdictions in which the property is located.

In addition, the Code imposes restrictions on a REIT's ability to dispose of properties that are not applicable to other types of real estate companies. In particular, the tax laws applicable to REITs effectively require that we hold our properties for investment, rather than primarily for sale in the ordinary course of business, which may cause us to forego or defer sales of properties that otherwise would be in our best interest. Therefore, we may not be able to vary our portfolio in response to economic or other conditions promptly or on favorable terms, which may adversely affect our financial condition, results of operations, cash flow and per share trading price of our common stock.

Our property taxes could increase due to property tax rate changes or reassessment, which would adversely impact our cash flows.

Even if we qualify as a REIT for federal income tax purposes, we will be required to pay some state and local taxes on our properties. The real property taxes on our properties may increase as property tax rates change or as our properties are assessed or reassessed by taxing authorities. All of the properties in our portfolio that are located in California will be reassessed as a result of this offering and the formation transactions. Therefore, the amount of property taxes we pay in the future may increase substantially from what we have paid in the past. If the property taxes we pay increase, our cash flow would be adversely impacted, and our ability to pay any expected dividends to our stockholders could be adversely affected.

We could incur significant costs related to government regulation and litigation over environmental matters.

Under various federal, state and local laws and regulations relating to the environment, as a current or former owner or operator of real property, we may be liable for costs and damages resulting from the presence or discharge of hazardous or toxic substances, waste or petroleum products at, on, in, under or migrating from such property, including costs to investigate, clean up such contamination and liability for harm to natural resources. Such laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the presence of such contamination, and the liability may be joint and several. These liabilities could be substantial and the cost of any required remediation, removal, fines or other costs could exceed the value of the property and/or our aggregate assets. In addition, the presence of contamination or the failure to remediate contamination at our properties may expose us to third-party liability for costs of remediation and/or personal or property damage or materially adversely affect our ability to sell, lease or develop our properties or to borrow using the properties as collateral. In addition, environmental laws may create liens on contaminated sites in favor of the government for damages and costs it incurs to address such contamination. Moreover, if contamination is discovered on our properties, environmental laws may impose restrictions on the manner in which property may be used or businesses may be operated, and these restrictions may require substantial expenditures.

Some of our properties have been or may be impacted by contamination arising from current or prior uses of the property, or adjacent properties, for commercial or industrial purposes. Such contamination may arise from spills of petroleum or hazardous substances or releases from tanks used to store such materials. For example, Del Monte Center is currently undergoing remediation of dry cleaning solvent contamination from a former onsite dry cleaner. The prior owner of Del Monte Center entered into a fixed fee environmental services agreement in 1997 pursuant to which the remediation will be completed for approximately $3.5 million, with the remediation costs paid for through an escrow funded by the prior owner. We expect that the funds in this escrow account will cover all remaining costs and expenses of the environmental remediation. However, if the Regional Water Quality Control Board – Central Coast Region were to require further work costing more than the remaining escrowed funds, we could be required to pay such overage although we may have a claim for such costs against the prior owner or our environmental remediation consultant. See “Business and Properties—Regulation—Environmental Matters.” In addition to the foregoing, we possess Phase I Environmental Site Assessments for certain of the properties in our portfolio. However, the assessments are limited in scope (e.g., they do not generally include soil sampling, subsurface investigations or hazardous materials survey) and may have failed to identify all environmental conditions or concerns. Furthermore, we do not have Phase I Environmental Site Assessment reports for all of the properties in our portfolio and, as such, may not be aware of all potential or existing environmental contamination liabilities at the properties in our portfolio. As a result, we could potentially incur material liability for these issues, which could adversely impact our financial condition, results of operations, cash flow and the per share trading price of our common stock.

Environmental laws also govern the presence, maintenance and removal of asbestos-containing building materials, or ACBM, and may impose fines and penalties for failure to comply with these requirements. Such laws require that owners or operators of buildings containing ACBM (and employers in such buildings) properly manage and maintain the asbestos, adequately notify or train those who may come into contact with asbestos, and undertake special precautions, including removal or other abatement, if asbestos would be disturbed during renovation or demolition of a building. In addition, the presence of ACBM in our properties may expose us to third-party liability (e.g., liability for personal injury associated with exposure to asbestos).

Similarly, environmental laws govern the presence, maintenance and removal of lead-based paint in residential buildings, and may impose fines and penalties for failure to comply with these requirements. Such laws require, among other things, that owners or operators of residential facilities that contain or potentially contain lead-based paint notify residents of the presence or potential presence of lead-based paint prior to occupancy and prior to renovations and manage lead-based paint waste appropriately. The presence of lead-based paint in our buildings may also expose us to third-party liability (e.g., liability for personal injury associated with exposure to lead-based paint). In addition, the properties in our portfolio also are subject to various federal, state and local environmental and health and safety requirements, such as state and local fire requirements. Moreover,

some of our tenants routinely handle and use hazardous or regulated substances and wastes as part of their operations at our properties, which are subject to regulation. Such environmental and health and safety laws and regulations could subject us or our tenants to liability resulting from these activities. Environmental liabilities could affect a tenant's ability to make rental payments to us. In addition, changes in laws could increase the potential liability for noncompliance. This may result in significant unanticipated expenditures or may otherwise materially and adversely affect our operations, or those of our tenants, which could in turn have an adverse effect on us.

We cannot assure you that costs or liabilities incurred as a result of environmental issues will not affect our ability to make distributions to you or that such costs or other remedial measures will not have an adverse effect on our financial condition, results of operations, cash flow and per share trading price of our common stock. If we do incur material environmental liabilities in the future, we may face significant remediation costs, and we may find it difficult to sell any affected properties.

Our properties may contain or develop harmful mold or suffer from other air quality issues, which could lead to liability for adverse health effects and costs of remediation.

When excessive moisture accumulates in buildings or on building materials, mold growth may occur, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. Some molds may produce airborne toxins or irritants. Indoor air quality issues can also stem from inadequate ventilation, chemical contamination from indoor or outdoor sources, and other biological contaminants such as pollen, viruses and bacteria. Indoor exposure to airborne toxins or irritants above certain levels can be alleged to cause a variety of adverse health effects and symptoms, including allergic or other reactions. As a result, the presence of significant mold or other airborne contaminants at any of our properties could require us to undertake a costly remediation program to contain or remove the mold or other airborne contaminants from the affected property or increase indoor ventilation. In addition, the presence of significant mold or other airborne contaminants could expose us to liability from our tenants, employees of our tenants or others if property damage or personal injury is alleged to have occurred.

We may incur significant costs complying with various federal, state and local laws, regulations and covenants that are applicable to our properties.

The properties in our portfolio are subject to various covenants and federal, state and local laws and regulatory requirements, including permitting and licensing requirements. Local regulations, including municipal or local ordinances, zoning restrictions and restrictive covenants imposed by community developers may restrict our use of our properties and may require us to obtain approval from local officials or restrict our use of our properties and may require us to obtain approval from local officials of community standards organizations at any time with respect to our properties, including prior to acquiring a property or when undertaking renovations of any of our existing properties. Among other things, these restrictions may relate to fire and safety, seismic or hazardous material abatement requirements. There can be no assurance that existing laws and regulatory policies will not adversely affect us or the timing or cost of any future acquisitions or renovations, or that additional regulations will not be adopted that increase such delays or result in additional costs. Our growth strategy may be affected by our ability to obtain permits, licenses and zoning relief. Our failure to obtain such permits, licenses and zoning relief or to comply with applicable laws could have an adverse effect on our financial condition, results of operations, cash flow and per share trading price of our common stock.

In addition, federal and state laws and regulations, including laws such as the Americans with Disabilities Act, or ADA, and the Fair Housing Amendment Act of 1988, or FHAA**,** impose further restrictions on our properties and operations. Under the ADA and the FHAA, all public accommodations must meet federal requirements related to access and use by disabled persons. Some of our properties may currently be in non-compliance with the ADA or the FHAA. If one or more of the properties in our portfolio is not in

compliance with the ADA, the FHAA or any other regulatory requirements, we may be required to incur additional costs to bring the property into compliance and we might incur governmental fines or the award of damages to private litigants. In addition, we do not know whether existing requirements will change or whether future requirements will require us to make significant unanticipated expenditures that will adversely impact our financial condition, results of operations, cash flow and per share trading price of our common stock.

Risks Related to Our Organizational Structure

Upon completion of this offering and the formation transactions, Ernest S. Rady and his affiliates, directly or indirectly, will own a substantial beneficial interest in our company on a fully diluted basis and will have the ability to exercise significant influence on our company and our operating partnership.

Upon completion of this offering and the formation transactions, Mr. Rady and his affiliates will own approximately % of our outstanding common stock and % of our outstanding common units, which represents an approximately % beneficial interest in our company on a fully diluted basis. Consequently, Mr. Rady may be able to significantly influence the outcome of matters submitted for stockholder action, including the election of our board of directors and approval of significant corporate transactions, including business combinations, consolidations and mergers. In addition, we may not, without prior limited partner approval, directly or indirectly transfer all or any portion of our interest in the operating partnership before the later of the death of Mr. Rady and the death of his wife, in connection with a merger, consolidation or other combination of our assets with another entity, a sale of all or substantially all of our assets, a reclassification, recapitalization or change in any outstanding shares of our stock or other outstanding equity interests or an issuance of shares of our stock, in any case that requires approval by our common stockholders. See “Description of the Partnership Agreement of American Assets Trust, L.P.—Restrictions on Transfers by the General Partner.” As a result, Mr. Rady has substantial influence on us and could exercise his influence in a manner that conflicts with the interests of other stockholders.

Conflicts of interest may exist or could arise in the future between the interests of our stockholders and the interests of holders of units in our operating partnership, which may impede business decisions that could benefit our stockholders.

Conflicts of interest may exist or could arise in the future as a result of the relationships between us and our affiliates, on the one hand, and our operating partnership or any partner thereof, on the other. Our directors and officers have duties to our company under Maryland law in connection with their management of our company. At the same time, we, as the general partner of our operating partnership, have fiduciary duties and obligations to our operating partnership and its limited partners under Maryland law and the partnership agreement of our operating partnership in connection with the management of our operating partnership. Our fiduciary duties and obligations as the general partner of our operating partnership may come into conflict with the duties of our directors and officers to our company.

Under Maryland law, a general partner of a Maryland limited partnership has fiduciary duties of loyalty and care to the partnership and its partners and must discharge its duties and exercise its rights as general partner under the partnership agreement or Maryland law consistently with the obligation of good faith and fair dealing. The partnership agreement provides that, in the event of a conflict between the interests of our operating partnership or any partner, on the one hand, and the separate interests of our company or our stockholders, on the other hand, we, in our capacity as the general partner of our operating partnership, are under no obligation not to give priority to the separate interests of our company or our stockholders, and that any action or failure to act on our part or on the part of our directors that gives priority to the separate interests of our company or our stockholders that does not result in a violation of the contract rights of the limited partners of the operating partnership under its partnership agreement does not violate the duty of loyalty that we, in our capacity as the general partner of our operating partnership, owe to the operating partnership and its partners.

Additionally, the partnership agreement provides that we will not be liable to the operating partnership or any partner for monetary damages for losses sustained, liabilities incurred or benefits not derived by the operating partnership or any limited partner, except for liability for our intentional harm or gross negligence. Our operating partnership must indemnify us, our directors and officers, officers of our operating partnership and our designees from and against any and all claims that relate to the operations of our operating partnership, unless (1) an act or omission of the person was material to the matter giving rise to the action and either was committed in bad faith or was the result of active and deliberate dishonesty, (2) the person actually received an improper personal benefit in violation or breach of the partnership agreement or (3) in the case of a criminal proceeding, the indemnified person had reasonable cause to believe that the act or omission was unlawful. Our operating partnership must also pay or reimburse the reasonable expenses of any such person upon its receipt of a written affirmation of the person's good faith belief that the standard of conduct necessary for indemnification has been met and a written undertaking to repay any amounts paid or advanced if it is ultimately determined that the person did not meet the standard of conduct for indemnification. Our operating partnership will not indemnify or advance funds to any person with respect to any action initiated by the person seeking indemnification without our approval (except for any proceeding brought to enforce such person's right to indemnification under the partnership agreement) or if the person is found to be liable to our operating partnership on any portion of any claim in the action. No reported decision of a Maryland appellate court has interpreted provisions similar to the provisions of the partnership agreement of our operating partnership that modify and reduce our fiduciary duties or obligations as the general partner or reduce or eliminate our liability for money damages to the operating partnership and its partners, and we have not obtained an opinion of counsel as to the enforceability of the provisions set forth in the partnership agreement that purport to modify or reduce the fiduciary duties that would be in effect were it not for the partnership agreement.

We may assume unknown liabilities in connection with our formation transactions.

As part of our formation transactions, we will acquire entities and assets that are subject to existing liabilities, some of which may be unknown or unquantifiable at the time this offering is completed. These liabilities might include liabilities for cleanup or remediation of undisclosed environmental conditions, claims by tenants, vendors or other persons dealing with our predecessor entities (that had not been asserted or threatened prior to this offering), tax liabilities and accrued but unpaid liabilities incurred in the ordinary course of business. While in some instances we may have the right to seek reimbursement against an insurer, any recourse against third parties, including the prior investors in our assets, for certain of these liabilities will be limited. There can be no assurance that we will be entitled to any such reimbursement or that ultimately we will be able to recover in respect of such rights for any of these historical liabilities.

Our charter and bylaws, the partnership agreement of our operating partnership and Maryland law contain provisions that may delay, defer or prevent a change of control transaction.

Our charter contains certain ownership limits with respect to our stock. Our charter, subject to certain exceptions, authorizes our board of directors to take such actions as it determines are advisable to preserve our qualification as a REIT. Our charter also prohibits the actual, beneficial or constructive ownership by any person of more than % in value or number of shares, whichever is more restrictive, of the outstanding shares of our common stock or more than % in value of the aggregate outstanding shares of all classes and series of our stock, excluding any shares that are not treated as outstanding for federal income tax purposes. Our board of directors, in its sole and absolute discretion, may exempt a person, prospectively or retroactively, from these ownership limits if certain conditions are satisfied. Our board of directors will, upon completion of this offering, grant to Mr. Rady (and certain affiliates) an exemption from the ownership limits, subject to various conditions and limitations. See "Description of Securities—Restrictions on Ownership and Transfer." The restrictions on ownership and transfer of our stock may:

- discourage a tender offer or other transactions or a change in management or of control that might involve a premium price for our common stock or that our stockholders otherwise believe to be in their best interests; or

- result in the transfer of shares acquired in excess of the restrictions to a trust for the benefit of a charitable beneficiary and, as a result, the forfeiture by the acquirer of the benefits of owning the additional shares.

We could increase the number of authorized shares of stock, classify and reclassify unissued stock and issue stock without stockholder approval. Our board of directors, without stockholder approval, has the power under our charter to amend our charter to increase the aggregate number of shares of stock or the number of shares of stock of any class or series that we are authorized to issue, to authorize us to issue authorized but unissued shares of our common stock or preferred stock and to classify or reclassify any unissued shares of our common stock or preferred stock into one or more classes or series of stock and set the terms of such newly classified or reclassified shares. See "Description of Securities—Power to Increase or Decrease Authorized Shares of Common Stock and Issue Additional Shares of Common and Preferred Stock." As a result, we may issue series or classes of common stock or preferred stock with preferences, dividends, powers and rights, voting or otherwise, that are senior to, or otherwise conflict with, the rights of holders of our common stock. Although our board of directors has no such intention at the present time, it could establish a class or series of preferred stock that could, depending on the terms of such series, delay, defer or prevent a transaction or a change of control that might involve a premium price for our common stock or that our stockholders otherwise believe to be in their best interest.

Certain provisions of Maryland law could inhibit changes in control, which may discourage third parties from conducting a tender offer or seeking other change of control transactions that could involve a premium price for our common stock or that our stockholders otherwise believe to be in their best interest. Certain provisions of the Maryland General Corporation Law, or MGCL, may have the effect of inhibiting a third party from making a proposal to acquire us or of impeding a change of control under circumstances that otherwise could provide the holders of shares of our common stock with the opportunity to realize a premium over the then-prevailing market price of such shares, including:

- "business combination" provisions that, subject to limitations, prohibit certain business combinations between us and an "interested stockholder" (defined generally as any person who beneficially owns 10% or more of the voting power of our shares or an affiliate thereof or an affiliate or associate of ours who was the beneficial owner, directly or indirectly, of 10% or more of the voting power of our then outstanding voting stock at any time within the two-year period immediately prior to the date in question) for five years after the most recent date on which the stockholder becomes an interested stockholder, and thereafter impose fair price and/or supermajority and stockholder voting requirements on these combinations; and

- "control share" provisions that provide that "control shares" of our company (defined as shares that, when aggregated with other shares controlled by the stockholder, entitle the stockholder to exercise one of three increasing ranges of voting power in electing directors) acquired in a "control share acquisition" (defined as the direct or indirect acquisition of ownership or control of issued and outstanding "control shares") have no voting rights with respect to their control shares, except to the extent approved by our stockholders by the affirmative vote of at least two-thirds of all the votes entitled to be cast on the matter, excluding all interested shares.

As permitted by the MGCL, our board of directors has, by board resolution, elected to opt out of the business combination provisions of the MGCL. However, we cannot assure you that our board of directors will not opt to be subject to such business combination provisions of the MGCL in the future.

Certain provisions of the MGCL permit our board of directors, without stockholder approval and regardless of what is currently provided in our charter or bylaws, to implement certain corporate governance provisions, some of which (for example, a classified board) are not currently applicable to us. These provisions may have the effect of limiting or precluding a third party from making an unsolicited acquisition proposal for us

or of delaying, deferring or preventing a change in control of us under circumstances that otherwise could provide the holders of shares of our common stock with the opportunity to realize a premium over the then current market price. Our charter contains a provision whereby we elect, at such time as we become eligible to do so, to be subject to the provisions of Title 3, Subtitle 8 of the MGCL relating to the filling of vacancies on our board of directors. See "Material Provisions of Maryland Law and of Our Charter and Bylaws."

Certain provisions in the partnership agreement of our operating partnership may delay or prevent unsolicited acquisitions of us. Provisions in the partnership agreement of our operating partnership may delay, or make more difficult, unsolicited acquisitions of us or changes of our control. These provisions could discourage third parties from making proposals involving an unsolicited acquisition of us or change of our control, although some stockholders might consider such proposals, if made, desirable. These provisions include, among others:

- redemption rights of qualifying parties;
- a requirement that we may not be removed as the general partner of our operating partnership without our consent;
- transfer restrictions on common units;
- our ability, as general partner, in some cases, to amend the partnership agreement and to cause the operating partnership to issue units with terms that could delay, defer or prevent a merger or other change of control of us or our operating partnership without the consent of the limited partners; and
- the right of the limited partners to consent to direct or indirect transfers of the general partnership interest, including as a result of a merger or a sale of all or substantially all of our assets, in the event that such transfer requires approval by our common stockholders.

In particular, we may not, without prior "partnership approval," directly or indirectly transfer all or any portion of our interest in our operating partnership, before the later of the death of Mr. Rady and the death of his wife, in connection with a merger, consolidation or other combination of our assets with another entity, a sale of all or substantially all of our assets, a reclassification, recapitalization or change in any outstanding shares of our stock or other outstanding equity interests or an issuance of shares of our stock, in any case that requires approval by our common stockholders. The "partnership approval" requirement is satisfied, with respect to such a transfer, when the sum of (1) the percentage interest of limited partners consenting to the transfer of our interest, plus (2) the product of (a) the percentage of the outstanding common units held by us multiplied by (b) the percentage of the votes that were cast in favor of the event by our common stockholders equals or exceeds the percentage required for our common stockholders to approve the event resulting in the transfer. Upon completion of this offering and the formation transactions, the limited partners, including Mr. Rady and his affiliates and our other executive officers, will own approximately % of our outstanding common units and approximately % of our outstanding common stock, which represents an approximately % beneficial interest in our company on a fully diluted basis.

Our charter and bylaws, the partnership agreement of our operating partnership and Maryland law also contain other provisions that may delay, defer or prevent a transaction or a change of control that might involve a premium price for our common stock or that our stockholders otherwise believe to be in their best interest. See "Description of the Partnership Agreement of American Assets Trust, L.P.—Restrictions on Transfers by the General Partner," "Material Provisions of Maryland Law and of Our Charter and Bylaws—Removal of Directors," "—Control Share Acquisitions," "—Advance Notice of Director Nominations and New Business" and "Description of the Partnership Agreement of American Assets Trust, L.P."

Tax protection agreements could limit our ability to sell or otherwise dispose of certain properties.

In connection with the formation transactions, we will enter into tax protection agreements with certain limited partners of our operating partnership, including Mr. Rady and his affiliates and an affiliate of

Mr. Chamberlain, that provide that if we dispose of any interest with respect to Carmel Country Plaza, Carmel Mountain Plaza, Del Monte Center, Loma Palisades, Lomas Santa Fe Plaza, Waikele Center or the ICW Plaza portion of Torrey Reserve Campus, which we collectively refer to as the tax protected properties, in a taxable transaction during the period from the closing of the offering through the seventh anniversary of such closing, we will indemnify such limited partners for their tax liabilities attributable to their share of the built-in gain that exists with respect to such property interest as of the time of this offering and tax liabilities incurred as a result of the reimbursement payment; provided that, subject to certain exceptions and limitations, such indemnification rights will terminate for any such protected partner that sells, exchanges or otherwise disposes of more than 50% of his or her common units. Notwithstanding the foregoing the operating partnership's indemnification obligations under the tax protection agreement will terminate upon the later of the death of Mr. Rady and the death of his wife. The tax protected properties represented 33.0% of our pro rata portfolio's annualized base rent as of June 30, 2010 and including total revenue for Waikiki Beach Walk—Hotel for the 12 months ended June 30, 2010. We have no present intention to sell or otherwise dispose of the properties or interest therein in taxable transactions during the restriction period. If we were to trigger the tax protection provisions under these agreements, we would be required to pay damages in the amount of the taxes owed by these limited partners (plus additional damages in the amount of the taxes incurred as a result of such payment). In addition, although it may otherwise be in our stockholders' best interest that we sell one of these properties, it may be economically prohibitive for us to do so because of these obligations.

Our tax protection agreements may require our operating partnership to maintain certain debt levels that otherwise would not be required to operate our business.

Our tax protection agreements will provide that during the period from the closing of the offering through the seventh anniversary of such closing, our operating partnership will offer certain holders of common units the opportunity to guarantee its debt, and following such period, our operating partnership will use commercially reasonable efforts to provide such prior investors with debt guarantee opportunities. We will be required to indemnify such holders for their tax liabilities resulting from our failure to make such opportunities available to them (and any tax liabilities incurred as a result of the indemnity payment). Notwithstanding the foregoing the operating partnership's indemnification obligations under the tax protection agreement will terminate upon the later of the death of Mr. Rady and the death of his wife. Subject to certain exceptions and limitations, such holders' rights to guarantee opportunities will terminate for any given holder that sells, exchanges or otherwise disposes of more than 50% of his or her common units. See "Certain Relationships and Related Transactions—Tax Protection Agreement." We agreed to these provisions in order to assist certain prior investors in deferring the recognition of taxable gain as a result of and after the formation transactions. These obligations may require us to maintain more or different indebtedness than we would otherwise require for our business.

We may pursue less vigorous enforcement of terms of the contribution and/or merger and other agreements with members of our senior management and our affiliates because of our dependence on them and conflicts of interest.

Each of Ernest S. Rady, our Executive Chairman, John W. Chamberlain, our Chief Executive Officer, and an affiliate of Robert F. Barton, our Executive Vice President and Chief Financial Officer, are parties to or have interests in contribution and/or merger agreements with us pursuant to which we have acquired or will acquire interests in our properties and assets. In addition, certain of our executive officers may become parties to employment agreements with us, and the Rady Trust has entered into a representation, warranty and indemnity agreement with us pursuant to which it made certain representations and warranties to us regarding the entities and assets being acquired in the formation transactions and agreed to indemnify us and our operating partnership for breaches of such representations and warranties for one year after the completion of this offering and the formation transactions. We may choose not to enforce, or to enforce less vigorously, our rights under these agreements because of our desire to maintain our ongoing relationships with members of our senior management and their affiliates, with possible negative impact on stockholders.

Our board of directors may change our investment and financing policies without stockholder approval and we may become more highly leveraged, which may increase our risk of default under our debt obligations.

Our investment and financing policies are exclusively determined by our board of directors. Accordingly, our stockholders do not control these policies. Further, our charter and bylaws do not limit the amount or percentage of indebtedness, funded or otherwise, that we may incur. Our board of directors may alter or eliminate our current policy on borrowing at any time without stockholder approval. If this policy changed, we could become more highly leveraged which could result in an increase in our debt service. Higher leverage also increases the risk of default on our obligations. In addition, a change in our investment policies, including the manner in which we allocate our resources across our portfolio or the types of assets in which we seek to invest, may increase our exposure to interest rate risk, real estate market fluctuations and liquidity risk. Changes to our policies with regards to the foregoing could adversely affect our financial condition, results of operations, cash flow and per share trading price of our common stock.

Our rights and the rights of our stockholders to take action against our directors and officers are limited.

As permitted by Maryland law, our charter eliminates the liability of our directors and officers to us and our stockholders for money damages, except for liability resulting from:

- actual receipt of an improper benefit or profit in money, property or services; or
- a final judgment based upon a finding of active and deliberate dishonesty by the director or officer that was material to the cause of action adjudicated.

In addition, our charter authorizes us to obligate our company, and our bylaws require us, to indemnify our directors and officers for actions taken by them in those and certain other capacities to the maximum extent permitted by Maryland law. Generally, Maryland law permits a Maryland corporation to indemnify its present and former directors and officers except in instances where the person seeking indemnification acted in bad faith or with active and deliberate dishonesty, actually received an improper personal benefit in money, property or services or, in the case of a criminal proceeding, had reasonable cause to believe that his or her actions were unlawful. Under Maryland law, a Maryland corporation also may not indemnify a director or officer in a suit by or in the right of the corporation in which the director or officer was adjudged liable to the corporation or for a judgment of liability on the basis that a personal benefit was improperly received. A court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the prescribed standard of conduct; however, indemnification for an adverse judgment in a suit by us or in our right, or for a judgment of liability on the basis that personal benefit was improperly received, is limited to expenses. As a result, we and our stockholders may have more limited rights against our directors and officers than might otherwise exist. Accordingly, in the event that actions taken in good faith by any of our directors or officers impede the performance of our company, your ability to recover damages from such director or officer will be limited.

We are a holding company with no direct operations and, as such, we will rely on funds received from our operating partnership to pay liabilities, and the interests of our stockholders will be structurally subordinated to all liabilities and obligations of our operating partnership and its subsidiaries.

We are a holding company and will conduct substantially all of our operations through our operating partnership. We do not have, apart from an interest in our operating partnership, any independent operations. As a result, we will rely on distributions from our operating partnership to pay any dividends we might declare on shares of our common stock. We will also rely on distributions from our operating partnership to meet any of our obligations, including any tax liability on taxable income allocated to us from our operating partnership. In addition, because we are a holding company, your claims as stockholders will be structurally subordinated to all existing and future liabilities and obligations (whether or not for borrowed money) of our operating partnership and its

subsidiaries. Therefore, in the event of our bankruptcy, liquidation or reorganization, our assets and those of our operating partnership and its subsidiaries will be available to satisfy the claims of our stockholders only after all of our and our operating partnership's and its subsidiaries' liabilities and obligations have been paid in full.

Our operating partnership may issue additional partnership units to third parties without the consent of our stockholders, which would reduce our ownership percentage in our operating partnership and would have a dilutive effect on the amount of distributions made to us by our operating partnership and, therefore, the amount of distributions we can make to our stockholders.

After giving effect to this offering, we will own % of the outstanding common units and we may, in connection with our acquisition of properties or otherwise, issue additional partnership units to third parties. Such issuances would reduce our ownership percentage in our operating partnership and affect the amount of distributions made to us by our operating partnership and, therefore, the amount of distributions we can make to our stockholders. Because you will not directly own partnership units, you will not have any voting rights with respect to any such issuances or other partnership level activities of our operating partnership.

Our operating structure subjects us to the risk of increased hotel operating expenses.

Our lease with our TRS lessee will require our TRS lessee to pay us rent based in part on revenues from the Waikiki Beach Walk—Hotel. Our operating risks include decreases in hotel revenues and increases in hotel operating expenses, which would adversely affect our TRS lessee's ability to pay us rent due under the lease, including but not limited to the increases in:

- wage and benefit costs;
- repair and maintenance expenses;
- energy costs;
- property taxes;
- insurance costs; and
- other operating expenses.

Increases in these operating expenses can have an adverse impact on our financial condition, results of operations, the market price of our common stock and our ability to make distributions to our stockholders.

Risks Related to Our Status as a REIT

Failure to qualify as a REIT would have significant adverse consequences to us and the value of our common stock.

We intend to elect to be taxed and to operate in a manner that will allow us to qualify as a REIT for federal income tax purposes commencing with our taxable year ending December 31, 2010. We have not requested and do not plan to request a ruling from the Internal Revenue Service, or IRS, that we qualify as a REIT, and the statements in the prospectus are not binding on the IRS or any court. Therefore, we cannot assure you that we will qualify as a REIT, or that we will remain qualified as such in the future. If we lose our REIT status, we will face serious tax consequences that would substantially reduce the funds available for distribution to you for each of the years involved because:

- we would not be allowed a deduction for distributions to stockholders in computing our taxable income and would be subject to federal income tax at regular corporate rates;
- we also could be subject to the federal alternative minimum tax and possibly increased state and local taxes; and

- unless we are entitled to relief under applicable statutory provisions, we could not elect to be taxed as a REIT for four taxable years following the year during which we were disqualified.

Any such corporate tax liability could be substantial and would reduce our cash available for, among other things, our operations and distributions to stockholders. In addition, if we fail to qualify as a REIT, we will not be required to make distributions to our stockholders. As a result of all these factors, our failure to qualify as a REIT also could impair our ability to expand our business and raise capital, and could materially and adversely affect the value of our common stock.

Qualification as a REIT involves the application of highly technical and complex Code provisions for which there are only limited judicial and administrative interpretations. The complexity of these provisions and of the applicable Treasury regulations that have been promulgated under the Code, or the Treasury Regulations, is greater in the case of a REIT that, like us, holds its assets through a partnership. The determination of various factual matters and circumstances not entirely within our control may affect our ability to qualify as a REIT. In order to qualify as a REIT, we must satisfy a number of requirements, including requirements regarding the ownership of our stock, requirements regarding the composition of our assets and a requirement that at least 95% of our gross income in any year must be derived from qualifying sources, such as “rents from real property.” Also, we must make distributions to stockholders aggregating annually at least 90% of our REIT taxable income, excluding net capital gains. In addition, legislation, new regulations, administrative interpretations or court decisions may materially adversely affect our investors, our ability to qualify as a REIT for federal income tax purposes or the desirability of an investment in a REIT relative to other investments.

Even if we qualify as a REIT for federal income tax purposes, we may be subject to some federal, state and local income, property and excise taxes on our income or property and, in certain cases, a 100% penalty tax, in the event we sell property as a dealer. In addition, our taxable REIT subsidiaries will be subject to tax as regular corporations in the jurisdictions they operate.

If our operating partnership failed to qualify as a partnership for federal income tax purposes, we would cease to qualify as a REIT and suffer other adverse consequences.

We believe that our operating partnership will be treated as a partnership for federal income tax purposes. As a partnership, our operating partnership will not be subject to federal income tax on its income. Instead, each of its partners, including us, will be allocated, and may be required to pay tax with respect to, its share of our operating partnership’s income. We cannot assure you, however, that the IRS will not challenge the status of our operating partnership or any other subsidiary partnership in which we own an interest as a partnership for federal income tax purposes, or that a court would not sustain such a challenge. If the IRS were successful in treating our operating partnership or any such other subsidiary partnership as an entity taxable as a corporation for federal income tax purposes, we would fail to meet the gross income tests and certain of the asset tests applicable to REITs and, accordingly, we would likely cease to qualify as a REIT. Also, the failure of our operating partnership or any subsidiary partnerships to qualify as a partnership could cause it to become subject to federal and state corporate income tax, which would reduce significantly the amount of cash available for debt service and for distribution to its partners, including us.

Our ownership of taxable REIT subsidiaries will be limited, and we will be required to pay a 100% penalty tax on certain income or deductions if our transactions with our taxable REIT subsidiaries are not conducted on arm’s length terms.

We will own an interest in one or more taxable REIT subsidiaries, including our TRS lessee, and may acquire securities in additional taxable REIT subsidiaries in the future. A taxable REIT subsidiary is a corporation other than a REIT in which a REIT directly or indirectly holds stock, and that has made a joint election with such REIT to be treated as a taxable REIT subsidiary. If a taxable REIT subsidiary owns more than 35% of the total voting power or value of the outstanding securities of another corporation, such other corporation will also be treated as a taxable REIT subsidiary. Other than some activities relating to lodging and health care facilities, a

taxable REIT subsidiary may generally engage in any business, including the provision of customary or non-customary services to tenants of its parent REIT. A taxable REIT subsidiary is subject to federal income tax as a regular C corporation. In addition, a 100% excise tax will be imposed on certain transactions between a taxable REIT subsidiary and its parent REIT that are not conducted on an arm's length basis.

A REIT's ownership of securities of a taxable REIT subsidiary is not subject to the 5% or 10% asset tests applicable to REITs. Not more than 25% of our total assets may be represented by securities (including securities of one or more taxable REIT subsidiaries), other than those securities includable in the 75% asset test. We anticipate that the aggregate value of the stock and securities of our taxable REIT subsidiaries and other nonqualifying assets will be less than 25% of the value of our total assets, and we will monitor the value of these investments to ensure compliance with applicable ownership limitations. In addition, we intend to structure our transactions with our taxable REIT subsidiaries to ensure that they are entered into on arm's length terms to avoid incurring the 100% excise tax described above. There can be no assurance, however, that we will be able to comply with the 25% limitation or to avoid application of the 100% excise tax discussed above.

To maintain our REIT status, we may be forced to borrow funds during unfavorable market conditions.

To qualify as a REIT, we generally must distribute to our stockholders at least 90% of our REIT taxable income each year, excluding net capital gains, and we will be subject to regular corporate income taxes to the extent that we distribute less than 100% of our REIT taxable income each year. In addition, we will be subject to a 4% nondeductible excise tax on the amount, if any, by which distributions paid by us in any calendar year are less than the sum of 85% of our ordinary income, 95% of our capital gain net income and 100% of our undistributed income from prior years. In order to maintain our REIT status and avoid the payment of income and excise taxes, we may need to borrow funds to meet the REIT distribution requirements even if the then prevailing market conditions are not favorable for these borrowings. These borrowing needs could result from, among other things, differences in timing between the actual receipt of cash and inclusion of income for federal income tax purposes, or the effect of non-deductible capital expenditures, the creation of reserves or required debt or amortization payments. These sources, however, may not be available on favorable terms or at all. Our access to third-party sources of capital depends on a number of factors, including the market's perception of our growth potential, our current debt levels, the market price of our common stock, and our current and potential future earnings. We cannot assure you that we will have access to such capital on favorable terms at the desired times, or at all, which may cause us to curtail our investment activities and/or to dispose of assets at inopportune times, and could adversely affect our financial condition, results of operations, cash flow and per share trading price of our common stock.

We may in the future choose to pay dividends in our own stock, in which case you may be required to pay tax in excess of the cash you receive.

We may distribute taxable dividends that are payable in our stock. Under recent IRS guidance, up to 90% of any such taxable dividend with respect to calendar years through 2011, and in some cases declared as late as December 31, 2012, could be payable in our stock. Taxable stockholders receiving such dividends will be required to include the full amount of the dividend as ordinary income to the extent of our current and accumulated earnings and profits for federal income tax purposes. As a result, a U.S. stockholder may be required to pay tax with respect to such dividends in excess of the cash received. If a U.S. stockholder sells the stock it receives as a dividend in order to pay this tax, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of our stock at the time of the sale. For more information on the tax consequences of distributions with respect to our common stock, see "Federal Income Tax Considerations." Furthermore, with respect to non-U.S. stockholders, we may be required to withhold U.S. tax with respect to such dividends, including in respect of all or a portion of such dividend that is payable in stock. In addition, if a significant number of our stockholders determine to sell shares of our stock in order to pay taxes owed on dividends, such sales may have an adverse effect on the per share trading price of our common stock.

Dividends payable by REITs do not qualify for the reduced tax rates available for some dividends.

The maximum tax rate applicable to income from "qualified dividends" payable to U.S. stockholders that are individuals, trusts and estates has been reduced by legislation to 15% (through the end of 2010). Dividends payable by REITs, however, generally are not eligible for the reduced rates. Although these rules do not adversely affect the taxation of REITs or dividends payable by REITs, to the extent that the reduced rates continue to apply to regular corporate qualified dividends, investors who are individuals, trusts and estates may perceive investments in REITs to be relatively less attractive than investments in the stocks of non-REIT corporations that pay dividends, which could adversely affect the value of the shares of REITs, including the per share trading price of our common stock.

The tax imposed on REITs engaging in "prohibited transactions" may limit our ability to engage in transactions which would be treated as sales for federal income tax purposes.

A REIT's net income from prohibited transactions is subject to a 100% penalty tax. In general, prohibited transactions are sales or other dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business. Although we do not intend to hold any properties that would be characterized as held for sale to customers in the ordinary course of our business, unless a sale or disposition qualifies under certain statutory safe harbors, such characterization is a factual determination and no guarantee can be given that the IRS would agree with our characterization of our properties or that we will always be able to make use of the available safe harbors.

Complying with REIT requirements may affect our profitability and may force us to liquidate or forgo otherwise attractive investments.

To qualify as a REIT, we must continually satisfy tests concerning, among other things, the nature and diversification of our assets, the sources of our income and the amounts we distribute to our stockholders. We may be required to liquidate or forgo otherwise attractive investments in order to satisfy the asset and income tests or to qualify under certain statutory relief provisions. We also may be required to make distributions to stockholders at disadvantageous times or when we do not have funds readily available for distribution. As a result, having to comply with the distribution requirement could cause us to: (1) sell assets in adverse market conditions; (2) borrow on unfavorable terms; or (3) distribute amounts that would otherwise be invested in future acquisitions, capital expenditures or repayment of debt. Accordingly, satisfying the REIT requirements could have an adverse effect on our business results, profitability and ability to execute our business plan. Moreover, if we are compelled to liquidate our investments to meet any of these asset, income or distribution tests, or to repay obligations to our lenders, we may be unable to comply with one or more of the requirements applicable to REITs or may be subject to a 100% tax on any resulting gain if such sales constitute prohibited transactions.

Legislative or other actions affecting REITs could have a negative effect on us.

The rules dealing with federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Department of the Treasury. Changes to the tax laws, with or without retroactive application, could adversely affect our investors or us. We cannot predict how changes in the tax laws might affect our investors or us. New legislation, Treasury Regulations, administrative interpretations or court decisions could significantly and negatively affect our ability to qualify as a REIT or the federal income tax consequences of such qualification.

Risks Related to this Offering

There has been no public market for our common stock prior to this offering and an active trading market for our common stock may not develop following this offering.

Prior to this offering, there has not been any public market for our common stock, and there can be no assurance that an active trading market will develop or be sustained or that shares of our common stock will be

resold at or above the initial public offering price. We intend to apply to have our common stock listed on the NYSE under the symbol "AAT." The initial public offering price of our common stock has been determined by agreement among us and the underwriters, but there can be no assurance that our common stock will not trade below the initial public offering price following the completion of this offering. See "Underwriting." The market value of our common stock could be substantially affected by general market conditions, including the extent to which a secondary market develops for our common stock following the completion of this offering, the extent of institutional investor interest in us, the general reputation of REITs and the attractiveness of their equity securities in comparison to other equity securities (including securities issued by other real estate-based companies), our financial performance and general stock and bond market conditions.

We may be unable to make distributions at expected levels, and we may be required to borrow funds to make distributions.

Our estimated initial annual distributions represent % of our estimated initial cash available for distribution for the 12 months ending June 30, 2011 as calculated in "Distribution Policy." Accordingly, we may be unable to pay our estimated initial annual distribution to stockholders out of cash available for distribution. If sufficient cash is not available for distribution from our operations, we may have to fund distributions from working capital, borrow to provide funds for such distributions, or reduce the amount of such distributions. If cash available for distribution generated by our assets is less than our current estimate, or if such cash available for distribution decreases in future periods from expected levels, our inability to make the expected distributions could result in a decrease in the market price of our common stock. In the event the underwriters' overallotment option is exercised, pending investment of the proceeds therefrom, our ability to pay such distributions out of cash from our operations may be further materially adversely affected.

Our ability to make distributions may also be limited by our proposed revolving credit facility. We expect that under the terms of the revolving credit facility we intend to enter into in connection with the completion of this offering, our ability to make distributions will be limited to the greater of (1) an amount to be agreed upon with our lenders or (2) the amount required for us to qualify and maintain our status as a REIT. We also expect that if a default or event of default occurs and is continuing under this credit facility, we may be precluded from making certain distributions (other than those required to allow us to qualify and maintain our status as a REIT).

All distributions will be made at the discretion of our board of directors and will be based upon, among other factors, our historical and projected results of operations, financial condition, cash flows and liquidity, maintenance of our REIT qualification and other tax considerations, capital expenditure and other expense obligations, debt covenants, contractual prohibitions or other limitations and applicable law and such other matters as our board of directors may deem relevant from time to time. We may not be able to make distributions in the future. In addition, some of our distributions may include a return of capital. To the extent that we decide to make distributions in excess of our current and accumulated earnings and profits, such distributions would generally be considered a return of capital for federal income tax purposes to the extent of the holder's adjusted tax basis in its shares, and thereafter as gain on a sale or exchange of such shares. See "Federal Income Tax Considerations—Federal Income Tax Considerations for Holders of Our Common Stock." If we borrow to fund distributions, our future interest costs would increase, thereby reducing our earnings and cash available for distribution from what they otherwise would have been.

Messrs. Rady, Chamberlain and Barton will receive benefits in connection with this offering, which create a conflict of interest because they have interests in the successful completion of this offering that may influence their decisions affecting the terms and circumstances under which the offering and formation transactions are completed.

In connection with this offering and our formation transactions, Messrs. Rady, Chamberlain and Barton will receive shares of our common stock and common units, representing a % beneficial interest on a fully diluted basis. These transactions create a conflict of interest because Messrs. Rady,

Chamberlain and Barton have interests in the successful completion of this offering. These interests may influence their decisions, affecting the terms and circumstances under which this offering and the formation transactions are completed. For more information concerning benefits to be received by Messrs. Rady, Chamberlain and Barton in connection with this offering, see "Structure and Formation of Our Company—Consequences of This Offering and the Formation Transactions" and "Certain Relationships and Related Transactions."

Affiliates of our underwriters will receive benefits in connection with this offering.

We expect that affiliates of our underwriters will participate as lenders under our proposed $ million revolving credit facility. We expect that, under this facility, an affiliate of will act as administrative agent and joint arranger, and an affiliate of will act as syndication agent and joint arranger. Affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated, one of the underwriters in this offering, are lenders under two outstanding loans totaling approximately $31.6 million in the aggregate, each of which will be repaid with a portion of the proceeds of this offering. Additionally, affiliates of Wells Fargo Securities, LLC, another underwriter in this offering, are lenders under three outstanding loans totaling approximately $44.8 million in the aggregate, each of which will be repaid with a portion of the proceeds of this offering. As such, these affiliates will receive the portion of the net proceeds of this offering that are used to repay such indebtedness. These transactions create potential conflicts of interest because the underwriters have an interest in the successful completion of this offering beyond the underwriting discounts and commissions they will receive. These interests may influence the decision regarding the terms and circumstances under which the offering and formation transactions are completed.

The market price and trading volume of our common stock may be volatile following this offering.

Even if an active trading market develops for our common stock, the per share trading price of our common stock may be volatile. In addition, the trading volume in our common stock may fluctuate and cause significant price variations to occur. If the per share trading price of our common stock declines significantly, you may be unable to resell your shares at or above the public offering price. We cannot assure you that the per share trading price of our common stock will not fluctuate or decline significantly in the future.

Some of the factors that could negatively affect our share price or result in fluctuations in the price or trading volume of our common stock include:

- actual or anticipated variations in our quarterly operating results or dividends;
- changes in our funds from operations or earnings estimates;
- publication of research reports about us or the real estate industry;
- increases in market interest rates that lead purchasers of our shares to demand a higher yield;
- changes in market valuations of similar companies;
- adverse market reaction to any additional debt we incur in the future;
- additions or departures of key management personnel;
- actions by institutional stockholders;
- speculation in the press or investment community;
- the realization of any of the other risk factors presented in this prospectus;
- the extent of investor interest in our securities;

- the general reputation of REITs and the attractiveness of our equity securities in comparison to other equity securities, including securities issued by other real estate-based companies;
- our underlying asset value;
- investor confidence in the stock and bond markets, generally;
- changes in tax laws;
- future equity issuances;
- failure to meet earnings estimates;
- failure to meet and maintain REIT qualifications;
- changes in our credit ratings; and
- general market and economic conditions.

In the past, securities class action litigation has often been instituted against companies following periods of volatility in the price of their common stock. This type of litigation could result in substantial costs and divert our management's attention and resources, which could have an adverse effect on our financial condition, results of operations, cash flow and per share trading price of our common stock.

We may use a portion of the net proceeds from this offering to make distributions to our stockholders, which would, among other things, reduce our cash available to acquire properties and may reduce the returns on your investment in our common stock.

Prior to the time we have fully invested the net proceeds of this offering, we may fund distributions to our stockholders out of the net proceeds of these offerings, which would reduce the amount of cash we have available to acquire properties and may reduce the returns on your investment in our common stock. The use of these net proceeds for distributions to stockholders could adversely affect our financial results. In addition, funding distributions from the net proceeds of this offering may constitute a return of capital to our stockholders, which would have the effect of reducing each stockholder's tax basis in our common stock.

Differences between the book value of the assets to be acquired in the formation transactions and the price paid for our common stock will result in an immediate and material dilution of the book value of our common stock.

As of June 30, 2010, the aggregate historical combined net tangible book value of our Predecessor was approximately $126.6 million, or $ per share of our common stock held by the prior investors, assuming the exchange of common units into shares of our common stock on a one-for-one basis. As a result, the pro forma net tangible book value per share of our common stock after the completion of this offering and the formation transactions will be less than the initial public offering price. The purchasers of shares of our common stock offered hereby will experience immediate and substantial dilution of $ per share in the pro forma net tangible book value per share of our common stock.

Market interest rates may have an effect on the value of our common stock.

One of the factors that will influence the price of our common stock will be the dividend yield on the common stock (as a percentage of the price of our common stock) relative to market interest rates. An increase in market interest rates, which are currently at low levels relative to historical rates, may lead prospective purchasers of our common stock to expect a higher dividend yield and higher interest rates would likely increase our borrowing costs and potentially decrease funds available for distribution. Thus, higher market interest rates could cause the market price of our common stock to decrease.

The number of shares of our common stock available for future issuance or sale could adversely affect the per share trading price of our common stock.

We are offering shares of our common stock as described in this prospectus. Upon completion of this offering and the formation transactions, we will have outstanding approximately shares of our common stock. Of these shares, the shares sold in this offering will be freely tradable, except for any shares purchased in this offering by our affiliates, as that term is defined by Rule 144 under the Securities Act. Upon completion of this offering and the formation transactions, Mr. Rady and our other directors and management and their affiliates, together with third party prior investors, will beneficially own shares of our outstanding common stock. Each of the prior investors and our management and directors may sell the shares of our common stock that they acquire in the formation transactions or are granted in connection with the offering at any time following the expiration of the lock-up periods for such shares, which expire from 180-365 days after the date of this prospectus, or earlier with the prior written consent of Merrill Lynch, Pierce Fenner & Smith Incorporated, Wells Fargo Securities, LLC and Morgan Stanley & Co. Incorporated.

We cannot predict whether future issuances or sales of shares of our common stock or the availability of shares for resale in the open market will decrease the per share trading price per share of our common stock. The per share trading price of our common stock may decline significantly when the restrictions on resale by certain of our stockholders lapse or upon the registration of additional shares of our common stock pursuant to registration rights granted in connection with this offering.

The issuance of substantial numbers of shares of our common stock in the public market, or upon exchange of common units, or the perception that such issuances might occur could adversely affect the per share trading price of the shares of our common stock.

The exercise of the underwriters' overallotment option, the exchange of common units for common stock or the vesting of any restricted stock granted to certain directors, executive officers and other employees under our 2010 Equity Incentive Award Plan, the issuance of our common stock or common units in connection with future property, portfolio or business acquisitions and other issuances of our common stock could have an adverse effect on the per share trading price of our common stock, and the existence of units, options or shares of our common stock issuable under our 2010 Equity Incentive Award Plan or upon exchange of common units may adversely affect the terms upon which we may be able to obtain additional capital through the sale of equity securities. In addition, future issuances of shares of our common stock may be dilutive to existing stockholders.

Future offerings of debt or equity securities, which would be senior to our common stock upon liquidation, and/or preferred equity securities which may be senior to our common stock for purposes of dividend distributions or upon liquidation, may adversely affect the per share trading price of our common stock.

In the future, we may attempt to increase our capital resources by making additional offerings of debt or equity securities (or causing our operating partnership to issue debt securities), including medium-term notes, senior or subordinated notes and classes or series of preferred stock. Upon liquidation, holders of our debt securities and shares of preferred stock and lenders with respect to other borrowings will be entitled to receive our available assets prior to distribution to the holders of our common stock. Additionally, any convertible or exchangeable securities that we issue in the future may have rights, preferences and privileges more favorable than those of our common stock and may result in dilution to owners of our common stock. Holders of our common stock are not entitled to preemptive rights or other protections against dilution. Our preferred stock, if issued, could have a preference on liquidating distributions or a preference on dividend payments that could limit our ability pay dividends to the holders of our common stock. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, our stockholders bear the risk of our future.

FORWARD-LOOKING STATEMENTS

We make statements in this prospectus that are forward-looking statements within the meaning of the federal securities laws. In particular, statements pertaining to our capital resources, portfolio performance and results of operations contain forward-looking statements. Likewise, our pro forma financial statements and all of our statements regarding anticipated growth in our funds from operations and anticipated market conditions, demographics and results of operations are forward-looking statements. You can identify forward-looking statements by the use of forward-looking terminology such as “believes,” “expects,” “may,” “will,” “should,” “seeks,” “approximately,” “intends,” “plans,” “pro forma,” “estimates” or “anticipates” or the negative of these words and phrases or similar words or phrases which are predictions of or indicate future events or trends and which do not relate solely to historical matters. You can also identify forward-looking statements by discussions of strategy, plans or intentions.

Forward-looking statements involve numerous risks and uncertainties and you should not rely on them as predictions of future events. Forward-looking statements depend on assumptions, data or methods which may be incorrect or imprecise and we may not be able to realize them. We do not guarantee that the transactions and events described will happen as described (or that they will happen at all). The following factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements:

- adverse economic or real estate developments in our markets;
- our failure to generate sufficient cash flows to service our outstanding indebtedness;
- defaults on, early terminations of or non-renewal of leases by tenants, including significant tenants;
- on-going litigation;
- difficulties in identifying properties to acquire and completing acquisitions;
- our failure to successfully operate acquired properties and operations;
- fluctuations in interest rates and increased operating costs;
- risks related to joint venture arrangements;
- our failure to obtain necessary outside financing;
- general economic conditions;
- financial market fluctuations;
- risks that affect the general retail environment;
- the competitive environment in which we operate;
- decreased rental rates or increased vacancy rates;
- conflicts of interests with our officers;
- lack or insufficient amounts of insurance;
- environmental uncertainties and risks related to adverse weather conditions and natural disasters;
- other factors affecting the real estate industry generally;
- our failure to maintain our status as a REIT;
- limitations imposed on our business and our ability to satisfy complex rules in order for us to qualify as a REIT for U.S. federal income tax purposes; and
- changes in governmental regulations or interpretations thereof, such as real estate and zoning laws and increases in real property tax rates and taxation of REITs.

While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. We disclaim any obligation to publicly update or revise any forward-looking statement to reflect changes in underlying assumptions or factors, of new information, data or methods, future events or other changes. For a further discussion of these and other factors that could impact our future results, performance or transactions, see the section above entitled “Risk Factors.”

USE OF PROCEEDS

After deducting the underwriting discount and commissions and estimated expenses of this offering and the formation transactions, we expect net proceeds from this offering of approximately $ million, or approximately $ million if the underwriters' overallotment option is exercised in full, in each case assuming an initial public offering price of $ per share, which is the mid-point of the range set forth on the cover of this prospectus.

We intend to contribute the net proceeds of this offering to our operating partnership in exchange for common units and our operating partnership will use the net proceeds received from us as described below:

- approximately $341.4 million to repay in full the outstanding indebtedness described in the table below, including applicable prepayment costs, exit fees and defeasance costs of $24.3 million;

Debt Repaid	June 30, 2010 Principal Balance (in millions)	Effective Interest Rate (June 30, 2010)	Interest Rate	Maturity Date
Valencia Corporate Center—Construction[1]	$ 7.8	4.500%	LIBOR + 3.000%	11/1/10
Waikele Center—Unsecured	10.5	4.110%	LIBOR + 3.750%	2/15/11
Valencia Corporate Center—First	15.8	6.520%	6.520%	10/1/12
Valencia Corporate Center—Unsecured[2]	0.3	6.000%	6.000%	Upon demand
160 King Street—Second	8.5	1.895%	LIBOR + 1.550%	11/1/12
Waikiki Beach Walk—Retail—First	15.4	5.375%	5.375%	2/8/13
Carmel Country Plaza—First	10.3	7.365%	7.365%	1/2/13
Santa Fe Park RV Resort—First	1.9	7.335%	7.365%	1/2/13
Del Monte Center—Unsecured[3]	4.9	10.000%	10.000%	3/1/13
Lomas Santa Fe Plaza—First	19.8	6.934%	6.934%	5/1/13
Torrey Reserve—South Court—First	13.0	6.884%	6.884%	5/1/13
Carmel Mountain Plaza—First	63.6	5.520%	5.520%	6/1/13
The Landmark at One Market—Debt Buyout[4]	23.0	2.338%	LIBOR + 2.000%	7/1/13[5]
160 King Street—First	33.7	5.680%	5.680%	5/1/14
The Shops at Kalakaua—First	19.0	5.449%	5.449%	5/1/15
Waikiki Beach Walk – Hotel—First	53.0	4.104%	LIBOR + 3.750%	6/1/15
Torrey Reserve—Daycare	1.7	6.500%	6.500%	6/1/19
Waikiki Beach Walk—Hotel—Unsecured	14.9	0.000%	0.000%	6/1/20

(1) Interest rate has a floor of 4.50%.
(2) Mr. Rady has a beneficial interest in this debt and will indirectly receive approximately $30,000 in repayment of this debt.
(3) Mr. Rady has a beneficial interest in this debt and will indirectly receive approximately $3.8 million in repayment of this debt.
(4) This debt was incurred in connection with the acquisition of the outside ownership interest in Landmark on June 30, 2010.
(5) $4 million of this debt has a maturity date of December 31, 2010. The remaining portion matures on July 1, 2013.

- approximately $13.2 million to exercise our option to purchase the approximately 80,000 square foot building vacated by Mervyn's located in Carmel Mountain Plaza;
- up to $8.5 million for tenant improvements and leasing commissions at The Landmark at One Market;
- approximately $ million to pay unaccredited prior investors in connection with the formation transactions;
- up to $2.0 million to pay costs related to the renovation of Solana Beach Towne Centre; and
- the remainder for general corporate purposes, including future acquisitions and, potentially, paying distributions.

Pending application of cash proceeds, we will invest the net proceeds in interest-bearing accounts, money market accounts and interest-bearing securities in a manner that is consistent with our intention to qualify for taxation as a REIT. Such investments may include, for example, government and government agency certificates, government bonds, certificates of deposit, interest-bearing bank deposits, money market accounts and mortgage loan participations.

See our pro forma financial statements contained elsewhere in this prospectus for additional detail regarding the use of proceeds.

Affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated, one of the underwriters in this offering, are lenders under two outstanding loans totaling approximately $31.6 million in the aggregate, each of which will be repaid with a portion of the proceeds of this offering. Additionally, affiliates of Wells Fargo Securities, LLC, another underwriter in this offering, are lenders under three outstanding loans totaling approximately $44.8 million in the aggregate, each of which will be repaid with a portion of the proceeds of this offering. As such, these affiliates will receive the portion of the net proceeds of this offering that are used to repay such indebtedness.

DISTRIBUTION POLICY

We intend to pay regular quarterly dividends to holders of our common stock. We intend to pay a pro rata initial dividend with respect to the period commencing on the completion of this offering and ending, based on $ per share for a full quarter. On an annualized basis, this would be $ per share, or an annual distribution rate of approximately % based on an estimated initial public offering price at the mid-point of the range set forth on the cover of this prospectus. We estimate that this initial annual distribution rate will represent approximately % of estimated cash available for distribution for the 12 months ending June 30, 2011. Our intended initial annual distribution rate has been established based on our estimate of cash available for distribution for the 12 months ending June 30, 2011, which we have calculated based on adjustments to our pro forma income before non-controlling interests for the 12 months ended December 31, 2009. This estimate was based on our Predecessor's historical operating results and does not take into account our growth strategy. In estimating our cash available for distribution for the 12 months ending June 30, 2011, we have made certain assumptions as reflected in the table and footnotes below.

Our estimate of cash available for distribution does not include the effect of any changes in our working capital resulting from changes in our working capital accounts. Our estimate also does not reflect the amount of cash estimated to be used for investing activities for acquisition and other activities, other than a reserve for recurring capital expenditures, and amounts estimated for leasing commissions and tenant improvements for renewing space. It also does not reflect the amount of cash estimated to be used for financing activities, other than scheduled loan principal payments on mortgage and other indebtedness that will be outstanding upon completion of this offering. Any such investing and/or financing activities may have a material effect on our estimate of cash available for distribution. Because we have made the assumptions set forth above in estimating cash available for distribution, we do not intend this estimate to be a projection or forecast of our actual results of operations or our liquidity, and have estimated cash available for distribution for the sole purpose of determining the amount of our initial annual distribution rate. Our estimate of cash available for distribution should not be considered as an alternative to cash flow from operating activities (computed in accordance with GAAP) or as an indicator of our liquidity or our ability to pay dividends or make other distributions. In addition, the methodology upon which we made the adjustments described below is not necessarily intended to be a basis for determining future dividends or other distributions.

We intend to maintain our initial distribution rate for the 12-month period following completion of this offering unless actual results of operations, economic conditions or other factors differ materially from the assumptions used in our estimate. Dividends and other distributions made by us will be authorized and determined by our board of directors in its sole discretion out of funds legally available therefor and will be dependent upon a number of factors, including restrictions under applicable law and other factors described below. We believe that our estimate of cash available for distribution constitutes a reasonable basis for setting the initial distribution rate; however, we cannot assure you that the estimate will prove accurate, and actual distributions may therefore be significantly different from the expected distributions. We do not intend to reduce the expected dividends per share if the underwriters' over-allotment option is exercised; however, this could require us to pay dividends from net offering proceeds.

We anticipate that, at least initially, our distributions will exceed our then current and accumulated earnings and profits as determined for U.S. federal income tax purposes due to the write-off of prepayment fees paid with offering proceeds and non-cash expenses, primarily depreciation and amortization charges that we expect to incur. Therefore, a portion of these distributions may represent a return of capital for federal income tax purposes. Distributions in excess of our current and accumulated earnings and profits and not treated by us as a distribution will not be taxable to a taxable U.S. stockholder under current U.S. federal income tax law to the extent those distributions do not exceed the stockholder's adjusted tax basis in his or her common stock, but rather will reduce the adjusted basis of the common stock. Therefore, the gain (or loss) recognized on the sale of that common stock or upon our liquidation will be increased (or decreased) accordingly. To the extent those distributions exceed a taxable U.S. stockholder's adjusted tax basis in his or her common stock, they generally

will be treated as a capital gain realized from the taxable disposition of those shares. We expect to pay our first dividend in , 2010, which will include a payment with respect to the period commencing on the completion of this offering and ending , 2010. We expect that % of our estimated initial dividend will represent a return of capital for the tax period ending December 31, 2010. The percentage of our stockholder distributions that exceeds our current and accumulated earnings and profits may vary substantially from year to year. For a more complete discussion of the tax treatment of distributions to holders of our common stock, see "Federal Income Tax Considerations."

We cannot assure you that our estimated dividends will be made or sustained or that our board of directors will not change our distribution policy in the future. Any dividends or other distributions we pay in the future will depend upon our actual results of operations, economic conditions, debt service requirements and other factors that could differ materially from our current expectations. Our actual results of operations will be affected by a number of factors, including the revenue we receive from our properties, our operating expenses, interest expense, the ability of our tenants to meet their obligations and unanticipated expenditures. For more information regarding risk factors that could materially adversely affect our actual results of operations, please see "Risk Factors."

Federal income tax law requires that a REIT distribute annually at least 90% of its REIT taxable income excluding net capital gains, and that it pay tax at regular corporate rates to the extent that it annually distributes less than 100% of its REIT taxable income including capital gains. In addition, a REIT will be required to pay a 4% nondeductible excise tax on the amount, if any, by which the distributions it makes in a calendar year are less than the sum of 85% of its ordinary income, 95% of its capital gain net income and 100% of its undistributed income from prior years. For more information, please see "Federal Income Tax Considerations." We anticipate that our estimated cash available for distribution will be sufficient to enable us to meet the annual distribution requirements applicable to REITs and to avoid or minimize the imposition of corporate and excise taxes. However, under some circumstances, we may be required to pay distributions in excess of cash available for distribution in order to meet these distribution requirements or to avoid or minimize the imposition of tax and we may need to borrow funds to make some distributions.

The following table describes our pro forma net income for the 12 months ended December 31, 2009 and the adjustments we have made thereto in order to estimate our initial cash available for distribution for the 12 months ending June 30, 2011 (dollars in thousands except per share amounts):

Pro forma net income (loss) for the twelve months ended December 31, 2009	$ 19,473
Less: pro forma net income for the six months ended June 30, 2009	(10,053)
Add: pro forma net income for the six months ended June 30, 2010	8,014
Pro forma net income (loss) for the twelve months ended June 30, 2010	17,434
Add: pro forma real estate depreciation and amortization	51,296
Add: non-cash interest expense(1)	4,789
Less: Income/(loss) of unconsolidated joint venture(2)	(195)
Add: Distributions from unconsolidated joint venture(3)	1,437
Less: net effect of straight-line rents(4)	(2,341)
Add: net effect of above/(below) market lease intangible amortization(4)	1,326
Add: net increases in contractual rent income for retail properties(5)	2,890
Add: net increases in contractual rent income for office properties(5)	4,781
Add: net increases in contractual rent income for mixed-use properties(5)	99
Less: net decreases in contractual rent income due to lease expirations for retail properties, assuming no renewals(6)	(2,179)
Less: net decreases in contractual rent income due to lease expirations for office properties, assuming no renewals(6)	(8,463)
Less: net decreases in contractual rent income due to lease expirations for mixed-use properties, assuming no renewals(6)	0
Add: non-cash compensation expense(7)	
Estimated cash flow from operating activities for the twelve months ending June 30, 2011	**$**
Estimated cash flows used in investing activities	
Less: contractual obligations for retail property tenant improvements and leasing commissions(8)	
Less: contractual obligations for office property tenant improvements and leasing commissions(8)	
Less: contractual obligations for mixed-use property tenant improvements and leasing commissions(8)	
Less: estimated annual provision for recurring retail property capital expenditures(9)	
Less: estimated annual provision for recurring office property capital expenditures(10)	
Less: estimated annual provision for recurring mixed-use property capital expenditures(11)	
Less: estimated annual provision for recurring multifamily property capital expenditures(12)	
Total estimated cash flows used in investing activities	
Estimated cash flows used in financing activities—scheduled principal payments(13)	$ 2,965
Estimated cash available for distribution for the twelve months ending June 30, 2011	**$**
Our share of estimated cash available for distribution(14)	$
Non-controlling partnership interests' share of estimated cash available for distribution	
Total estimated initial annual distribution to stockholders	
Estimated initial annual distribution per share(15)	$
Payout ratio based on our share of estimated cash available for distribution(16)	

(1) Represents one year of non-cash interest expense associated with loan fair value adjustments and one year of amortization of deferred financing costs associated with our proposed revolving credit facility.

(2) Reflects the reversal of pro forma income from real estate joint venture for the 12 months ended June 30, 2010 relating to our unconsolidated investment in the Fireman's Fund Headquarters.

(3) Reflects actual distributions received from our unconsolidated investment in Fireman's Fund Headquarters for the 12 months ended June 30, 2010.

(4) Represents the conversion of estimated rental revenues on in-place leases for the 12 months ended June 30, 2010 from a GAAP basis to a cash basis of recognition.

(5) Represents net increases in contractual rental income net of expenses and contractual rent abatements from existing leases and from new leases and renewals that were not in effect for the entire 12-month period ended June 30, 2010 or that will go into effect during the 12 months ending June 30, 2011 based upon leases entered into through September 8, 2010.

(6) Assumes no lease renewals or new leases (other than month-to-month leases) for leases expiring after June 30, 2010 unless a new or renewal lease had been entered into by September 8, 2010, or such tenant was under a month-to-month lease as of June 30, 2010.

(7) Represents non-cash compensation expense related to restricted stock granted to our officers and non-employee directors.

(8) Reflects contractual obligations for tenant improvement costs and leasing commissions for the 12 months ending June 30, 2011. In connection with the execution of new leases with salesforce.com and Autodesk, Inc. at The Landmark at One Market, we agreed to pay leasing commissions of $429,000 and to make certain tenant improvements that we anticipate will cost approximately $8.0 million to complete. As described under "Use of Proceeds," we intend to pay these amounts out of a portion of the proceeds of this offering and not cash flow from operating activities.

(9) For the 12 months ending June 30, 2011, the estimated costs of recurring building improvements (excluding costs of tenant improvements) at the properties in our retail portfolio is approximately $, based on the weighted average annual capital expenditures costs of $ per square foot at the properties in our retail portfolio incurred during the 12 months ended December 31, 2007, 2008 and 2009 and the six months ended June 30, 2010, multiplied by rentable square feet in our retail portfolio. The following table sets forth certain information regarding historical capital expenditures at the properties in our retail portfolio through June 30, 2010:

	Year Ended December 31,			Six Months Ended June 30, 2010	Weighted Avg. January 1, 2007 June 30, 2010
	2007	2008	2009		
Recurring capital expenditures (in thousands)	$	$	$	$	
Total rentable square feet					
Recurring capital expenditure per square foot	$	$	$	$	$

(10) For the 12 months ending June 30, 2011, the estimated costs of recurring building improvements (excluding costs of tenant improvements) at the wholly owned properties in our office portfolio is approximately $, based on the weighted average annual capital expenditures costs of $ per square foot at the wholly owned properties in our office portfolio incurred during the 12 months ended December 31, 2007, 2008 and 2009 and the six months ended June 30, 2010, multiplied by 1,452,820 rentable square feet in our wholly owned office portfolio. The following table sets forth certain information regarding historical capital expenditures at the wholly owned properties in our office portfolio through June 30, 2010:

	Year Ended December 31,			Six Months Ended June 30, 2010	Weighted Avg. January 1, 2007 June 30, 2010
	2007	2008	2009		
Recurring capital expenditures (in thousands)	$	$	$	$	
Total rentable square feet					
Recurring capital expenditure per square foot	$	$	$	$	$

(11) For the 12 months ending June 30, 2011, the estimated costs of recurring building improvements (excluding costs of tenant improvements) at the retail portion of our mixed-use property is approximately $, based on the weighted average annual capital expenditures costs of $ per square foot at the retail portion of our mixed-use property incurred during the 12 months ended December 31, 2007, 2008 and 2009 and the six months ended June 30, 2010, multiplied by 96,569 rentable square feet in the retail portion of our mixed-use property. The following table sets forth certain information regarding historical capital expenditures at our mixed-use property through June 30, 2010:

	Year Ended December 31,			Six Months Ended June 30, 2010	Weighted Avg. January 1, 2007 June 30, 2010
	2007	2008	2009		
Recurring capital expenditures (in thousands)			$		
Total rentable square feet					
Recurring capital expenditure per square foot			$	$	$

In addition, we are contractually obligated pursuant to the terms of the franchise agreement with the franchisor of our hotel to reserve 4.0% of the revenue from the hotel portion of our mixed-use property for furniture, fixture and equipment expenses. For the 12 months ending June 30, 2011, the estimated furniture, fixture and equipment expense for the hotel portion of our mixed-use property is approximately $, based on the weighted average annual furniture, fixture and equipment expense incurred during the 12 months ended December 31, 2007, 2008 and 2009 and the six months ended June 30, 2010 for the hotel portion of our mixed-use property. The following table sets forth certain information regarding historical furniture, fixture and equipment expenses at the hotel portion of our mixed-use property through June 30, 2010:

	Year Ended December 31,			Six Months Ended June 30, 2010	Weighted Avg. January 1, 2007 June 30, 2010
	2007	2008	2009		
Furniture, fixture and equipment expense….	$	$	$	$	$

Based upon the foregoing, the estimated annual provision for recurring mixed-use property capital expenditures for the retail and hotel portions of our mixed-use property of the twelve months ending June 30, 2011 is $.

(12) For the 12 months ending June 30, 2011, the estimated costs of recurring building improvements (excluding costs of tenant improvements) at the properties in our multifamily portfolio is approximately $, based on the weighted average annual capital expenditures costs of $ per unit at the properties in our initial multifamily portfolio incurred during the 12 months ended December 31, 2007, 2008 and 2009 and the six months ended June 30, 2010, multiplied by rentable units in our initial multifamily portfolio. The following table sets forth certain information regarding historical capital expenditures at the properties in our multifamily portfolio through June 30, 2010:

	Year Ended December 31,			Six Months Ended	Weighted Avg. January 1, 2007
	2007	2008	2009	June 30, 2010	June 30, 2010
Recurring capital expenditures (in thousands)	$	$	$	$	
Total rentable units					
Recurring capital expenditure per unit	$	$	$	$	$

(13) Represents scheduled principal amortization on outstanding indebtedness during the 12 months ending June 30, 2011.

(14) Our share of estimated cash available for distribution and estimated initial annual cash distributions to our stockholders is based on an estimated approximate % aggregate partnership interest in our operating partnership.

(15) Based on a total of shares of our common stock to be outstanding after this offering, including shares to be sold in this offering.

(16) Calculated as estimated initial annual distribution per share divided by our share of estimated cash available for distribution per share for the 12 months ending June 30, 2011.

CAPITALIZATION

The following table sets forth the historical combined capitalization of our Predecessor as of June 30, 2010 and our pro forma consolidated capitalization as of June 30, 2010, adjusted to give effect to this offering, the formation transactions and the use of net proceeds as set forth in "Use of Proceeds." You should read this table in conjunction with "Use of Proceeds," "Selected Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes appearing elsewhere in this prospectus.

	As of June 30, 2010	
	Historical Combined	Pro Forma Consolidated
	(In thousands, except share amounts)	
Mortgages and other secured loans[1]	$ 855,368	
Non-controlling partnership interest	36,285	
Stockholders' equity:		
Preferred stock, $.01 par value per share, shares authorized, none issued or outstanding	—	
Common stock, $.01 par value per share, shares authorized, shares issued and outstanding on a pro forma basis[2]	—	
Additional paid in capital	—	
Accumulated other comprehensive income	—	
Owner's equity	118,929	
Total stockholders'/owner's equity	155,214	
Total capitalization	$1,010,582	

(1) We also expect to enter into a $ revolving credit facility, which we expect to be undrawn at the closing of this offering.

(2) Pro forma common stock outstanding includes (a) shares of common stock to be issued in this offering, (b) shares of common stock to be issued in connection with our formation transactions, (c) shares of restricted stock to be granted to our officers and certain other employees concurrently with the completion of this offering, and (d) shares of restricted common stock granted to our non-employee directors concurrently with the completion of this offering, and excludes (i) shares issuable upon exercise of the underwriters' overallotment option in full, (ii) additional shares of common stock available for future issuance under our 2010 Equity Incentive Award Plan, and (iii) shares that may be issued, at our option, upon exchange of common units to be issued in the formation transactions.

DILUTION

Purchasers of our common stock offered in this prospectus will experience an immediate and substantial dilution of the net tangible book value of our common stock from the initial public offering price. At June 30, 2010, we had a combined net tangible book value of approximately $126.6 million, or $ per share of our common stock held by the prior investors, assuming the exchange of outstanding common units (other than common units held by us) into shares of our common stock on a one-for-one basis. After giving effect to the sale of the shares of our common stock offered hereby, including the use of proceeds as described under "Use of Proceeds" and the formation transactions, and the deduction of underwriting discounts and commissions and estimated offering and formation expenses, the pro forma net tangible book value at June 30, 2010 attributable to common stockholders would have been $594.4 million, or $ per share of our common stock. This amount represents an immediate increase in net tangible book value of $ per share to the prior investors and an immediate dilution in pro forma net tangible book value of $ per share from the assumed public offering price of $ per share of our common stock to new public investors. See "Risk Factors—Risks Related to this Offering—Differences between the book value of the assets to be acquired in the formation transactions and the price paid for our common stock will result in an immediate and material dilution of the book value of our common stock." The following table illustrates this per share dilution:

Assumed initial public offering price per share	
Net tangible book value per share before the formation transactions and this offering [(1)]	
Net increase in pro forma net tangible book value per share attributable to the formation transactions and this offering	
Pro forma net tangible book value per share after the formation transaction and this offering[(2)]	
Dilution in pro forma net tangible book value per share to new investors[(3)]	

(1) Net tangible book value per share of our common stock before the formation transactions and this offering is determined by dividing the net tangible book value based on June 30, 2010 net book value of tangible assets (consisting of total assets less intangible assets, which are comprised of deferred financing and leasing costs, acquired above-market leases and acquired in-place lease value, net of liabilities to be assumed, excluding acquired below-market leases) of our Predecessor by the number of shares of our common stock held by prior investors after this offering, assuming the exchange for shares of our common stock on a one-for-one basis of the common units to be issued in connection with the formation transactions.

(2) Based on pro forma net tangible book value of approximately $594.4 million divided by the sum of shares of our common stock and common units to be outstanding after this offering (excluding units held by us), not including (a) shares of common stock issuable upon the exercise of the underwriters' overallotment option and (b) shares of our common stock available for issuance under our 2010 Equity Incentive Award Plan.

(3) Dilution is determined by subtracting pro forma net tangible book value per share of our common stock after giving effect to the formation transactions and this offering from the initial public offering price paid by a new investor for a share of our common stock.

SELECTED FINANCIAL DATA

The following table sets forth summary selected financial and operating data on a historical combined basis for our "Predecessor." Our Predecessor is comprised of certain entities and their consolidated subsidiaries that own directly or indirectly 17 retail, office and multifamily properties, and unconsolidated equity interests in four retail, mixed-use and office properties. We refer to these entities and their subsidiaries as the "ownership entities." Each of the ownership entities currently owns, directly or indirectly, one or more retail, office, mixed-use or multifamily properties. Upon completion of this offering and the formation transactions, we will acquire the 17 retail, office and multifamily properties owned directly or indirectly by our Predecessor, as well our Predecessor's unconsolidated equity interests in four other retail, office and mixed-use properties, and assume the ownership and operation of its business. As a result of the completion of the formation transactions we will have acquired direct or indirect ownership of a total of 20 retail, office, mixed-use and multifamily properties, and an equity investment in our unconsolidated office property. We have not presented historical information for American Assets Trust, Inc. because we have not had any corporate activity since our formation other than the issuance of 1,000 shares of common stock to the Rady Trust in connection with the initial capitalization of the company and activity in connection with this offering, and because we believe that a discussion of the results of American Assets Trust, Inc. would not be meaningful.

You should read the following summary selected financial data in conjunction with our historical combined financial statements and the related notes and with "Management's Discussion and Analysis of Financial Condition and Results of Operations," which are included elsewhere in this prospectus.

The historical combined balance sheet information as of June 30, 2010 of our Predecessor and the combined statements of operations for the six months ended June 30, 2010 and 2009 of our Predecessor have been derived from the historical unaudited combined financial statements included elsewhere in this prospectus and includes all adjustments consisting of normal recurring adjustments, which management considers necessary for a fair presentation of the historical financial statements for such periods. The historical combined balance sheet information as of December 31, 2009 and 2008 of our Predecessor and the combined statements of operations information for each of the years ended December 31, 2009, 2008 and 2007 of our Predecessor have been derived from the historical audited combined financial statements included elsewhere in this prospectus.

Our unaudited selected pro forma consolidated financial statements and operating information as of and for the six months ended June 30, 2010 and for the year ended December 31, 2009 assume completion of this offering and the formation transactions as of January 1, 2009 for the operating data and as of June 30, 2010 for the balance sheet data. Our pro forma financial information is not necessarily indicative of what our actual financial position and results of operations would have been as of the date and for the periods indicated, nor does it purport to represent our future financial position or results of operations.

The Company (Pro Forma) and Our Predecessor (Historical)

	Six Months Ended June 30,			Year Ended December 31,					
	Pro Forma Consolidated	Historical Combined		Pro Forma Consolidated	Historical Combined				
	2010	2010	2009	2009	2009	2008	2007	2006	2005
	(Unaudited)	(Unaudited)		(In thousands, except per share data) (Unaudited)				(Unaudited)	
Statement of Operations Data:									
Revenue:									
Rental income	$ 94,043	$ 56,509	$ 55,252	$ 189,150	$113,080	$117,104	$ 113,324	$ 108,885	$ 102,246
Other property income	3,074	1,710	1,691	6,768	3,963	3,839	4,184	4,118	2,792
Total revenues	97,117	58,219	56,943	195,918	117,043	120,943	117,508	113,003	105,038
Expenses:									
Rental expenses	24,068	9,864	9,854	49,277	20,336	22,029	21,674	20,312	16,049
Real estate taxes	8,471	5,948	2,463	13,298	8,306	10,890	10,878	11,030	10,527
General and administrative	4,465	3,408	3,756	9,050	7,058	8,690	10,471	10,713	7,714
Depreciation and amortization	25,465	14,739	14,902	51,309	29,858	31,089	31,376	31,197	29,587
Total operating expenses	62,469	33,959	30,975	122,934	65,558	72,698	74,399	73,252	63,877
Operating income	34,648	24,260	25,968	72,984	51,485	48,245	43,109	39,751	41,161
Interest income and other, net	(121)	31	109	(113)	173	1,167	2,462	1,907	831
Interest expense	(26,752)	(21,278)	(21,489)	(53,825)	(43,290)	(43,737)	(42,902)	(41,880)	(41,267)
Fee income from real estate joint ventures	126	1,943	871	254	1,736	1,538	2,721	1,303	1,957
Income (loss) from real estate joint ventures	113	1,407	(2,503)	173	(4,865)	(19,272)	(7,191)	(3,099)	(5,962)
Income (loss) from continuing operations	8,014	6,363	2,956	19,473	5,239	(12,059)	(1,801)	(2,018)	(3,280)
Discontinued operations:									
Income (loss) from discontinued operations	—	—	—	—	—	(2,071)	(2,874)	(2,420)	1,603
Gain on sale of real estate property	—	—	—	—	—	2,625	—	—	128,796
Results from discontinued operations	—	—	—	—	—	554	(2,874)	(2,420)	130,399
Net income (loss) attributable to Predecessor	8,014	6,363	2,956	19,473	5,239	(11,505)	(4,675)	(4,438)	127,119
Net income (loss) attributable to noncontrolling interests		(899)	(656)		(1,205)	(4,488)	(2,140)	(542)	34,649
Net income (loss)	$ 8,014	$ 7,262	$ 3,612	$ 19,473	$ 6,444	$ (7,017)	$ (2,535)	$ (3,896)	$ 92,470
Balance Sheet Data (at period end)									
Net real estate	$ 1,290,391	$ 928,831			$774,208	$793,237	$ 802,605	$ 803,589	$ 817,309
Investment in real estate ventures, net	12,225	30,668			55,361	67,661	108,240	100,446	62,920
Total assets	1,528,472	1,099,549			938,991	971,118	1,039,909	1,029,157	1,057,606
Notes payable	859,316	895,346			744,451	755,189	$ 729,174	$ 708,591	$ 716,556
Total liabilities	905,424	944,335			768,028	781,944	763,717	746,799	753,449
Noncontrolling interests	73,694	36,285			37,790	40,310	60,881	59,165	57,503
Stockholders'/owners' equity	623,048	155,214			170,963	189,174	276,192	282,358	304,157
Total liabilities and stockholders'/ owners' equity	1,528,472	1,099,549			938,991	971,118	1,039,909	1,029,157	1,057,606
Per Share Data:									
Pro forma basic earnings per share									
Pro forma diluted earnings per share									
Pro forma weighted average common shares outstanding—basic									
Pro forma weighted average common shares outstanding—diluted									
Other Data:									
Pro forma funds from operations[(1)]	$ 34,727			$ 73,279					
Cash flows from:									
Operating activities		$ 23,408	$ 27,613		$ 47,501	$ 47,592	$ 31,179	$ 33,652	$ 30,916
Investing activities		(11,422)	(4,306)		(7,544)	2,111	(44,441)	(43,541)	109,766
Financing activities		(4,583)	(13,737)		(34,746)	(49,957)	18,850	(25,868)	103,209

(1) We calculate FFO, in accordance with the standards established by the National Association of Real Estate Investment Trusts, or NAREIT. FFO represents net income (loss) (computed in accordance with GAAP), excluding gains (or losses) from sales of depreciable operating property, real estate related depreciation and amortization (excluding amortization of deferred financing costs) and after adjustments for unconsolidated partnerships and joint ventures. FFO is a supplemental non-GAAP financial measure. Management uses FFO as a supplemental performance

measure because it believes that FFO is beneficial to investors as a starting point in measuring our operational performance. Specifically, in excluding real estate related depreciation and amortization and gains and losses from property dispositions, which do not relate to or are not indicative of operating performance, FFO provides a performance measure that, when compared year over year, captures trends in occupancy rates, rental rates and operating costs. We also believe that, as a widely recognized measure of the performance of REITs, FFO will be used by investors as a basis to compare our operating performance with that of other REITs. However, because FFO excludes depreciation and amortization and captures neither the changes in the value of our properties that result from use or market conditions nor the level of capital expenditures and leasing commissions necessary to maintain the operating performance of our properties, all of which have real economic effects and could materially impact our results from operations, the utility of FFO as a measure of our performance is limited. In addition, other equity REITs may not calculate FFO in accordance with the NAREIT definition as we do, and, accordingly, our FFO may not be comparable to such other REITs' FFO. Accordingly, FFO should be considered only as a supplement to net income as a measure of our performance. FFO should not be used as a measure of our liquidity, nor is it indicative of funds available to fund our cash needs, including our ability to pay dividends or service indebtedness. FFO also should not be used as a supplement to or substitute for cash flow from operating activities computed in accordance with GAAP. The following table sets forth a reconciliation of our pro forma FFO to net income, the nearest GAAP equivalent, for the periods presented:

	Pro Forma	
	Six Months Ended June 30, 2010	Year Ended December 31, 2009
	(In Thousands)	
Pro forma net income	$ 8,014	$ 19,473
Plus: pro forma real estate depreciation and amortization	25,465	51,309
Plus: pro forma depreciation of joint venture real estate assets	1,248	2,497
Pro forma funds from operations	$ 34,727	$ 73,279

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of our financial condition and results of operation should be read in conjunction with the unaudited selected combined financial data of our "Predecessor" as of June 30, 2010 and for the six months ended June 30, 2010 and 2009, and the audited historical combined financial statements of our "Predecessor" as of December 31, 2009 and 2008 and for the periods ended December 31, 2009, 2008 and 2007, and related notes thereto, included elsewhere in this prospectus. Our Predecessor is comprised of certain entities and their consolidated subsidiaries that own directly or indirectly 17 retail, office and multifamily properties, and unconsolidated equity interests in four retail, office and mixed use properties. As used in this section, unless the context otherwise requires, "we," "us," "our," and "our company" mean our Predecessor for the periods presented and American Assets Trust, Inc., a Maryland corporation and its consolidated subsidiaries, upon completion of this offering and the formation transactions. Where appropriate, the following discussion includes analysis of the effects of the formation transactions, certain other transactions and this offering. These effects are reflected in the pro forma consolidated financial statements located elsewhere in this prospectus. This discussion may contain forward-looking statements based upon current expectations that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under "Risk Factors" or elsewhere in this prospectus. See "Risk Factors" and "Forward-Looking Statements."

Overview

Our Company

We are a full service, vertically integrated and self-administered REIT that owns, operates, acquires and develops high quality retail and office properties in attractive, high-barrier-to-entry markets primarily in Southern California, Northern California and Hawaii. We are a Maryland corporation formed on July 16, 2010 to acquire the entities owning various controlling and noncontrolling interests in real estate assets owned and/or managed by Ernest S. Rady or his affiliates, including the Rady Trust, and will not have any operating activity until the consummation of this offering and the related acquisition of our Predecessor. Accordingly, we believe that a discussion of the results of operations of American Asset Trust, Inc. would not be meaningful, and we have therefore set forth below a discussion regarding the historical operations of our Predecessor only. American Assets Trust, L.P., or our operating partnership, was formed as a Maryland limited partnership on July 16, 2010. Upon completion of this offering and formation transactions described below, we expect our operations to be carried on through our operating partnership. At such time, the company, as the sole general partner of our operating partnership will own % of and will have control of our operating partnership. Accordingly, we will consolidate the assets, liabilities and results of operations of our operating partnership.

Our Predecessor

Our Predecessor includes (1) entities owned and/or controlled by Mr. Rady and his affiliates, including the Rady Trust, which in turn own controlling interests in 17 properties and the property management business of American Assets, Inc., or the controlled entities, and (2) noncontrolling interests in entities owning four properties, or the noncontrolled entities. Our Predecessor accounts for its investment in the noncontrolled entities under the equity method of accounting.

Prior to June 30, 2010, the noncontrolled entities owned an office property located in San Francisco, California referred to as The Landmark at One Market. We refer to the entities owning The Landmark at One Market as the "Landmark entities." The outside ownership interest in the Landmark entities was acquired by our Predecessor on June 30, 2010 for a cash payment of $23.0 million and the assumption of $133.0 million of outstanding debt (of which $87.1 million was attributable to the outside owners' interest). As of June 30, 2010, The Landmark at One Market was controlled by our Predecessor. All but one of the properties owned by the

controlled entities and noncontrolled entities are managed by American Assets, Inc., or AAI, an entity controlled by Mr. Rady. The noncontrolled entities managed by AAI include the entities that own Solana Beach Towne Centre and Solana Beach Corporate Centre, or the Solana Beach Centre entities, and the entity that owns the Fireman's Fund Headquarters office property. The remaining property not managed by AAI is Waikiki Beach Walk, which is managed by Outrigger Hotels & Resorts. We refer to ABW Lewers LLC and the Waikiki Beach Walk—Hotel, the entities that own this non-AAI managed property, as the Waikiki Beach Walk entities.

For the periods after consummation of this offering and the formation transactions, our operations will include the consolidated results of operations of the noncontrolled entities, excluding the Fireman's Fund Headquarters office property, which we will continue to account for under the unconsolidated equity method of accounting. Elsewhere in this prospectus, we have included the audited financial statements of our Predecessor, the Waikiki Beach Walk entities and Novato FF Venture, LLC (the entity that owns Fireman's Fund Headquarters office property) as of December 31, 2009 and 2008 and for the years ended December 31, 2009, 2008 and 2007, and the unaudited financial statements for those same entities for the six months ended June 30, 2010 and 2009. In addition, we have included the audited statements of revenues and expenses for The Landmark at One Market entities and the Solana Beach Centre entities for the years ended December 31, 2009, 2008 and 2007 and the unaudited statement of revenues and expenses for the Landmark entities and the Solana Beach Centre entities for the six months ended June 30, 2010.

Formation Transactions

Concurrently with this offering, we will complete a series of formation transactions pursuant to which we will acquire, through a series of merger and contribution transactions, 100% of the ownership interests in the controlled entities, the Waikiki Beach Walk entities and the Solana Beach Centre entities (including our Predecessor's ownership interest in these entities). We will also acquire our Predecessor's noncontrolling 25% ownership interest in Novato FF Venture, LLC, the entity that owns Fireman's Fund Headquarters. We will continue to account for our investment in Novato FF Venture, LLC under the equity method of accounting. In the aggregate, these interests will comprise our ownership of our property portfolio.

To acquire the ownership interests in the entities that own the properties to be included in our portfolio from the prior investors, we will issue to the prior investors an aggregate of shares of our common stock and common units, with an aggregate value of $, and we will pay $ in cash to those prior investors that are unaccredited. Cash amounts will be provided from the net proceeds of this offering. These contributions and mergers will be effected substantially concurrently with the completion of this offering.

We estimate that the net proceeds from this offering will be approximately $ million, or approximately $ million if the underwriters' over allotment option is exercised in full (in each case after deducting the underwriting discount and commissions and estimated expenses of this offering and formation transactions). We will contribute the net proceeds of this offering to our operating partnership in exchange for common units, and our operating partnership will use the proceeds received from us, as well as cash on hand, if any, as described under "Use of Proceeds." Upon completion of this offering, we expect to enter into a $ million revolving credit facility. In connection with this offering, we expect to repay approximately $341.4 million of indebtedness (including $24.3 million of defeasance costs), pay $13.2 million to exercise our option to purchase the approximately 80,000 square foot building vacated by Mervyn's located in Carmel Mountain Plaza, pay up to $8.5 million to fund tenant improvements and leasing commissions at The Landmark at One Market, pay $ in cash to those prior investors that are unaccredited and pay up to $2.0 million for costs related to the renovation of Solana Beach Towne Centre. Any remaining net proceeds will be used for general corporate purposes, including future acquisitions.

Upon completion of this offering and consummation of the formation transactions, we expect our operations to be carried on through our operating partnership and subsidiaries of our operating partnership,

including our taxable REIT subsidiary. Consummation of the formation transactions will enable us to (1) consolidate the ownership of our property portfolio under our operating partnership; (2) succeed to the property management business of AAI; (3) facilitate this offering; and (4) qualify as a real estate investment trust for U.S. federal income tax purposes commencing with the taxable year ending December 31, 2010. As a result, we expect to be a vertically integrated and self-administered REIT with approximately 100 employees providing substantial in-house expertise in asset management, property management, property development, leasing, tenant improvement construction, acquisitions, repositioning, redevelopment and financing.

We have determined that the Predecessor is the acquirer for accounting purposes, and therefore the contribution or acquisition by merger of interests in the controlled entities is considered a transaction between entities under common control since our Executive Chairman, Ernest S. Rady or his affiliates, including the Rady Trust, own the controlling interest in each of the entities comprising the Predecessor, which, in turn, own a controlling interest in each of the controlled entities. As a result, the acquisition of interests in each of the controlled entities will be recorded at our historical cost.

The contribution or acquisition by merger of interests in certain of the noncontrolled entities, which include the Waikiki Beach Walk entities and the Solana Beach Centre entities (including our Predecessor's ownership interest in these noncontrolled entities), will be accounted for as an acquisition under the acquisition method of accounting and recognized at the estimated fair value of acquired assets and assumed liabilities on the date of such contribution or acquisition. The acquisition of the ownership interests in the Landmark entities by the Predecessor was accounted for under the acquisition method of accounting on June 30, 2010 and will be recorded at the Predecessor's historical cost when acquired by us upon the consummation of the formation transactions.

The fair value of these assets and liabilities has been allocated in accordance with Accounting Standards Codification, or ASC, Section 805-10, *Business Combinations*. Our methodology of allocating the cost of acquisitions to assets acquired and liabilities assumed is based on estimated fair values, replacement cost and appraised values. We estimate the fair value of acquired tangible assets (consisting of land, building and improvements), identified intangible assets and liabilities (consisting of acquired above-market leases, acquired in-place lease value, and acquired below-market leases) and assumed debt.

Based on these estimates, we allocate the purchase price to the applicable assets and liabilities. The value allocated to in-place leases is amortized over the related lease term and reflected as depreciation and amortization. The value of above- and below-market in-place leases are amortized over the related lease term and reflected as either an increase (for below-market leases) or a decrease (for above-market leases) to rental income. The fair value of the debt assumed is determined using current market interest rates for comparable debt financings.

Revolving Credit Facility

We anticipate entering into an agreement for a $ million revolving credit facility. For additional information regarding the revolving credit facility, please refer to "—Liquidity and Capital Resources" below.

Segments

As of June 30, 2010, our Predecessor had three operating segments: retail, office and multifamily. Upon consummation of this offering and the formation transactions we will have four operating segments, the three operating segments of our Predecessor, as well as a mixed-use segment. Our mixed-use segment will be comprised of approximately 97,000 rentable square feet of retail space and a 369-room all-suite hotel, both of which we are acquiring from the Waikiki Beach Walk entities. This hotel and the related retail space are located at the same property and are viewed by our management as a single, integrated mixed-use asset, and as such, will be operated by us as a separate segment.

Revenue Base

Upon consummation of this offering and the formation transactions, we will acquire from our Predecessor and the noncontrolled entities an aggregate of 20 properties comprising approximately 3.0 million rentable square feet of retail space, 1.5 million rentable square feet of office space, a mixed-use asset comprised of approximately 97,000 rentable square feet of retail space and a 369-room all-suite hotel, and 922 multifamily units, which collectively will comprise our portfolio. In addition, we will acquire from our Predecessor a 25% interest in Fireman's Fund Headquarters, which is a 710,000 square foot office property located in Novato, California. The properties are located in Southern California, Northern California, Honolulu, Hawaii and San Antonio, Texas.

Rental income consists of scheduled rent charges, straight-line rent adjustments and the amortization of above-market and below-market rents acquired. We also derive revenue from tenant recoveries and other property revenues, including parking income, lease termination fees, late fees, storage rents and other miscellaneous property revenues.

Retail Leases. Our Predecessor's retail portfolio included nine properties with a total of approximately 2.8 million rentable square feet available for lease as of June 30, 2010. As of June 30, 2010, these properties were 95.8% leased. For the years ended December 31, 2009, 2008 and 2007, and for the six months ended June 30, 2010, the retail segment contributed 65%, 66%, 66% and 66%, respectively, of our total revenue. Upon consummation of this offering and the formation transactions, we will acquire from the noncontrolled entities an additional retail property with approximately 247,000 rentable square feet available for lease, which was 98.2% leased as of June 30, 2010. Historically, we have leased retail properties to tenants primarily on a triple-net lease basis, and we expect to continue to do so in the future. In a triple-net lease, the tenant is responsible for all property taxes and operating expenses. As such, the base rent payment does not include any operating expense, but rather all such expenses, to the extent they are paid by the landlord, are billed to the tenant. The full amount of the expenses for this lease type, to the extent they are paid by the landlord, is reflected in operating expenses, and the reimbursement is reflected in tenant recoveries.

Office Leases. Our Predecessor's office portfolio included four properties with a total of approximately 1.2 million rentable square feet available for lease as of June 30, 2010. In addition, our Predecessor owned a 25% joint venture interest in Fireman's Fund Headquarters. As of June 30, 2010, these properties were 92.8% leased. For the years ended December 31, 2009, 2008 and 2007, and for the six months ended June 30, 2010, the office segment contributed 23%, 22%, 22% and 22%, respectively, of our total revenue. Upon consummation of this offering and the formation transactions, we will acquire from the noncontrolled entities one additional office property with approximately 212,000 square feet available for lease, which was 88.6% leased as of June 30, 2010. Historically, we have leased office properties to tenants primarily on a full service gross or a modified gross basis and to a limited extent on a triple-net lease basis. We expect to continue to do so in the future. A full-service gross or modified gross lease has a base year expense stop, whereby the tenant pays a stated amount of certain expenses as part of the rent payment, while future increases in property operating expenses (above the base year stop) are billed to the tenant based on such tenant's proportionate square footage of the property. The increased property operating expenses billed are reflected as operating expenses and amounts recovered from tenants are reflected as rental income in the statements of operations.

Multifamily Leases. Our Predecessor's multifamily portfolio included three apartment properties, as well as an RV resort, with a total of 922 units available for lease as of June 30, 2010. As of June 30, 2010, these properties were 93.2% leased. For the years ended December 31, 2009, 2008 and 2007, and for the six months ended June 30, 2010, the multifamily segment contributed 12%, 12%, 12% and 12%, respectively, of our total revenue. Our multifamily leases, other than at our RV Resort, generally have lease terms ranging from 7 to 15 months, with a majority having 12-month lease terms. Tenants normally pay a base rental amount, usually quoted in terms of a monthly rate for the respective unit. Spaces at the RV Resort can be rented at a daily- weekly- or monthly-rate.

Mixed-Use Property Revenue. Upon consummation of this offering and the formation transactions, we will acquire from the Waikiki Beach Walk entities a mixed-use property that consists of 97,000 rentable square feet of retail space and a 369-room all-suite hotel. Revenue from the mixed-use property consists of revenue earned from retail leases, and revenue earned from the hotel, which consists of room revenue, food and beverage services, parking and other guest services.

Factors That May Influence Future Results of Operations

Rental Income

The amount of net rental income generated by the properties in our portfolio depends principally on our ability to renew expiring leases or re-lease space upon the scheduled or unscheduled termination of leases, lease currently available space (approximately 242,000 rentable square feet for retail, office and mixed-use properties and 63 residential units as of June 30, 2010) and maintain or increase rental rates at our properties. Local, regional or national economic conditions; an oversupply of or a reduction in demand for retail, office, mixed-use or multifamily space; changes in market rental rates; our ability to provide adequate services and maintenance at our properties; and fluctuations in interest rates could adversely affect our rental income in future periods. Future economic or regional downturns affecting our submarkets or downturns in our tenants' industries that impair our ability to renew or re-lease space and the ability of our tenants to fulfill their lease commitments, as in the case of tenant bankruptcies, could adversely affect our ability to maintain or increase occupancy. In addition, growth in rental income will also partially depend on our ability to acquire additional properties that meet our acquisition criteria.

Rental Rates

We believe that the average rental rates for our properties are generally greater than or equal to the current average quoted market rate, although individual properties within any particular submarket presently may be leased above or below the average quoted market rental rates within that submarket.

Scheduled Lease Expirations

Our ability to re-lease expiring space at rental rates equal to or in excess of current rental rates will impact our results of operations. In addition to approximately 117,400 rentable square feet of available space in our retail portfolio as of June 30, 2010, during the years ending December 31, 2010 and 2011, leases representing approximately 2.2% and 4.9%, respectively, of the net rentable square feet of our retail portfolio are scheduled to expire. These leases are expected to represent approximately 2.5% and 7.3%, respectively, of our pro rata annualized base rent for such periods. In addition to approximately 121,100 rentable square feet of available space in our pro rata office portfolio as of June 30, 2010, during the years ending December 31, 2010 and 2011, leases representing approximately 10.6% and 5.5%, respectively, of the net rentable square feet of our pro rata office portfolio are scheduled to expire. These leases are expected to represent approximately 13.5% and 6.6%, respectively, of our pro rata annualized base rent for such periods.

Conditions in Core Markets

The properties in our portfolio are located in Southern California, Northern California, Honolulu, Hawaii and San Antonio, Texas markets. Positive or negative changes in conditions in these markets, such as changes in economic or other conditions, including the California state budgetary shortfall, employment rates, natural hazards and other factors, will impact our overall performance.

Operating Expenses

Our operating expenses generally consist of utilities, property and ad valorem taxes, insurance and site maintenance costs. Increases in these expenses over tenants' base years are generally passed on to tenants in our

full-service gross leased properties and are generally paid in full by tenants in our triple-net lease properties. As a public company, we estimate our annual general and administrative expenses will increase compared to our Predecessor's operations by $ to $ million initially due to increased headcount and cash and equity-based compensation and legal, insurance, accounting and other expenses related to corporate governance, SEC reporting and other compliance matters. In addition, properties in our portfolio may be reassessed after the consummation of this offering. Therefore, the amount of property taxes we pay in the future may increase from what we have paid in the past. Given the uncertainty of the amounts involved, we have not included any property tax increase in our pro forma financial statements.

Interest Rates

We expect future changes in interest rates will impact our overall performance. While we may seek to manage our exposure to future changes in rates through interest rate swap agreements or interest rate caps, portions of our overall outstanding debt, including borrowings under our revolving credit facility, will likely remain at floating rates.

Taxable REIT Subsidiary

As part of the formation transactions, on , 2010, we formed American Assets Trust Services, Inc., a Maryland corporation that is wholly owned by our operating partnership and which we refer to as our services company. We will elect, together our services company, to treat our services company as a taxable REIT subsidiary for federal income tax purposes. A taxable REIT subsidiary generally may provide non-customary and other services to our tenants and engage in activities that we may not engage in directly without adversely affecting our qualification as a REIT, provided a taxable REIT subsidiary may not operate or manage a lodging facility or provide rights to any brand name under which any lodging facility is operated. See "Federal Income Tax Considerations—Taxation of Our Company—General—Ownership of Interests in Taxable REIT Subsidiaries." We may form additional taxable REIT subsidiaries in the future, and our operating partnership may contribute some or all of its interests in certain wholly owned subsidiaries or their assets to our services company. Any income earned by our taxable REIT subsidiaries will not be included in our taxable income for purposes of the 75% or 95% gross income tests, except to the extent such income is distributed to us as a dividend, in which case such dividend income will qualify under the 95%, but not the 75%, gross income test. See "Federal Income Tax Considerations—Taxation of Our Company—Income Tests." Because a taxable REIT subsidiary is subject to federal income tax, and state and local income tax (where applicable) as a regular corporation, the income earned by our taxable REIT subsidiaries generally will be subject to an additional level of tax as compared to the income earned by our other subsidiaries.

Critical Accounting Policies

Our discussion and analysis of our historical financial condition and results of operations are based upon our Predecessors' combined financial statements, which have been prepared in accordance with GAAP. The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that in certain circumstances affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities, and revenues and expenses. These estimates are prepared using management's best judgment, after considering past and current events and economic conditions. In addition, information relied upon by management in preparing such estimates includes internally generated financial and operating information, external market information, when available, and when necessary, information obtained from consultations with third party experts. Actual results could differ from these estimates. A discussion of possible risks which may affect these estimates is included in the section above entitled "Risk Factors." Management considers an accounting estimate to be critical if changes in the estimate could have a material impact on our combined results of operations or financial condition.

Our significant accounting policies are more fully described in the notes to the combined financial statements of our Predecessor included elsewhere in this prospectus; however, the most critical accounting policies, which involve the use of estimates and assumptions as to future uncertainties and, therefore, may result in actual amounts that differ from estimates, are as follows:

Revenue Recognition and Accounts Receivable

Our leases with tenants are classified as operating leases. Substantially all of our retail and office leases contain fixed escalations which occur at specified times during the term of the lease. Base rents are recognized on a straight-line basis from when the tenant controls the space through the term of the related lease, net of valuation adjustments, based on management's assessment of credit, collection and other business risk. Percentage rents, which represent additional rents based upon the level of sales achieved by certain tenants, are recognized at the end of the lease year or earlier if we have determined the required sales level is achieved and the percentage rents are collectible. Real estate tax and other cost reimbursements are recognized on an accrual basis over the periods in which the related expenditures are incurred. For a tenant to terminate its lease agreement prior to the end of the agreed term, we may require that they pay a fee to cancel the lease agreement. Lease termination fees for which the tenant has relinquished control of the space are generally recognized on the termination date. When a lease is terminated early but the tenant continues to control the space under a modified lease agreement, the lease termination fee is generally recognized evenly over the remaining term of the modified lease agreement.

We make estimates of the collectability of our accounts receivable related to minimum rents, straight-line rents, expense reimbursements and other revenue. Accounts receivable is carried net of this allowance for doubtful accounts. We generally do not require collateral or other security from our tenants, other than letters of credit or security deposits. Our determination as to the collectability of accounts receivable and correspondingly, the adequacy of this allowance, is based primarily upon evaluations of individual receivables, current economic conditions, historical experience and other relevant factors. The allowance for doubtful accounts is increased or decreased through bad debt expense. In some cases, primarily relating to straight-line rents, the collection of these amounts extends beyond one year. Our experience relative to unbilled straight-line rents is that a portion of the amounts otherwise recognizable as revenue is never billed to or collected from tenants due to early lease terminations, lease modifications, bankruptcies and other factors. Accordingly, the extended collection period for straight-line rents along with our evaluation of tenant credit risk may result in the nonrecognition of a portion of straight-line rental income until the collection of such income is reasonably assured. If our evaluation of tenant credit risk changes indicating more straight-line revenue is reasonably collectible than previously estimated and realized, the additional straight-line rental income is recognized as revenue. If our evaluation of tenant credit risk changes indicating a portion of realized straight-line rental income is no longer collectible, a reserve and bad debt expense is recorded.

We recognize gains on sales of properties upon the closing of the transaction with the purchaser. Gains on properties sold are recognized using the full accrual method when (1) the collectability of the sales price is reasonably assured, (2) we are not obligated to perform significant activities after the sale, (3) the initial investment from the buyer is sufficient and (4) other profit recognition criteria have been satisfied. Gains on sales of properties may be deferred in whole or in part until the requirements for gain recognition have been met.

Real Estate

Land, buildings and improvements are recorded at cost. Depreciation is computed using the straight-line method. Estimated useful lives range generally from 30 years to a maximum of 40 years on buildings and major improvements. Minor improvements, furniture and equipment are capitalized and depreciated over useful lives ranging from 3 to 15 years. Maintenance and repairs that do not improve or extend the useful lives of the related assets are charged to operations as incurred. Tenant improvements are capitalized and depreciated over the life of

the related lease or their estimated useful life, whichever is shorter. If a tenant vacates its space prior to contractual termination of its lease, the undepreciated balance of any tenant improvements are written off if they are replaced or have no future value.

Acquisitions of properties are accounted for in accordance with the authoritative accounting guidance on acquisitions and business combinations. Our methodology of allocating the cost of acquisitions to assets acquired and liabilities assumed is based on estimated fair values, replacement cost and appraised values. When we acquire operating real estate properties, the purchase price is allocated to land and buildings, intangibles (for acquisitions made subsequent to June 30, 2001) such as in-place leases, and to current assets and liabilities acquired, if any. The value allocated to in-place leases is amortized over the related lease term and reflected as depreciation and amortization in the statement of operations. The value of above and below market leases are amortized over the related lease term and reflected as either an increase (for below-market leases) or a decrease (for above-market leases) to rental income in the statement of operations. If a tenant vacates its space prior to contractual termination of its lease, the unamortized balance of any in-place lease value is written off to rental income and amortization expense.

We capitalize certain costs related to the development and redevelopment of real estate including pre-construction costs, real estate taxes, insurance and construction costs and salaries and related costs of personnel directly involved. Additionally, we capitalize interest costs related to development and significant redevelopment activities. Capitalization of these costs begins when the activities and related expenditures commence and cease when the project is substantially complete and ready for its intended use, at which time the project is placed in service and depreciation commences. Additionally, we make estimates as to the probability of certain development and redevelopment projects being completed. If we determine that the completion of development or redevelopment is no longer probable, we expense all capitalized costs which are not recoverable.

Impairment of Long-Lived Assets

We review for impairment on a property by property basis. Impairment is recognized on properties held for use when the expected undiscounted cash flows for a property are less than its carrying amount at which time the property is written-down to fair value. Properties held for sale are recorded at the lower of the carrying amount or the expected sales price less costs to sell. The sale or disposal of a “component of an entity” is treated as discontinued operations. The operating properties sold by us typically meet the definition of a component of an entity and as such the revenues and expenses associated with sold properties are reclassified to discontinued operations for all periods presented.

Financial Instruments

The estimated fair values of financial instruments are determined using available market information and appropriate valuation methods. Considerable judgment is necessary to interpret market data and develop estimated fair values. The use of different market assumptions or estimation methods may have a material effect on the estimated fair value amounts. Accordingly, estimated fair values are not necessarily indicative of the amounts that could be realized in current market exchanges.

Cash and Cash Equivalents

We define cash and cash equivalents as cash on hand, demand deposits with financial institutions and short-term liquid investments with an initial maturity less than three months. Cash balances in individual banks may exceed the federally insured limit of $250,000 by the Federal Deposit Insurance Corporation, or the FDIC.

Restricted Cash

Restricted cash consists of amounts held by lenders to provide for future real estate tax expenditures, insurance expenditures and reserves for capital improvements. Activity for accounts related to real estate tax and

insurance expenditures is classified as operating activities in the statement of cash flows. Changes in reserves for capital improvements are classified as investing activities in the statement of cash flows.

Prepaid Expenses and Other Assets

Prepaid expenses and other assets consist primarily of lease costs, lease incentives, acquired in-place leases and acquired above-market leases. Capitalized lease costs are direct costs incurred which were essential to originate a lease and would not have been incurred had the leasing transaction not taken place and include third party commissions, internal salaries and personnel costs related to obtaining a lease. Capitalized lease costs are amortized over the life of the related lease and included in depreciation and amortization expense on the statement of operations. If a tenant vacates its space prior to the contractual termination of its lease, the unamortized balance of any lease costs are written off.

Debt Issuance Costs

Costs related to the issuance of debt instruments are capitalized and are amortized as interest expense over the estimated life of the related issue using the straight-line method which approximates the effective interest method. If a debt instrument is paid off prior to its original maturity date, the unamortized balance of debt issuance costs are written off to interest expense or, if significant, included in “early extinguishment of debt.”

Variable Interest Entities

Certain entities that do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties or in which equity investors do not have the characteristics of a controlling financial interest qualify as variable interest entities, or VIEs. VIEs are required to be consolidated by their primary beneficiary. The primary beneficiary of a VIE is determined to be the party that absorbs a majority of the entity’s expected losses, receives a majority of its expected returns, or both. We have evaluated our investments in certain joint ventures and determined that these joint ventures do not meet the requirements of a VIE and, therefore, consolidation of these ventures is not required. These investments are accounted for using the equity method. Our investment balances in our real estate joint ventures are presented separately in our combined balance sheets.

Investments in Real Estate Joint Ventures

We analyze our investments in real estate joint ventures under applicable guidance to determine if the venture is considered a VIE and would require consolidation. To the extent that the ventures do not qualify as VIEs, we further assess the venture to determine whether a general partner, or the general partners as a group, controls a limited partnership or similar entity when the limited partners have certain rights in order to determine whether consolidation is required.

We consolidate those ventures that are considered to be VIEs where we are the primary beneficiary. For non-VIEs, we combine those ventures that we control through majority ownership interests or where we are the managing member and our partner does not have substantive participating rights. Control is further demonstrated by the ability of the general partner to manage day-to-day operations, refinance debt and sell the assets of the venture without the consent of the limited partner, and inability of the limited partner to replace the general partner. We use the equity method of accounting for those ventures where we do not have control over operating and financial policies. Under the equity method of accounting, the investment in each venture is included on our balance sheet; however, the assets and liabilities of the ventures for which we use the equity method are not included in the balance sheet. The investment is adjusted for contributions, distributions and our proportionate share of the net earnings or losses of each respective venture.

We assess whether there has been impairment in the value of our investments in real estate joint ventures periodically. An impairment charge is recorded when events or changes in circumstances indicate that a

decline in the fair value below the carrying value has occurred and such decline is other-than-temporary. The ultimate realization of the investments in unconsolidated real estate joint ventures is dependent on a number of factors, including the performance of the investments and market conditions.

Results of Operations

Comparison of Six Months ended June 30, 2010 to Six Months ended June 30, 2009

The following table summarizes the historical results of operations of our Predecessor for the six months ended June 30, 2010 and 2009. As of June 30, 2010, our operating portfolio was comprised of 17 retail, office and multifamily properties with an aggregate of approximately 4.0 million rentable square feet of retail and office space and 922 residential units, compared to a portfolio that was comprised of 16 properties with an aggregate of approximately 3.6 million rentable square feet of retail and office space and 922 residential units as of June 30, 2009. In addition, we had noncontrolling investments in four properties at June 30, 2010, and five properties at June 30, 2009, which are accounted for under the equity method of accounting. The one additional property that is included in our portfolio at June 30, 2010 is The Landmark at One Market, which was acquired on June 30, 2010 by our Predecessor. Prior to June 30, 2010, our Predecessor had a noncontrolling interest in The Landmark at One Market and accounted for its investment under the equity method of accounting. The following table sets forth selected data from our combined statements of operations for the six months ended June 30, 2010 and 2009 (unaudited, dollars in thousands):

	Six Months Ended June 30,			
	2010	2009	Change	%
Revenues				
Rental income	$ 56,509	$ 55,252	$ 1,257	2%
Other property income	1,710	1,691	19	1
Total property revenues	58,219	56,943	1,276	2
Expenses				
Rental expenses	9,864	9,854	10	—
Real estate taxes	5,948	2,463	3,485	141
Total property expenses	15,812	12,317	3,495	28
Total property income	42,407	44,626	(2,219)	(5)
General and administrative	(3,408)	(3,756)	348	(9)
Depreciation and amortization	(14,739)	(14,902)	163	(1)
Interest income	31	109	(78)	(72)
Interest expense	(21,278)	(21,489)	211	(1)
Fee income from real estate joint ventures	1,943	871	1,072	123
Income (loss) from real estate joint ventures	1,407	(2,503)	3,910	—
Total other, net	(36,044)	(41,670)	5,626	(14)
Net income	6,363	2,956	3,407	115
Net income (loss) attributable to noncontrolling interests	(899)	(656)	(243)	37
Net income attributable to Predecessor	$ 7,262	$ 3,612	$ 3,650	101%

Revenue

Total property revenues. Total property revenue consists of rental revenue and other property income. Total property revenue increased $1.3 million, or 2%, to $58.2 million for the six months ended June 30, 2010, compared to $56.9 million for the six months ended June 30, 2009. The percentage leased was as follows for each segment as of June 30, 2010 and June 30, 2009:

	Percentage Leased June 30,	
	2010	2009
Retail	95.8%	95.8%
Office	89.1[(1)]	91.7
Multifamily	93.2	89.3

(1) Excludes The Landmark at One Market, which was acquired on June 30, 2010.

The increase in total property revenue is attributable primarily to the factors discussed below.

Rental revenues. Rental revenue includes minimum base rent, cost reimbursements, percentage rents, and other rents. Rental revenue increased $1.3 million, or 2%, to $56.5 million for the six months ended June 30, 2010, compared to $55.2 million for the six months ended June 30, 2009. Rental revenue by segment was as follows (dollars in thousands):

	June 30,			
	2010	2009	Change	%
Retail	$37,669	$35,433	$2,236	6%
Office	12,257	13,058	(801)	(6)
Multifamily	6,583	6,761	(178)	(3)
	$56,509	$55,252	$1,257	2%

This increase in retail rental revenue was primarily caused by a one-time property tax refund that was obtained with respect to one property in March 2009 of approximately $2.7 million, of which $2.6 million was passed through to tenants during the same period and recorded as a reduction to rental revenue. A comparable real estate tax refund was not obtained during the six months ended June 30, 2010. On a comparable basis, adding back this property tax refund to rental income during the six months ended June 30, 2009, rental income actually decreased by $0.4 million or 1%. This decrease was due to lease expirations, which adversely impacted occupancy in certain segments and reduced rental rates. The percentage leased of our retail portfolio remained consistent at 95.8% for June 30, 2010 and June 30, 2009. The percentage leased of our office portfolio declined to 89.1% at June 30, 2010 compared to 91.7% at June 30, 2009, which contributed to a decline in office rental revenue of $0.8 million. The percentage leased of our multifamily portfolio increased to 93.2% at June 30, 2010 from 89.3% at June 30, 2009, however, this was offset by reductions in rental rates, which contributed to a decline in multifamily revenue of $0.2 million.

Other property income. Other property income remained flat at $1.7 million for the six months ended June 30, 2010 and 2009.

Other property income by segment was as follows (dollars in thousands):

	Six Months Ended June 30,			
	2010	2009	Change	%
Retail	$ 573	$ 495	$ 78	16%
Office	629	611	18	3
Multifamily	508	585	(77)	(13)
	$1,710	$1,691	$ 19	1%

Retail other property income increased to $0.6 million for the six months ended June 30, 2010 from $0.5 million for the six months ended June 30, 2009. Retail other income is primarily attributable to the Hawaii general excise tax, which is remitted to the state at 4.5% and included in rental expenses, and was $0.5 million for the six months ended June 30, 2010 and 2009. Office other property income remained flat at $0.6 million for the six months ended June 30, 2010 and 2009. Office other property income primarily consists of parking income from one office building, which was $0.5 million for the six months ended June 30, 2010 and 2009. Multifamily other property income decreased to $0.5 million for the six months ended June 30, 2010 from $0.6 million for the six months ended June 30, 2009. Multifamily other property income consists primarily of laundry fees and utilities billed to tenants and security deposits forfeited when tenants move out.

Property Expenses

Total Property Expenses. Total property expenses consist of rental expenses and real estate taxes. Total property expenses increased by $3.5 million, or 28%, to $15.8 million for the six months ended June 30, 2010, compared to $12.3 million for the six months ended June 30, 2009. This increase in total property expenses is attributable primarily to the factors discussed below.

Rental Expenses. Rental expenses remained flat at $9.9 million for the six months ended June 30, 2010 and 2009. Rental expense by segment was as follows (dollars in thousands):

	Six Months Ended June 30,			
	2010	2009	Change	%
Retail	$5,672	$5,815	$ (143)	(2)%
Office	2,345	2,181	164	8
Multifamily	1,847	1,858	(11)	(1)
	$9,864	$9,854	$ 10	—

Rental expenses included the following general categories: facilities services, repairs and maintenance, utilities, onsite payroll expense, Hawaii excise tax, third-party management fees, insurance and marketing.

Real Estate Taxes. Real estate tax expense increased $3.5 million, or 141%, to $5.9 million for the six months ended June 30, 2010, compared to $2.5 million for the six months ended June 30, 2009. Real estate tax expense by segment was as follows (dollars in thousands):

	Six Months Ended June 30,			
	2010	2009	Change	%
Retail	$4,328	$ 891	$3,437	386%
Office	1,267	1,236	31	3
Multifamily	353	336	17	5
	$5,948	$2,463	$3,485	141%

The increase in retail real estate tax expense was due primarily to a one-time property tax refund of approximately $2.7 million, that was obtained with respect to one property in March 2009 and which was recorded as a reduction of real estate tax expense in the period the refund was received due to the contingent nature of the collection. A comparable real estate tax refund was not obtained during the six months ended June 30, 2010. Additionally, a lower tax assessment for 2008 at the same retail property reduced the 2009 tax bill by approximately $0.4 million in the six months ended June 30, 2009. The remaining increase in real estate tax expense is due to regular annual increases in assessed taxes on the properties in our portfolio located in Texas and Hawaii. Office property tax expense remained flat at $1.2 million for the six months ended June 30, 2010 and 2009. Multifamily property tax expense remained flat at $0.3 million for the six months ended June 30, 2010 and 2009.

Property Operating Income.

Property operating income decreased $2.2 million, or 5%, to $42.4 million for the six months ended June 30, 2010, compared to $44.6 million for the six months ended June 30, 2009. As discussed above, this decrease is primarily attributable to decreased occupancy due to lease expirations and reduced rental rates.

Other

General and administrative. General and administrative expenses decreased $0.3 million, or 9%, to $3.4 million for the six months ended June 30, 2010, compared to $3.8 million for the six months ended June 30, 2009. This decrease was due primarily to renegotiation of a third party management fee, lower state excise tax paid in Texas, and minor cost containment efforts.

Depreciation and amortization. Depreciation and amortization expense decreased $0.2 million, or 1%, to $14.7 million for the six months ended June 30, 2010, compared to $14.9 million for the six months ended June 30, 2009. This decrease was due primarily to full amortization of certain acquired lease intangible assets and tenant improvements.

Interest income. Interest income decreased $0.08 million, or 72%, to $0.03 million for the six months ended June 30, 2010, compared to $0.11 million for the six months ended June 30, 2009. This decrease was primarily due to a decline in interest rates earned on cash investments and notes receivable from affiliates.

Interest expense. Interest expense decreased $0.2 million, or 1%, to $21.3 million for the six months ended June 30, 2010 compared with $21.5 million for the six months ended June 30, 2009. This decrease was primarily due to slightly decreased average debt levels.

Fee income from real estate joint ventures. Fee income from real estate joint ventures increased $1.1 million, or 123%, to $1.9 million for the six months ended June 30, 2010, compared to $0.9 million for the six months ended June 30, 2009. The increase primarily relates to leasing commissions earned by us related to a new lease signed at The Landmark at One Market prior to our acquisition of the controlling ownership interest in The Landmark at One Market on June 30, 2010.

Income (loss) from real estate joint ventures. Income (loss) from real estate joint ventures increased $3.9 million, or 156%, to $1.4 million for the six months ended June 30, 2010, compared to a loss of $2.5 million for the six months ended June 30, 2009. This increased income from real estate joint ventures was primarily due to the $4.2 million gain recognized on the acquisition of the outside ownership interest in The Landmark at One Market. Excluding the gain recognized on the acquisition of The Landmark at One Market, loss from real estate joint ventures increased $0.3 million, or 15%, primarily related to our investment in our mixed-use property in Hawaii. This was the result of larger losses at the property due to lower paid occupancy and average daily rate at the hotel property, which translates into a lower revenue per available room.

Comparison of the Year Ended December 31, 2009 to the Year Ended December 31, 2008

As of December 31, 2009 and 2008, our operating portfolio was comprised of 16 retail, office and multifamily properties with an aggregate of approximately 3.6 million rentable square feet of retail and office space and 922 residential units. In addition, we had noncontrolling investments in five properties at December 31, 2009 and 2008, which were accounted for under the equity method of accounting. The following table sets forth selected data from our combined statements of operations for the years ended December 31, 2009 and 2008 (dollars in thousands).

	Year Ended December 31,			
	2009	2008	Change	%
Revenues				
Rental income	$113,080	$ 117,104	$ (4,024)	(3)%
Other property income	3,963	3,839	124	3
Total property revenues	117,043	120,943	(3,900)	(3)
Expenses				
Rental expenses	20,336	22,029	(1,693)	(8)
Real estate taxes	8,306	10,890	(2,584)	(24)
Total property expenses	28,642	32,919	(4,277)	(13)
Total property income	88,401	88,024	377	—
General and administrative	(7,058)	(8,690)	1,632	(19)
Depreciation and amortization	(29,858)	(31,089)	1,231	(4)
Interest income	173	1,167	(994)	(85)
Interest expense	(43,290)	(43,737)	447	(1)
Fee income from real estate joint ventures	1,736	1,538	198	13
Loss from real estate joint ventures	(4,865)	(19,272)	14,407	(75)
Total other, net	(83,162)	(100,083)	16,921	(17)
Income (loss) from continuing operations	5,239	(12,059)	17,298	(143)
Discontinued operations				
Loss from discontinued operations	—	(2,071)	2,071	(100)
Gain on sale of real estate from discontinued operations	—	2,625	(2,625)	(100)
Results from discontinued operations	—	554	(554)	(100)
Net income (loss)	5,239	(11,505)	16,744	—
Net income (loss) attributable to noncontrolling interests	(1,205)	(4,488)	3,283	(73)
Net income (loss) attributable to Predecessor	$ 6,444	$ (7,017)	$13,461	—

Revenue

Total property revenues. Total property revenue consists of rental revenue and other property income. Total property revenue decreased $3.9 million, or 3%, to $117.0 million in 2009, compared to $120.9 million in 2008. The percentage leased was as follows for each segment as of December 31, 2009 and 2008:

	Percentage Leased Year Ended December 31,	
	2009	2008
Retail	94.8%	97.7%
Office	86.9	92.6
Multifamily	93.8	95.2

The decrease in total property revenue is attributable primarily to the factors discussed below.

Rental revenues. Rental revenue decreased $4.0 million, or 3%, to $113.1 million in 2009, compared to $117.1 million for 2008. Rental income consists primarily of minimum rent, cost reimbursements from tenants, percentage rent and other rents. Rental revenue by segment was as follows (dollars in thousands):

	December 31,			
	2009	2008	Change	%
Retail	$ 74,248	$ 78,428	$(4,180)	(5)%
Office	25,443	25,215	228	1
Multifamily	13,389	13,461	(72)	(1)
	$113,080	$117,104	$(4,024)	(3)%

This decrease in retail rental revenue was primarily caused by a one-time property tax refund that was obtained by one property in March 2009 of approximately $2.7 million, of which $2.6 million was passed through to tenants during the same period and recorded as a reduction to rental revenue. On a comparable basis, adding back this property tax tenant refund to rental income in 2009, rental income actually decreased by $1.6 million or 2% in 2009. This decrease was due to reduced occupancy and rental rates. The percentage leased of our retail portfolio declined to 94.8% at December 31, 2009 from 97.7% at December 31, 2008, which contributed to a decline in revenue of $1.6 million. The percentage leased of our office portfolio declined to 86.9% at December 31, 2009 from 92.6% at December 31, 2008, however this was offset by improved rental rates which resulted in an increase in office segment revenue of $0.2 million. The percentage leased of our multifamily portfolio declined to 93.8% at December 31, 2009 from 95.2% at December 31, 2008, which contributed to a decline in multifamily revenue of $0.1 million.

Other property income. Other property income increased $0.1 million, or 3%, to $3.9 million in 2009, compared to $3.8 million in 2008. Other property income by segment was as follows (dollars in thousands):

	Year Ended December 31,			
	2009	2008	Change	%
Retail	$1,647	$1,335	$ 312	23%
Office	1,192	1,341	(149)	(11)
Multifamily	1,124	1,163	(39)	(3)
	$3,963	$3,839	$ 124	3%

Retail other property income increased to $1.6 million in 2009 from $1.3 million in 2008. The increase in retail other property income is due to settlement of an acquisition-related liability of $0.4 million at Del Monte Center. Were it not for the impact of the settlement of this liability, other property income would have actually decreased by $0.1 million, or 6.6% in 2009. The majority of the retail other property income consists of the Hawaii general excise tax that is billed to tenants at the rate of 4.75%, which is then remitted to the state at 4.5% and included in rental expenses. The Hawaii general excise tax included in retail other property income was $1.0 million in both 2009 and 2008. Office other property income decreased to $1.2 million in 2009 from $1.3 million in 2008. The majority of the office other property income consists of parking income from one office building. Parking income included in other property income was $1.0 million in 2009 compared to $1.2 million in 2008. Parking income decreased because one tenant moved out of the office building, although such tenant's lease and economic rent do not expire until February 28, 2012. Multifamily other income remained flat at $1.1 million in 2009 and 2008. The majority of multifamily other property income consists of laundry fees, meter fees on utilities billed back to tenants, and security deposits earned when tenants move out.

Property Expenses

Total Property Expenses. Total property expenses consist of rental expenses and real estate taxes. Total property expenses decreased by $4.3 million, or 13%, to $28.6 million in 2009, compared to $32.9 million in 2008. This decrease in total property expenses is attributable primarily to the factors discussed below.

Rental Expenses. Rental expenses decreased $1.7 million, or 8%, to $20.3 million in 2009, compared to $22.0 million in 2008. Rental expense by segment was as follows (dollars in thousands):

	Year Ended December 31,			
	2009	2008	Change	%
Retail	$12,008	$13,134	$(1,126)	(9)%
Office	4,330	4,565	(235)	(5)
Multifamily	3,998	4,330	(332)	(8)
	$20,336	$22,029	$(1,693)	(8)%

Retail rental expenses decreased to $12.0 million in 2009, compared to $13.1 million in 2008. Office rental expenses decreased to $4.3 million in 2009, compared to $4.6 million in 2008. Multifamily rental expenses decreased to $4.0 million in 2009, compared to $4.3 million in 2008. The decrease in rental expenses is primarily due to a decrease in occupancy.

Real Estate Taxes. Real estate tax expense decreased $2.6 million, or 24%, to $8.3 million in 2009, compared to $10.9 million in 2008. Real estate tax expense by segment was as follows (dollars in thousands):

	Year Ended December 31,			
	2009	2008	Change	%
Retail	$5,183	$8,044	$(2,861)	(36)%
Office	2,434	2,178	256	12
Multifamily	689	668	21	3
	$8,306	$10,890	$(2,584)	(24)%

This decrease in retail real estate taxes was due primarily to a one-time property tax refund of approximately $2.7 million, that was obtained with respect to one property in March 2009 and which was recorded as a reduction of real estate tax expense in the period the refund was received due to the contingent nature of collection. A comparable real estate tax refund was not obtained during 2008. Additionally, a lower tax

assessment for 2008 at the same retail property reduced the 2009 tax bill by $0.4 million in 2009. Office property tax expense increased to $2.4 million in 2009 from $2.2 million in 2008. The increase for office property tax expense is due primarily to higher annual tax assessments. Multifamily property tax expense remained flat at $0.7 million in 2009 and 2008.

Property Operating Income

Property operating income increased $0.4 million to $88.4 million in 2009, compared to $88.0 million in 2008, due primarily to the factors discussed above.

Other

General and administrative. General and administrative expenses decreased $1.6 million, or 19%, to $7.1 million in 2009, compared to $8.7 million in 2008. This decrease in general and administrative expense is attributable to reduced compensation costs as a result of cost containment efforts.

Depreciation and amortization. Depreciation and amortization expense decreased $1.2 million, or 4%, to $29.9 million in 2009, compared to $31.1 million in 2008. This decrease was due primarily to the full amortization of certain acquired lease intangible assets and tenant improvements.

Interest income. Interest income decreased $1.0 million, or 85%, to $0.2 million in 2009, compared with $1.2 million in 2008. This decrease was primarily due to decreased interest rates earned on invested cash and notes receivable from affiliates.

Interest expense. Interest expense decreased $0.4 million, or 1%, to $43.3 million in 2009, compared with $43.7 million in 2008. This decrease was primarily due to slight decreases in average borrowing levels and interest rates.

Fee income from real estate joint ventures. Fee income from real estate joint ventures increased $0.2 million, or 13%, to $1.7 million in 2009, compared to $1.5 million in 2008. This increase is primarily attributable to increased management fees earned from The Landmark at One Market.

Loss from real estate joint ventures. Loss from real estate joint ventures decreased $14.4 million, or 75%, to $4.9 million in 2009 compared with $19.3 million in 2008. This decrease was primarily due to an impairment loss of $15.8 million in 2008 recorded on our investments in real estate joint ventures related to our investment in the Fireman's Fund Headquarters office property. We recorded this impairment as a result of the credit crisis in 2008, which caused a decline in the fair value of our investment in Fireman's Fund Headquarters that we determined was other than temporary. Excluding the impairment loss in 2008, our losses from real estate joint ventures increased by $1.4 million due primarily to the results of operations at our investment in the mixed-use property in Hawaii, where there was lower paid occupancy and lower average daily rate at the hotel property for 2009 compared to 2008. Total visitor arrivals to Hawaii for 2009 were down 5.1% year over year, which impacted both the hotel and retail portions of the mixed-use property.

Loss from Discontinued Operations. Loss from discontinued operations represents the operating loss from a property in Chicago that we acquired in 2005 and disposed of in 2008, which is required to be reported separately from results of ongoing operations. The reported loss of $2.1 million in 2008, represents the loss for the period in 2008 during which we owned this property.

Gain on Sale of Real Estate from Discontinued Operations. The gain on sale of real estate from discontinued operations of $2.6 million in 2008 consisted of the sale of the Chicago property in 2008. The property was sold for $16.5 million in August 2008.

Comparison of the Year Ended December 31, 2008 to the Year Ended December 31, 2007

As of December 31, 2008 and 2007 our operating portfolio was comprised of 16 retail, office and multifamily properties with an aggregate of approximately 3.6 million rentable square feet of retail and office space and 922 residential units. In addition, we had noncontrolling investments in five operating properties at December 31, 2008 and 2007, which were accounted for under the equity method of accounting. The following table sets forth selected data from our consolidated statements of operations for the years ended December 31, 2008 and 2007 (dollars in thousands):

	Year Ended December 31,			
	2008	2007	Change	%
Revenues				
Rental income	$ 117,104	$113,324	$ 3,780	3%
Other property income	3,839	4,184	(345)	(8)
Total property revenues	120,943	117,508	3,435	3
Expenses				
Rental expenses	22,029	21,674	355	2
Real estate taxes	10,890	10,878	12	—
Total property expenses	32,919	32,552	367	1
Total property income	88,024	84,956	3,068	4
General and administrative	(8,690)	(10,471)	1,781	(17)
Depreciation and amortization	(31,089)	(31,376)	287	(1)
Interest income	1,167	2,462	(1,295)	(53)
Interest expense	(43,737)	(42,902)	(835)	2
Fee income from real estate joint ventures	1,538	2,721	(1,183)	(43)
Loss from real estate joint ventures	(19,272)	(7,191)	(12,081)	168
Total other, net	(100,083)	(86,757)	(13,326)	15
Income (loss) from continuing operations	(12,059)	(1,801)	(10,258)	570
Discontinued operations				
Loss from discontinued operations	(2,071)	(2,874)	803	(28)
Gain on sale of real estate from discontinued operations	2,625	—	2,625	—
Results from discontinued operations	554	(2,874)	3,428	—
Net income (loss)	(11,505)	(4,675)	(6,830)	146
Net income (loss) attributable to noncontrolling interests	(4,488)	(2,140)	(2,348)	110
Net income (loss) attributable to Predecessor	$ (7,017)	$ (2,535)	$ (4,482)	177%

Revenue

Total property revenues. Total property revenue consists of rental revenue and other property income. Total property revenue increased $3.4 million, or 3%, to $120.9 million in 2008, compared to $117.5 million in 2007. The percentage leased by segment was as follows as of December 31, 2008 and 2007:

	Percentage Leased Year Ended December 31,	
	2008	2007
Retail	97.7%	97.5%
Office	92.6	93.9
Multifamily	95.2	96.8

The increase in total property revenue is attributable primarily to the factors discussed below.

Rental revenues. Rental revenue increased $3.8 million, or 3%, to $117.1 million in 2008, compared to $113.3 million in 2007. Rental expense by segment was as follows (dollars in thousands):

	December 31,			
	2008	2007	Change	%
Retail	$ 78,428	$ 76,720	$ 1,708	2%
Office	25,215	23,363	1,852	8
Multifamily	13,461	13,241	220	2
	$ 117,104	$ 113,324	$ 3,780	3%

This increase in rental revenue was primarily caused by an increase in rental rates across the portfolio and a slight increase in occupancy. Percentage leased of our retail portfolio increased to 97.7% at December 31, 2008, compared to 97.5% at December 31, 2007, which contributed to an increase in retail revenue of $1.7 million. Percentage leased at our office portfolio decreased to 92.6% at December 31, 2008, compared to 93.9% at December 31, 2007, which was offset by improved rental rates which contributed to an increase in office rental revenue of $1.9 million. Percentage leased at our multifamily portfolio decreased to 95.2% at December 31, 2008 from 96.8% at December 31, 2007. However, multifamily revenue increased $0.2 million due to higher average occupancy during 2008 compared to 2007.

Other property income. Other property income decreased $0.3 million, or 8%, to $3.8 million in 2008, compared to $4.2 million in 2007. Other property income by segment was as follows (dollars in thousands):

	Year Ended December 31,			
	2008	2007	Change	%
Retail	$1,335	$1,136	$ 199	18%
Office	1,341	1,920	(579)	(30)
Multifamily	1,163	1,128	35	3
	$3,839	$4,184	$ (345)	(8)%

Retail other property income increased to $1.3 million in 2008 from $1.1 million in 2007. The majority of the retail other property income consists of a Hawaiian general excise tax that is billed to tenants at the rate of 4.75%, which is then remitted to the state at 4.5% and included in rental expenses. The Hawaii general excise tax included in retail other property income was $1.0 million in 2008 and $0.9 million in 2007. Office other property income decreased to $1.3 million in 2008 from $1.9 million in 2007. The majority of the office other property income consists of parking income from one office building. Parking income included in other property income was $1.2 million in 2008, compared to $1.6 million in 2007. Parking income decreased due to one tenant downsizing a significant amount of staff, combined with reduced event parking. Multifamily other property income remained flat at $1.1 million for 2008 and 2007. The majority of multifamily other property income consists of laundry fees, meter fees on utilities billed back to tenants, and security deposits earned when tenants move out.

Property Expenses

Total Property Expenses. Total property expenses consist of rental expenses and real estate taxes. Total property expenses increased by $0.4 million, or 1%, to $32.9 million in 2008, compared to $32.5 million in 2007. This increase in total property expenses is attributable primarily to the factors discussed below.

Rental Expenses. Rental expenses increased $0.4 million, or 2%, to $22.0 million in 2008, compared to $21.7 million in 2007. Rental expense by segment were as follows (dollars in thousands):

	Year Ended December 31,			
	2008	2007	Change	%
Retail	$13,134	$12,287	$ 847	7%
Office	4,565	4,647	(82)	(2)
Multifamily	4,330	4,740	(410)	(9)
	$22,029	$21,674	$ 355	2%

Retail rental expenses increased to $13.1 million in 2008, compared to $12.3 million in 2007. The increase in rental expense is primarily due to the increase in rental income for the retail portfolio. Office rental expenses remained flat at $4.6 million in 2008 and 2007. Multifamily rental expenses decreased to $4.3 million in 2008, compared to $4.7 million in 2007. The decrease is due to lower costs incurred for repairs in 2008 compared to 2007.

Real Estate Taxes. Real estate tax expense remained flat at $10.9 million in both 2008 and 2007. Real estate tax expense by segment was as follows (dollars in thousands):

	Year Ended December 31,			
	2008	2007	Change	%
Retail	$ 8,044	$ 7,851	$ 193	2%
Office	2,178	2,370	(192)	(8)
Multifamily	668	657	11	2
	$10,890	$10,878	$ 12	—

Retail property tax expense increased to $8.0 million in 2008, compared to $7.9 million in 2007 due primarily to higher annual tax assessments. Office property tax expense decreased to $2.2 million in 2008 from $2.4 million in 2007 due to a supplemental tax assessed in 2007 at the 160 King Street property that did not occur in 2008. Multifamily property tax expense remained flat at $0.7 million in 2008 and 2007.

Property Operating Income. Property operating income increased $3.1 million, or 4%, to $88.0 million in 2008, compared to $85.0 million in 2007. As discussed above, this increase is primarily attributable to an increase in rental rates across the portfolio and a slight increase in occupancy.

Other

General and administrative. General and administrative expenses decreased $1.8 million, or 17%, to $8.7 million in 2008, compared to $10.5 million in 2007. This increase was due primarily to compensation cost reduction efforts.

Depreciation and amortization. Depreciation and amortization expense decreased $0.3 million, or 1%, to $31.1 million in 2008, compared to $31.4 million in 2007. This decrease was due primarily to full amortization of certain acquired lease intangible assets and tenant improvements.

Interest income. Interest income decreased $1.3 million, or 53%, to $1.2 million in 2008, compared with $2.5 million in 2007. This decrease was primarily due to decreased interest rates earned on invested cash and notes receivable from affiliates.

Interest expense. Interest expense increased $0.8 million, or 2%, to $43.7 million in 2008, compared with $42.9 million in 2007. This increase was primarily due to slight increases in average outstanding borrowings.

Fee income from real estate joint ventures. Fee income from real estate joint ventures decreased $1.2 million, or 43%, to $1.5 million in 2008 compared to $2.7 million in 2007. This decrease is primarily attributable to acquisition fees earned on the acquisition of Fireman's Fund Headquarters in 2007.

Loss from real estate joint ventures. Loss from real estate joint ventures increased $12.1 million, or 168%, to $19.3 million for 2008 compared to $7.2 million for 2007. This increase was primarily due to an impairment loss of $15.8 million in 2008 recorded on our investments in real estate joint ventures related to our investment in Fireman's Fund Headquarters office property. We recorded this impairment as a result of the credit crisis in 2008 which caused a decline in the fair value of our investment in Fireman's Fund Headquarters that we determined was other-than-temporary. Excluding the impairment loss in 2008, our losses from real estate joint ventures decreased by $3.8 million primarily attributable to our investment in a mixed-use property in Hawaii, where the hotel, which opened in 2007, incurred fewer start up costs in 2008 compared to 2007, offset by a reduction in tourism in 2008, which impacted both the hotel and retail property.

Loss from Discontinued Operations. Loss from discontinued operations represents the operating loss from a property in Chicago that we acquired in 2005 and disposed of in 2008, which is required to be reported separately from results of ongoing operations. The reported loss of $2.1 million and $2.9 million in 2008 and 2007, respectively, represents the loss for these periods relating to this property.

Gain on Sale of Real Estate from Discontinued Operations. The gain on sale of real estate from discontinued operations of $2.6 million in 2008 consisted of the sale of the Chicago property in 2008. The property was sold for $16.5 million in August of 2008.

Liquidity and Capital Resources

Analysis of Liquidity and Capital Resources

We believe that this offering and the formation transactions will improve our financial position through changes in our capital structure, including a reduction in our leverage. After completion of this offering and the formation transactions, we expect our ratio of debt to total market capitalization to be approximately % (% if the underwriters' overallotment option is exercised in full). Our total market capitalization is defined as the sum of the market value of our outstanding common stock (which may decrease, thereby increasing our debt to total capitalization ratio), including restricted stock that we may issue to certain of our directors and executive officers, plus the aggregate value of common units not owned by us, plus the book value of our total consolidated indebtedness. Upon completion of this offering and the formation transactions, we expect to have approximately $ million of available cash (assuming no exercise of the underwriters' overallotment option). In addition, we anticipate entering into an agreement for a $ million revolving credit facility. We intend to use the revolving credit facility, among other things, to finance the acquisition of other properties, to provide funds for tenant improvements and capital expenditures and to provide for working capital and other corporate purposes.

Our short-term liquidity requirements consist primarily of operating expenses and other expenditures associated with our properties, dividend payments to our stockholders required to maintain our REIT status, capital expenditures and, potentially, acquisitions. We expect to meet our short-term liquidity requirements through net cash provided by operations, reserves established from existing cash and the proceeds of this offering and, if necessary, borrowings available under our revolving credit facility.

Our properties require periodic investments of capital for tenant-related capital expenditures and for general capital improvements. For the six months ended June 30, 2010 and years ended December 31, 2009, 2008 and 2007, our weighted average annual tenant improvement and leasing commission costs were $28.93 per square foot of leased retail space and $17.47 per square foot of leased office space. As of June 30, 2010, we had commitments under leases in effect for $10.5 million of tenant improvements and leasing commissions.

Our long-term liquidity needs consist primarily of funds necessary to pay for the repayment of debt at maturity, property acquisitions, tenant improvements and non-recurring capital improvements. We expect to meet our long-term liquidity requirements to pay scheduled debt maturities and to fund property acquisitions and non-recurring capital improvements with net cash from operations, long-term secured and unsecured indebtedness and the issuance of equity and debt securities. We also may fund property acquisitions and non-recurring capital improvements using our revolving credit facility pending permanent financing.

We believe that, upon the completion of this offering, and as a publicly traded REIT, we will have access to multiple sources of capital to fund our long-term liquidity requirements, including the incurrence of additional debt and the issuance of additional equity. However, as a new public company, we cannot assure you that this will be the case. Our ability to incur additional debt will be dependent on a number of factors, including our degree of leverage, the value of our unencumbered assets and borrowing restrictions that may be imposed by lenders. Our ability to access the equity capital markets will be dependent on a number of factors as well, including general market conditions for REITs and market perceptions about our company.

Contractual Obligations

The following table outlines the timing of required payments related to our commitments as of December 31, 2009 on a pro forma basis to reflect the obligations we expect to have upon completion of this offering and the formation transactions.

	Payments by Period						
Contractual Obligations (in thousands)	**Total**	**Within 1 Year**	**2 Years**	**3 Years**	**4 Years**	**5 Years**	**More than 5 Years**
Principal payments on long-term indebtedness[1]	$ 881,389	$ 2,917	$ 3,055	$ 3,335	$ 3,838	$ 234,136	$ 634,108
Interest payments[1]	337,772	53,275	53,115	52,961	50,883	43,691	83,847
Operating lease[2]	2,104	1,403	701	—	—	—	—
Tenant-related commitments	16,772	10,065	6,707	—	—	—	—
Total	$ 1,238,037	$ 67,660	$ 63,578	$ 56,296	$ 54,721	$ 277,827	$ 717,955

(1) Includes principal and interest payments on loans refinanced in June 2010 based upon refinanced interest rate and due dates.
(2) On July 30, 2010, we sent a notification letter to exercise our renewal option for our lease at the Annex portion of the Landmark at One Market to extend this lease through June 30, 2016, which otherwise would have expired on June 30, 2011. Monthly lease payments will be the greater of current payments or 97.5% of the prevailing rate at the start of the extension term.

Consolidated Indebtedness to be Outstanding after this Offering

Upon completion of this offering and the formation transactions, we expect to have approximately $879.9 million ($924.1 million including our pro rata share of joint venture debt) of outstanding consolidated long-term secured debt. The following table sets forth information as of June 30, 2010 (on a pro forma basis) with respect to the indebtedness that we expect will be outstanding after completion of this offering and the formation transactions (dollars in thousands):

Debt	Pro Forma Amount Outstanding	Interest Rate	Annual Debt Service	Maturity Date	Balance at Maturity
Wholly Owned Property Debt					
Alamo Quarry Market[1][2]	$ 98,954	5.67%	$ 7,567	January 8, 2014	$ 91,717
Waikele Center[3]	140,700	5.15	7,360	November 1, 2014	140,700
The Landmark at One Market[2][3]	133,000	5.61	7,558	July 5, 2015	133,000
Del Monte Center[3]	82,300	4.93	4,121	July 8, 2015	82,300
Rancho Carmel Plaza[1]	8,103	5.65	572	January 1, 2016	7,414
Imperial Beach Gardens[3]	20,000	6.16	1,250	September 1, 2016	20,000
Mariner's Point[3]	7,700	6.09	476	September 1, 2016	7,700
Torrey Reserve—ICW Plaza[3]	43,000	5.46	2,382	February 1, 2017	43,000
South Bay Marketplace[3]	23,000	5.48	1,281	February 10, 2017	23,000
Waikiki Beach Walk—Retail[3]	130,310	5.39	7,020	July 1, 2017	130,310
Solana Beach Corporate Centre III-IV[1]	37,330	6.39	2,418	August 1, 2017	35,136
Loma Palisades[3]	73,744	6.09	4,553	July 1, 2018	73,744
Torrey Reserve—North Court[1]	22,281	7.22	1,864	June 1, 2019	19,328
Torrey Reserve—VCI, VCII, VCIII[1]	7,494	6.36	560	June 1, 2020	6,439
Solana Beach Corporate Centre I-II[1]	12,000	5.91	855	June 1, 2020	10,169
Solana Beach Towne Centre[1]	40,000	5.91	2,849	June 1, 2020	33,898
Subtotal/Weighted Average Interest Rate	**$ 879,916[4]**	**5.59%**	**$ 53,576**		**$857,855**
Our Pro Rata Share of Joint Venture Debt					
Fireman's Fund Headquarters[2] [5]	$ 44,136	5.55%	$ 3,333	October 1, 2015	$ 38,969
Total/Weighted Average Interest Rate Including Our Pro Rata Share of Joint Venture Debt	**$ 924,052**	**5.59%**	**$ 56,909**		**$896,824**

(1) Principal payments based on a 30-year amortization schedule.
(2) Maturity date is the earlier of the loan maturity date under the loan agreement, or the "Anticipated Repayment Date" as specifically defined in the loan agreement, which is the date after which substantial economic penalties apply if the loan has not been paid off.
(3) Interest only.
(4) Amount does not equal pro forma balance sheet due to fair value of debt adjustments.
(5) On a gross basis, the pro forma amount outstanding on the Fireman's Fund Headquarters loan was $176.5 million, with an annual debt service of $13.3 million and a balance at maturity of $155.9 million.

Description of Certain Debt

The following is a summary of the material provisions of the loan agreements evidencing our material debt to be outstanding upon the closing of this offering and the consummation of the formation transactions.

Mortgage Loan Secured by Alamo Quarry

Our Alamo Quarry property is subject to senior mortgage debt with an original principal amount of $109 million, which is securitized debt that is currently held by Bank of America, N.A, as successor by merger to LaSalle Bank, N.A., as Trustee for Bear Stearns Commercial Mortgage Securities Inc., Commercial Mortgage Pass-Through Certificates Series 2003—PWR2.

Maturity and Interest. The loan has a maturity date of January 8, 2014 and bears interest at a rate per annum of 5.67%. This loan requires regular payments of principal and interest.

Security. The loan was made to two borrower subsidiaries, and is secured by a first-priority deed of trust lien on the Alamo Quarry property, a security interest in all personal property used in connection with the Alamo Quarry property and an assignment of all leases, rents and security deposits relating to the property.

Prepayment. The loan may be voluntarily defeased in whole or in part, subject to satisfaction of customary defeasance requirements in effect for a prepayment prior to January 8, 2014, at which time the loan may be voluntarily prepaid without penalty or premium.

Events of Default. The loan agreement contains customary events of default, including defaults in the payment of principal or interest, defaults in compliance with the covenants contained in the documents evidencing the loan, defaults in payments under any other security instrument covering any part of the property, whether junior or senior to the loan, and bankruptcy or other insolvency events.

Mortgage Loan Secured by Waikele Center

The Waikele Center is subject to senior mortgage debt with an original principal amount of $140.7 million, which is securitized debt that is currently held by Bank of America, N.A., as successor by merger to LaSalle Bank, N.A., as Trustee for Morgan Stanley Capital I, Inc., Commercial Mortgage Pass-Through Certificates, Series 2005-TOP17.

Maturity and Interest. The loan has a maturity date of November 1, 2014 and bears interest at a rate per annum of 5.1452%. This is an interest only loan.

Security. The loan was made to two borrower subsidiaries, and is secured by a first-priority deed of trust lien on the Waikele Center, a security interest in all personal property used in connection with the Waikele Center and an assignment of all leases, rents and security deposits relating to the property.

Prepayment. The loan may be voluntarily defeased in whole or in part, subject to satisfaction of customary defeasance requirements in effect for a prepayment prior to November 1, 2014, at which time the loan may be voluntarily prepaid without penalty or premium.

Events of Default. The loan agreement contains customary events of default, including defaults in the payment of principal or interest, defaults in compliance with the covenants contained in the documents evidencing the loan, defaults in payments under any other security instrument covering any part of the property, whether junior or senior to the loan, and bankruptcy or other insolvency events.

Mortgage Loan Secured by the Landmark at One Market

The Landmark at One Market is subject to senior mortgage debt with an original principal amount of $133.0 million, which is securitized debt that is currently held by Bank of America, N.A., as successor by merger to LaSalle Bank, N.A., as Trustee for the Morgan Stanley Capital I, Inc. Commercial Mortgage Pass-Through Certificates; Series 2005-HQ6.

Maturity and Interest. The loan has a maturity date of July 5, 2015 and bears interest at a rate per annum of 5.605%. This is an interest only loan.

Security. The loan was made to two borrower subsidiaries, and is secured by a first-priority deed of trust lien on The Landmark at One Market, a security interest in all personal property used in connection with The Landmark at One Market and an assignment of all leases, rents and security deposits relating to the property.

Prepayment. The loan may be voluntarily defeased in whole or in part, subject to satisfaction of customary defeasance requirements in effect for a prepayment prior to July 5, 2015, at which time the loan may be voluntarily prepaid without penalty or premium.

Events of Default. The loan agreement contains customary events of default, including defaults in the payment of principal or interest, defaults in compliance with the covenants contained in the documents evidencing the loan and bankruptcy or other insolvency events.

Mortgage Loan Secured by Del Monte Center

Del Monte Center is subject to senior mortgage debt with an original principal amount of $82.3 million, which is securitized debt that is currently held by Wells Fargo Bank, N.A., as Trustee for the registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2005-C5 under that certain Pooling and Servicing Agreement, dated as of November 1, 2005.

Maturity and Interest. The loan has a maturity date of July 8, 2015 and bears interest at a rate per annum of 4.9256%. This is an interest only loan.

Security. The loan was made to four borrower subsidiaries, and is secured by a first-priority deed of trust lien on the Del Monte Center property, a security interest in all personal property used in connection with the Del Monte Center property and an assignment of all leases, rents and security deposits relating to the property.

Prepayment. The loan may be voluntarily defeased in whole or in part, subject to satisfaction of customary defeasance requirements in effect for a prepayment prior to July 8, 2015, at which time the loan may be voluntarily prepaid without penalty or premium.

Events of Default. The loan agreement contains customary events of default, including defaults in the payment of principal or interest, defaults in compliance with the covenants contained in the documents evidencing the loan, defaults in payments under any other security instrument covering any part of the property, whether junior or senior to the loan, and bankruptcy or other insolvency events.

Mortgage Loan Secured by Waikiki Beach Walk – Retail

Waikiki Beach Walk—Retail is subject to senior mortgage debt with an original principal amount of $130.3 million, which is securitized debt that is currently held by KeyCorp Real Estate Capital Markets, Inc. d/b/a KeyBank Real Estate Capital as Master Servicer in trust for Wells Fargo Bank, N.A., as trustee for the registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2008-C1.

Maturity and Interest. The loan has a maturity date of July 1, 2017 and bears interest at a rate per annum of 5.387%. This is an interest only loan.

Security. The loan was made to a single borrower subsidiary, and is secured by a first-priority deed of trust lien on Waikiki Beach Walk—Retail, a security interest in all personal property used in connection with Waikiki Beach Walk—Retail and an assignment of all leases, rents and security deposits relating to the property.

Prepayment. The loan may be voluntarily defeased in whole or in part, subject to satisfaction of customary defeasance requirements in effect for a prepayment prior to July 1, 2017, after which time the loan may be voluntarily prepaid without penalty or premium.

Events of Default. The loan agreement contains customary events of default, including defaults in the payment of principal or interest, defaults in compliance with the covenants contained in the documents evidencing the loan, defaults in payments under any other security instrument covering any part of the property, whether junior or senior to the loan, and bankruptcy or other insolvency events.

Mortgage Loan Secured by Loma Palisades

Loma Palisades is subject to senior mortgage debt with an original principal amount of $73.7 million, which is securitized debt under the Federal Home Loan Mortgage Corporation program, or Freddie Mac, that is currently held by Wells Fargo Bank, N.A.

Maturity and Interest. The loan has a maturity date of July 1, 2018 and bears interest at a rate per annum of 6.09%. This is an interest only loan.

Security. The loan was made to a single borrower subsidiary, and is secured by a first-priority deed of trust lien on Loma Palisades, a security interest in all personal property used in connection with Loma Palisades and an assignment of all leases, rents and security deposits relating to the property.

Prepayment. The loan may be voluntarily prepaid in whole or in part, subject to satisfaction of customary yield maintenance requirements in effect for a prepayment prior to April 1, 2018, at which time the loan may be voluntarily prepaid without penalty or premium.

Events of Default. The loan agreement contains customary events of default, including defaults in the payment of principal or interest, defaults in compliance with the covenants contained in the documents evidencing the loan and bankruptcy or other insolvency events.

Mortgage Loan Secured by Fireman's Fund Headquarters

Fireman's Fund Headquarters, in which we have a 25% interest, is subject to senior mortgage debt with an outstanding principal amount of $176.5 million, which is securitized debt that is currently held by Midland Loan Services, Inc., as Master Servicer for Wells Fargo Bank., N.A as Trustee, for the Registered Holders of GE Commercial Mortgage Corporation, Commercial Mortgage Pass Through-Certificates Series 2005-C4.

Maturity and Interest. The loan has a maturity date of October 1, 2015 and bears interest at a rate per annum of 5.547851%. This loan requires regular payments of principal and interest.

Security. The loan was made to a single borrower subsidiary, and is secured by a first-priority deed of trust lien on Fireman's Fund Headquarters, a security interest in all personal property used in connection with Fireman's Fund Headquarters and an assignment of all leases, rents and security deposits relating to the property.

Prepayment. The loan may be voluntarily defeased in whole or in part, subject to satisfaction of customary defeasance requirements in effect for a prepayment prior to October 1, 2015, at which time the loan may be voluntarily prepaid without penalty or premium.

Events of Default. The loan agreement contains customary events of default, including defaults in the payment of principal or interest, defaults in compliance with the covenants contained in the documents evidencing the loan, defaults in payments under any other security instrument covering any part of the property, whether junior or senior to the loan, and bankruptcy or other insolvency events.

Off-Balance Sheet Arrangements

Our Predecessor has four joint venture arrangements with unrelated third parties. The Predecessor accounts for these investments under the equity method of accounting. The properties owned by these unconsolidated joint ventures are as follows:

Property	Type	Location
Solana Beach Towne Centre	Retail	Solana Beach, CA
Solana Beach Corporate Centre	Office	Solana Beach, CA
Fireman's Fund Headquarters	Office	Novato, CA
Waikiki Beach Walk	Mixed-Use	Honolulu, HI

Upon completion of this offering and the formation transactions, we will have one joint venture arrangement with respect to our ownership interest in Fireman's Fund Headquarters and will account for this investment under the equity method of accounting. Other than this joint venture and items disclosed above under the heading "Contractual Obligations," upon the completion of this offering we will have no off-balance sheet arrangements that are reasonably likely to have a current or future material effect on our financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

Interest Rate Risk

FASB ASC Topic 815, Derivative and Hedging, requires us to recognize all derivatives on the balance sheet at fair value. Derivatives that do not qualify as hedges must be adjusted to fair value and the changes in fair value must be reflected as income or expense. If the derivative qualifies as a hedge, depending on the nature of the hedge, changes in the fair value of derivatives are either offset against the change in fair value of the hedged assets, liabilities, or firm commitments through earnings or recognized in other comprehensive income, which is a component of equity. The ineffective portion of a derivative's change in fair value is immediately recognized in earnings.

Upon completion of this offering and the repayment of indebtedness described in "Use of Proceeds," we will not hold any variable-rate debt and will not be subject to fluctuations in interest rates in the near term.

Cash Flows

Comparison of the six months ended June 30, 2010 to the six months ended June 30, 2009

Cash and cash equivalents were $31.6 million and $28.5 million as of June 30, 2010 and 2009, respectively.

Net cash provided by operating activities decreased by $4.2 million to $23.4 million for the six months ended June 30, 2010, compared to $27.6 for the six months ended June 30, 2009. The decrease was primarily due to cash of $2.7 million for a property tax refund received in March 2009 and lower net income for 2010, excluding the non-cash gain on the acquisition of The Landmark at One Market of $4.3 million.

Net cash used in investing activities increased $7.1 million to $11.4 million for the six months ended June 30, 2010, compared to $4.3 million for the six months ended June 30, 2009. The increase was primarily due to the acquisition of the outside ownership interest in The Landmark at One Market for $19.7 million, net of cash acquired of $3.3 million. This was offset by distributions of $10.6 million from the equity investment in the Solana Beach Towne Centre and Solana Beach Corporate Centre properties upon refinance of the debt on the properties. Additionally, $0.8 million in notes receivable were paid to us by an affiliate, and there was $0.8 million lower use of cash for capital expenditures.

Net cash used in financing activities decreased $9.1 million to $4.6 million for the six months ended June 30, 2010, compared to $13.7 million for the six months ended June 30, 2009. The decrease was primarily due to new financings of $23.0 million made upon the acquisition of Landmark. The increased financing was offset by an $8.4 million increase in distributions to controlling and noncontrolling interests. Additionally, excluding the $23.0 million financing for The Landmark at One Market, net repayments of loans increased by $4.4 million in the aggregate in connection with the refinancing of certain loans on Torrey Reserve Campus, including the Torrey Reserve—VCI, Torrey Reserve—VCII, and Torrey Reserve—VCIII loans in June 2010 and refinancing the Torrey Reserve—North Court and Torrey Reserve—Daycare loans in May 2009.

Comparison of year ended December 31, 2009 to the year ended December 31, 2008

Cash and cash equivalents were $24.2 million and $19.0 million, at December 31, 2009 and 2008, respectively.

Net cash provided by operating activities decreased $0.1 million to $47.5 million for the year ended December 31, 2009, compared to $47.6 million for the year ended December 31, 2008.

Net cash used in investing activities decreased $9.6 million to $7.5 million for the year ended December 31, 2009, compared to cash flow provided by investing activities of $2.1 million for the year ended December 31, 2008. The decrease was primarily due to the sale of a property in Chicago in 2008 that resulted in $16.5 million of cash proceeds, with no comparable sale in 2009. The cash flow from the sale was offset by a decrease of $12.9 million in the use of cash for capital expenditures in 2009 as compared to 2008 related primarily to construction activities at Valencia Corporate Center and Waikele Center in 2008 and a decrease of $1.7 million in cash used for lease commissions due to fewer new leases and lease renewals in 2009. In addition, the funding of notes to AAI decreased from net issuances of $3.5 million in 2008 compared to net repayments of $1.1 million in 2009, including repayments of notes related to discontinued operations. The decrease in cash outflows were offset by a decrease in distributions of capital from real estate joint ventures, which were $11.4 million in 2008 and $0.0 million in 2009.

Net cash used in financing activities decreased $15.3 million to $34.7 million for the year ended December 31, 2009, compared to $50.0 million for the year ended December 31, 2008. The decrease was primarily due to lower net distributions of $52.1 million to controlling and noncontrolling interests including a $15.9 million distribution in 2008 after the sale of a property in Chicago. Net distributions were $23.5 million in 2009, compared to $59.6 million in 2008, excluding the $15.9 million distribution after the sale of the Chicago property. Additionally, net borrowings decreased by $36.7 million to net repayments of $(10.7) million in 2009, compared to net issuances of $26.0 million in 2008 related to the refinancing of the Loma Palisades debt and issuances of notes to affiliates.

Comparison of the year ended December 31, 2008 to the year ended December 31, 2007

Cash and cash equivalents were $19.0 million and $19.2 million, at December 31, 2008 and 2007, respectively.

Net cash provided by operating activities increased by $16.4 million to $47.6 million for the year ended December 31, 2008, compared to $31.2 million for the year ended December 31, 2007. The increase was primarily due to an increase in net income, excluding a $15.8 million impairment loss recorded on the investment in Fireman’s Fund in 2008, and additional distributions from operations of unconsolidated real estate joint ventures in 2008.

Net cash provided by investing activities increased $46.5 million to $2.1 million for the year ended December 31, 2008, compared to net cash used of $44.4 million for the year ended December 31, 2007. The increase was primarily due to increased net cash flows from unconsolidated joint ventures of $31.3 million from a use of cash of $19.9 million in 2007, compared to sources of cash of $11.4 million in 2008. This increase is due primarily to the formation of the entity owning Fireman’s Fund Headquarters and additional contributions to the Waikiki Beach Walk entities in 2007, offset by distributions by the entities owning Solana Beach Towne Centre and Solana Beach Corporate Centre and one Waikiki Beach Walk entity upon refinancing of the loans at those properties. In 2008, distributions of capital from real estate joint ventures of $11.4 million were received from a Waikiki Beach Walk entity related to the refinancing of debt. In addition cash flow from investing activities related to discontinued operations increased by a net of $14.7 million, related to the sale of an operating property in 2008.

Net cash used in financing activities was $50.0 million for the year ended December 31, 2008, compared to net cash provided by financing of $18.9 million for the year ended December 31, 2007. The increase was primarily due to increased net distributions to controlling and noncontrolling interests of $74.0 million, primarily as a result of cash available for distribution from operations and distributions to controlling interests of $15.9 million upon sale of the property in 2008. Additionally, net issuances of debt increased by $5.4 million related to the refinancing of the Loma Palisades loan in 2008 and issuance of notes to affiliates and the South Bay Marketplace, Torrey Reserve—ICW Plaza and Valencia Corporate Center loan refinances in 2007.

Net Operating Income

Net Operating Income, or NOI, is a non-GAAP financial measure of performance. NOI is used by investors and our management to evaluate and compare the performance of our properties and to determine trends in earnings and to compute the fair value of our properties as it is not affected by (1) the cost of funds of the property owner, (2) the impact of depreciation and amortization expenses as well as gains or losses from the sale of operating real estate assets that are included in net income computed in accordance with GAAP, or (3) general and administrative expenses and other gains and losses that are specific to the property owner. The cost of funds is eliminated from net income because it is specific to the particular financing capabilities and constraints of the owner. The cost of funds is also eliminated because it is dependent on historical interest rates and other costs of capital as well as past decisions made by us regarding the appropriate mix of capital which may have changed or may change in the future. Depreciation and amortization expenses as well as gains or losses from the sale of operating real estate assets are eliminated because they may not accurately represent the actual change in value in our retail, office or multifamily properties that result from use of the properties or changes in market conditions. While certain aspects of real property do decline in value over time in a manner that is reasonably captured by depreciation and amortization, the value of the properties as a whole have historically increased or decreased as a result of changes in overall economic conditions instead of from actual use of the property or the passage of time. Gains and losses from the sale of real property vary from property to property and are affected by market conditions at the time of sale which will usually change from period to period. These gains and losses can create distortions when comparing one period to another or when comparing our operating results to the operating results of other real estate companies that have not made similarly timed purchases or sales. We believe that eliminating these costs from net income is useful because the resulting measure captures the actual revenue generated and actual expenses incurred in operating our properties as well as trends in occupancy rates, rental rates and operating costs.

However, the usefulness of NOI is limited because it excludes general and administrative costs, interest expense, interest income and other expense, depreciation and amortization expense and gains or losses from the sale of properties, and other gains and losses as stipulated by GAAP, the level of capital expenditures and leasing costs necessary to maintain the operating performance of our properties, all of which are significant economic costs. NOI may fail to capture significant trends in these components of net income which further limits its usefulness.

NOI is a measure of the operating performance of our properties but does not measure our performance as a whole. NOI is therefore not a substitute for net income as computed in accordance with GAAP. This measure should be analyzed in conjunction with net income computed in accordance with GAAP and discussions elsewhere in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” regarding the components of net income that are eliminated in the calculation of NOI. Other companies may use different methods for calculating NOI or similarly entitled measures and, accordingly, our NOI may not be comparable to similarly entitled measures reported by other companies that do not define the measure exactly as we do.

The following is a reconciliation of our pro forma and historical NOI to net income for the six months ended June 30, 2010 and June 30, 2009 and for the years ended December 31, 2009, 2008 and 2007 computed in accordance with GAAP (in thousands):

	Pro Forma Six Months Ended June 30,	Historical Predecessor Six Months Ended June 30,		Pro Forma Year Ended December	Historical Predecessor Year Ended December 31,		
	2010	2010	2009	2009	2009	2008	2007
Net operating income	$ 64,578	$ 42,407	$ 44,626	$133,343	$ 88,401	$ 88,024	$ 84,956
General and administrative	(4,465)	(3,408)	(3,756)	(9,050)	(7,058)	(8,690)	(10,471)
Depreciation and amortization	(25,465)	(14,739)	(14,902)	(51,309)	(29,858)	(31,089)	(31,376)
Interest income and other, net	(121)	31	109	(113)	173	1,167	2,462
Interest expense	(26,752)	(21,278)	(21,489)	(53,825)	(43,290)	(43,737)	(42,902)
Fee income from real estate joint ventures	126	1,943	871	254	1,736	1,538	2,721
Income (loss) from real estate joint ventures	113	1,407	(2,503)	173	(4,865)	(19,272)	(7,191)
Results from discontinued operations	—	—	—	—	—	554	(2,874)
Net income (loss)	$ 8,014	$ 6,363	$ 2,956	$ 19,473	$ 5,239	$(11,505)	$ (4,675)
Other Net Operating Income Data							
Net operating income	$ 64,578	$ 42,407	$ 44,626	$133,343	$ 88,401	$ 88,024	$ 84,956
Above and below market rents	747	876	701	1,151	1,407	170	(294)
Straight line rent adjustments	(1,239)	(515)	(558)	(2,384)	(943)	(2,119)	(2,279)

Funds From Operations

We calculate funds from operations, or FFO, in accordance with the standards established by the National Association of Real Estate Investment Trusts, or NAREIT. FFO represents net income (loss) (computed in accordance with GAAP), excluding gains (or losses) from sales of depreciable operating property, real estate related depreciation and amortization (excluding amortization of deferred financing costs) and after adjustments for unconsolidated partnerships and joint ventures.

FFO is a supplemental non-GAAP financial measure. Management uses FFO as a supplemental performance measure because it believes that FFO is beneficial to investors as a starting point in measuring our operational performance. Specifically, in excluding real estate related depreciation and amortization and gains and losses from property dispositions, which do not relate to or are not indicative of operating performance, FFO provides a performance measure that, when compared year over year, captures trends in occupancy rates, rental rates and operating costs. We also believe that, as a widely recognized measure of the performance of REITs, FFO will be used by investors as a basis to compare our operating performance with that of other REITs.

However, because FFO excludes depreciation and amortization and captures neither the changes in the value of our properties that result from use or market conditions nor the level of capital expenditures and leasing commissions necessary to maintain the operating performance of our properties, all of which have real economic effects and could materially impact our results from operations, the utility of FFO as a measure of our performance is limited. In addition, other equity REITs may not calculate FFO in accordance with the NAREIT definition as we do, and, accordingly, our FFO may not be comparable to such other REITs' FFO. Accordingly,

FFO should be considered only as a supplement to net income as a measure of our performance. FFO should not be used as a measure of our liquidity, nor is it indicative of funds available to fund our cash needs, including our ability to pay dividends or service indebtedness. FFO also should not be used as a supplement to or substitute for cash flow from operating activities computed in accordance with GAAP.

The following table sets forth a reconciliation of our pro forma FFO for the six months ended June 30, 2010 and the year ended December 31, 2009 to net income, the nearest GAAP equivalent (in thousands):

	Pro Forma	
	Six Months Ended June 30, 2010	Year Ended December 31, 2009
Pro forma net income	$ 8,014	$ 19,473
Plus: pro forma real estate depreciation and amortization	25,465	51,309
Plus: pro forma depreciation of joint venture real estate assets	1,248	2,497
Pro forma funds from operations	$ 34,727	$ 73,279

Inflation

Substantially all of our office and retail leases provide for separate real estate tax and operating expense escalations. In addition, many of the leases provide for fixed base rent increases. We believe that inflationary increases may be at least partially offset by the contractual rent increases and expense escalations described above. In addition, our multifamily leases (other than at our RV resort where spaces can be rented at a daily, weekly or monthly rate) generally have lease terms ranging from 7 to 15 months, with a majority having 12-month lease terms, and generally allow for rent adjustments at the time of renewal, which we believe reduces our exposure to the effects of inflation.

Recently Issued Accounting Literature

FASB Accounting Standards Codification

In June 2009, the Financial Accounting Standards Board, or FASB, issued new accounting requirements, which make the FASB Accounting Standards Codification, or Codification, the single source of authoritative literature for U.S. accounting and reporting standards. The Codification is not meant to change existing GAAP but rather provide a single source for all literature. The standard is effective for all periods ending after September 15, 2009. The standard required our financial statements to reflect Codification or “plain English” references rather than references to FASB Statements, Staff Positions or Emerging Issues Task Force Abstracts. The adoption of this requirement impacted certain disclosures in the financial statement but did not have an impact on our combined financial position, results of operations, or cash flows.

Recently Adopted Accounting Pronouncements

Effective January 1, 2009, we adopted a new accounting standard that broadens and clarifies the definition of a business, which will result in significantly more of our acquisitions being treated as business combinations rather than asset acquisitions. The new requirement is effective for business combinations for which the acquisition date is on or after January 1, 2009, and therefore, will only impact prospective acquisitions with no change to the accounting for acquisitions completed prior to or on December 31, 2008. The new standard requires us to expense all acquisition related transaction costs as incurred which could include broker fees, transfer taxes, legal, accounting, valuation, and other professional and consulting fees. For acquisitions prior to January 1, 2009, these costs were capitalized as part of the acquisition cost. While the adoption did not have a material impact on our Predecessor’s financial statements for 2009, the impact to our future combined financial statements will vary significantly depending on the timing and number of acquisitions or potential acquisitions, size of the acquisitions, and location of the acquisitions. The new standard includes several other changes to the

accounting for business combinations including requiring contingent consideration to be measured at fair value at acquisition and subsequently remeasured through the income statement if accounted for as a liability as the fair value changes, any adjustments during the purchase price allocation period to be "pushed back" to the acquisition date with prior periods being adjusted for any changes, and the business combination to be accounted for on the acquisition date or the date control is obtained.

Effective January 1, 2009, we adopted a new accounting standard that significantly changes the accounting and reporting of minority interests in the combined financial statements and requires a noncontrolling interest, which was previously referred to as a minority interest, to be recognized as a component of equity rather than included in the mezzanine section of the balance sheet where it was previously presented. The terminology "minority interest" has been changed to "noncontrolling interest." The "minority interest" caption on the statement of operations is now reflected as "net income attributable to noncontrolling interests" and shown after combined net income. This is a presentation only change for minority interest on both the balance sheet and statement of operations and has no impact to total liabilities and shareholders' equity, or net income available to common shareholders. The statement also requires the recognition of 100% of the fair value of assets acquired and liabilities assumed in acquisitions of less than 100% controlling interest with subsequent acquisitions of the noncontrolling interest recorded as equity transactions. The new accounting standard was adopted effective January 1, 2009 and has been applied prospectively except for the presentation changes to the balance sheet and statement of operations which have been applied retrospectively in the 2008 and 2007 combined financial statements. While there was no additional impact on the combined financial statements during 2009, the impact on our future combined financial statements will vary depending on the level of transactions with entities involving noncontrolling interests. The adoption of this standard impacted our accounting for the acquisition of the outside interest in The Landmark at One Market.

Effective January 1, 2009, we adopted a new accounting standard that requires enhanced disclosures about an entity's derivative instruments and hedging activities. The adoption did not have an impact on our combined financial statements as we currently have no derivative instruments outstanding.

Effective January 1, 2009, we adopted a new accounting standard which clarifies the accounting for certain transactions and impairment considerations involving equity method investments. The new accounting standard clarifies that equity method investments should initially be measured at cost, the issuance of shares by the investee would result in a gain or loss on issuance of shares reflected in the income statement of the equity investor, and that a loss in value of an equity investment which is other than a temporary decline should be recognized. The standard was effective on a prospective basis beginning on January 1, 2009, and did not have a material impact on our financial position, results of operations, or cash flows.

Effective January 1, 2009, we adopted certain accounting guidance within ASC Topic 740, *Income Taxes*, or ASC 740, with respect to how uncertain tax positions should be recognized, measured, presented and disclosed in the financial statements. The guidance requires the accounting and disclosure of tax positions taken or expected to be taken in the course of preparing our tax returns to determine whether the tax positions are "more-likely-than-not" of being sustained by the applicable tax authority. Tax positions not deemed to meet the more-likely-than-not threshold would be recorded as a tax benefit of expense in the current year. We are required to analyze all open tax years, as defined by the statute of limitations, for all major jurisdictions, which includes federal and certain states. We have had no examinations in progress and none are expected at this time. As of December 31, 2009, we have reviewed all open tax years and major jurisdictions and concluded the adoption of the new accounting guidance resulted in no impact to our financial position or results of operations. There is no tax liability resulting from unrecognized tax benefits relating to uncertain income tax positions taken or expected to be taken in future tax returns.

As of April 1, 2009, we adopted a new accounting standard which establishes general standards of accounting and disclosure of events that occur after the balance sheet date but before the financial statements are issued or available to be issued and requires disclosure of the date through which subsequent events have been evaluated.

In June 2009, the FASB issued a new accounting standard which provides certain changes to the evaluation of a VIE including requiring a qualitative rather than quantitative analysis to determine the primary beneficiary of a VIE, continuous assessments of whether an enterprise is the primary beneficiary of a VIE, and enhanced disclosures about an enterprise's involvement with a VIE. The standard is effective January 1, 2010, and is applicable to all entities in which an enterprise has a variable interest. The adoption of this standard did not have a material impact on our financial position, results of operations, or cash flows.

In January 2010, the FASB issued a new accounting standard to improve disclosure over fair value measurements. The new standard amends previously issued guidance and clarifies and provides additional disclosure requirements relating to recurring and non-recurring fair value measurements. This standard became effective for our on January 1, 2010. The adoption of the standard did not have a material impact on our combined financial statements.

Unaudited Interim Information

The financial statements as of June 30, 2010 and for the six months ended June 30, 2010 and 2009 are unaudited. In the opinion of management, such financial statements reflect all adjustments necessary for a fair presentation of the respective interim periods. All such adjustments are of a normal recurring nature.

Quantitative and Qualitative Disclosures about Market Risk

Our future income, cash flows and fair values relevant to financial instruments are dependent upon prevalent market interest rates. Market risk refers to the risk of loss from adverse changes in market prices and interest rates. As of June 30, 2010, we do not hold any derivative financial instruments.

Under our pro forma capital structure, we do not hold any variable-rate debt and are not subject to fluctuations in interest rates in the near term.

As of June 30, 2010, on a pro forma basis, our total consolidated outstanding debt was approximately $879.9 million of fixed-rate secured mortgage loans. As of June 30, 2010, the fair value of our pro forma fixed rate secured mortgage loans was approximately $852.9 million.

INDUSTRY BACKGROUND AND MARKET OPPORTUNITY

Unless otherwise indicated, all information in this Industry Background and Market Opportunity section is derived from the market study prepared for us by RCG.

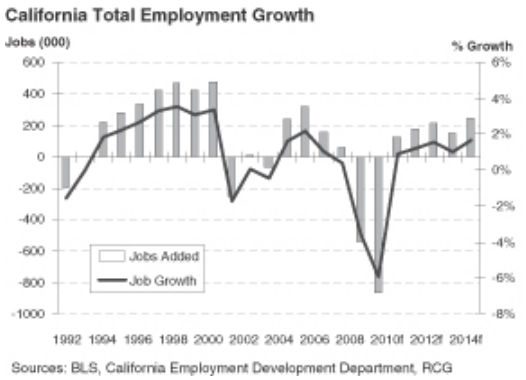
Our Markets

We will primarily target high-barrier-to-entry markets in Southern and Northern California and Hawaii that exhibit attractive economic fundamentals and have favorable long term supply-demand characteristics. Specifically, our target markets in California include the metropolitan areas of San Diego, Los Angeles and Orange County as well as the San Francisco Bay Area. In Hawaii, our target markets include the greater Honolulu area, where our existing assets are located, but may include other markets and submarkets that exhibit similar attractive investment fundamentals. Listed below is a summary of the California and Hawaii economies, summaries of each of our existing target markets, as well as San Antonio, Texas, where we own a premier retail center.

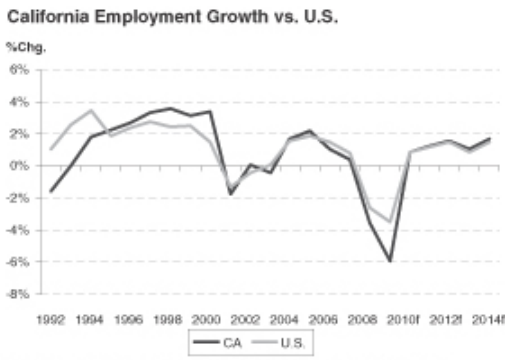
California Economy

California is the largest state economy in the United States and represents the equivalent of the world's eighth largest economy, producing $1.8 trillion in goods and services in 2008 and accounting for approximately 13% of the national gross domestic product. According to RCG, California accounts for roughly one out of every 10 workers in the United States and has non-farm employment of more than 13.9 million people as of May 2010. California's mean income per capita was 8.2% higher than the national figure in 2009, illustrating the state's highly educated workforce and greater share of skilled workers. Major industries within the state include technology innovation and investment, financial services, life sciences, media, trade, agriculture and tourism. California is a highly attractive place to live and work and tends to recover more quickly from recessions as population growth fuels economic expansion. Additionally, the state's diverse industry mix has historically led to stronger economic growth during periods of national economic expansion. As a result of California's attractive economic fundamentals, we believe that California is well positioned for meaningful growth in the coming years and presents a compelling commercial real estate investment opportunity and environment.

According to RCG, California is slowly emerging from the recent recession with employment gains in recent months serving as a leading indicator. RCG expects job growth to be moderate in 2010, at 0.9% or 124,000 jobs, but to accelerate in 2011 and 2012 to 1.3% and 1.6%, respectively, adding 394,000 jobs during the two-year period.



Sources: BLS, California Employment Development Department, RCG



Sources: BLS, California Employment Development Department, RCG

Retail

According to RCG, California's universe of metropolitan areas contain approximately 552 million square foot of retail space. Regionally, 70% of California's retail space is located in Southern California including the Los Angeles, Orange County, San Diego and Inland Empire metropolitan areas. While the overall retail market softened in 2009, positive trends in retail sales and cargo volumes at California ports suggest that consumers are becoming more confident in their personal financial situations and demand for retail space is expected to increase accordingly. Tourism plays a significant role in the support of California's retail market, with visitors to the state spending an estimated $87.7 billion in 2009 according to the California Travel & Tourism Commission. RCG expects the volume of tourism in the state to increase over the next several years, especially from international visitors. In 2010, vacancy is expected to stabilize at 8.4% and decrease incrementally to reach 6.0% by 2014.

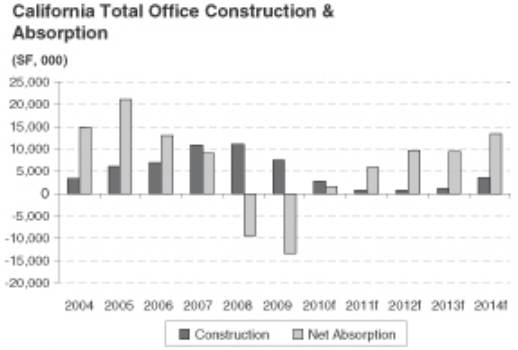
Sources: CBRE, Marcus & Millichap, RCG

Sources: CBRE, Marcus & Millichap, RCG

California's limited land supply, stringent regulatory environment and environmental restrictions make it one of the most challenging markets in the United States for new construction, thus limiting new supply. Additionally, high land and construction costs and challenging financing conditions for new construction are also factors that will limit development of new retail projects.

Office

California's office market contains more than 634 million square feet of office space across the state. Approximately 55% of the total office space is located in Southern California metropolitan areas, including Los Angeles, Orange County, San Diego, Inland Empire and Ventura. The remaining 45% of the inventory is located in Northern California metropolitan areas including San Francisco, Sacramento, Oakland and San Jose. California's world-class educational and research institutions foster a relatively high education base for California's population, thus supporting a dynamic demand for office space as innovation leads the growth phase of economic cycles. RCG believes the California office market bottomed in mid-2010 after a 6.4% increase in vacancy over the last two years. By 2014, RCG expects total California office vacancy to reach 13.1%, as compared to the projected year-end 2010 vacancy of 18.3%.



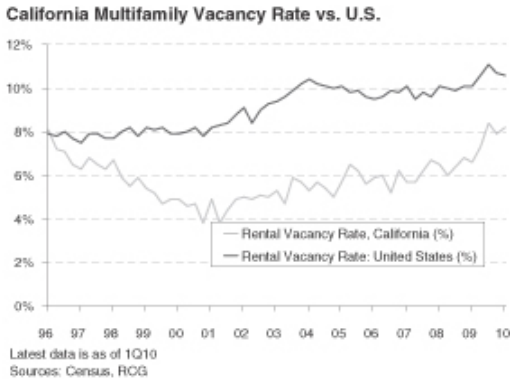
Sources: Cushman & Wakefield, CBRE, RCG

Sources: Cushman & Wakefield, CBRE, RCG

Barriers to entry in California's office market are generally high, particularly in coastal regions. A lack of developable land inhibits new developments in most major metropolitan areas. Additionally, highly restrictive building codes, extensive planning and environmental review and approval requirements, and high land and construction costs also serve to discourage new development.

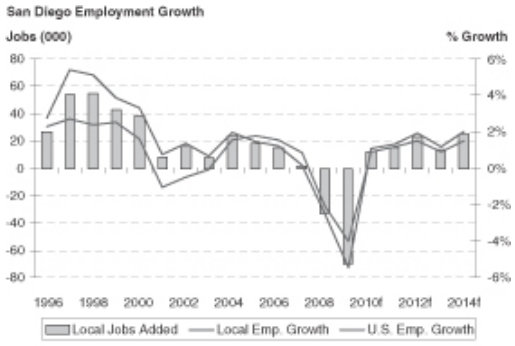
Multifamily

For a majority of the last 15 years, the state of California recorded a lower rental vacancy rate than the United States as a whole. Limited supply, strong demand, a low rate of single family housing affordability, as well as strong demographics support RCG's long-term view that the California multifamily market should continue to outperform the nation as a whole. In the last several years, new construction activity fell to the lowest level since 1960. From 2000 to 2009, the California population increased by nearly 5.1 million people, a slowdown from peak growth in the 1980s, but rapid on a relative basis when compared with the country as a whole. In the fourth quarter of 2009, the vacancy rate was 7.9% in California as compared with 10.7% nationally. Through the remainder of 2010, the leasing market should stabilize and RCG forecasts the vacancy rate to reach 7.7% at the end of the year. After shedding jobs for several years, 139,000 jobs were created in California during the first five months of 2010, which will help to begin the process of stabilizing rental demand in 2010, accelerating thereafter, and contributing to the rebound of the apartment market. Rent growth slowed dramatically in 2009, however remained positive, dropping to only 0.2% from an annual average of 4.8% from 2000 to 2008. As the economy strengthens in 2011, job opportunities and income growth are expected to improve and the multifamily vacancy rate is expected to move below 7.0%. By 2014, RCG expects the vacancy rate to reach 5.6%.



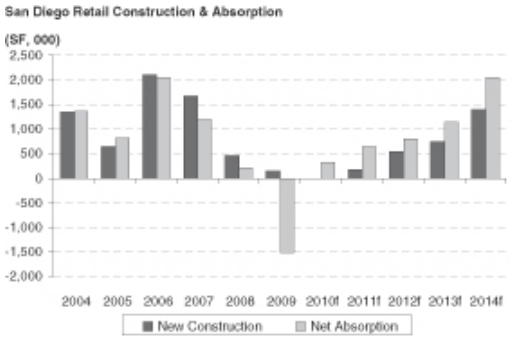
San Diego, California

The combination of San Diego's desirable quality of life, highly skilled work force and significant military presence make it an attractive market to both own and operate real estate. Twelve Navy and Marine bases are located in the area and support an estimated 342,000 jobs. The technology sector also plays a large role in San Diego's economy with 300 new firms adding 1,070 new jobs in 2009. Recent increases in venture capital investments indicate continued growth and expansion in the San Diego economy.



Retail

The San Diego retail market had total absorption of 110,000 square feet in the first quarter of 2010 resulting in a decrease in total vacancy of 0.2%. Demand is expected to continue to increase over the coming years and RCG projects retail vacancies to drop to 2.4% in 2014. Supply constraints, due to high barriers-to-entry, keeps vacancy low in this market and benefits existing properties. According to RCG, the growing population, improved hiring, and rebound in tourism are expected to stimulate growth in retail sales in the coming years, contributing to strength in the San Diego retail market.

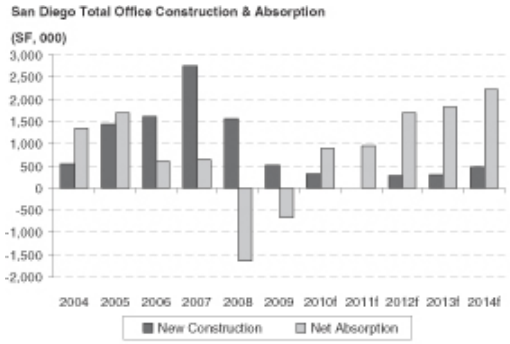


Sources: CBRE, RCG

Sources: CBRE, RCG

Office

San Diego's non-central business district office market vacancy increased to a historically high level in 2009, but has begun to improve, falling from 22.3% to 21.0% in the first quarter of 2010. As a result of the recent weakness in the market, few new construction projects are currently underway, which will further help vacancy rates fall as space leases up. After a significant decline in asking rents of 12.8% year-over-year in the fourth quarter of 2009, rents were relatively flat during the first quarter of 2010 throughout the suburban office market. RCG expects rent growth in 2011 of 1.9% and an average annual rent growth of 5.2% between 2012 and 2014.

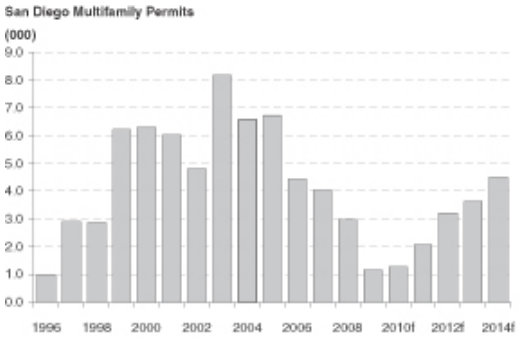


Sources: CBRE, RCG

Sources: CBRE, RCG

Multifamily

San Diego rental demand has regained momentum, recording total vacancy of 8.5% in the first quarter of 2010 as compared to 9.9% one year prior. Condo conversions have added some new supply to the market; however, the concentration is primarily limited to the downtown submarket. RCG expects total vacancy to decrease to 6.0% by 2014 and expects average annual rent growth of 3.6% throughout that time period. Construction activity is expected to grow over the next several years, but remain significantly below peak levels.

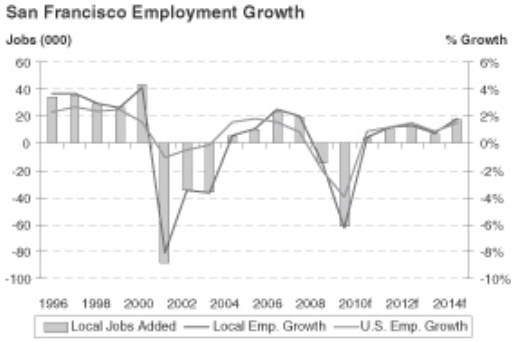


Sources: Census, RCG

Sources: Census, RCG

San Francisco, California

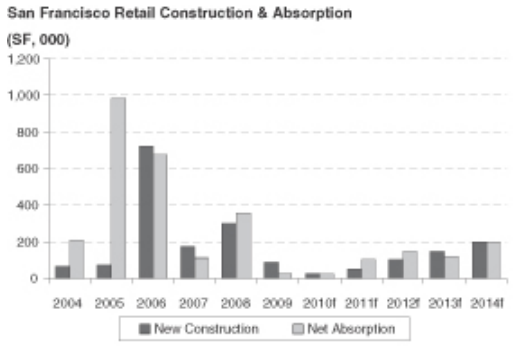
San Francisco is a major, world class city located in Northern California that has a diverse economic base and that draws visitors from around the globe. Home to many software development firms, San Francisco is considered a hub of the technology industry and thus the desired location for many new companies involved in online entertainment, social networking and clean-tech. San Francisco's economy was impacted by the recent recession and, coupled with an already high cost of living, had negative population growth of 0.4% in 2009. However, signs of economic improvement are evident, and RCG expects total employment during 2010 to increase 0.4%, a net gain of 4,100 jobs, and forecasts continued job growth through 2014.



Sources: BLS, California Employment Development Department, RCG

Retail

San Francisco's retail market showed signs of improvement in the early part of 2010 with overall vacancy expected to drop to 2.6% by the end of the year. RCG expects growth in the market to be modest in the near term, but expects vacancy to decrease to approximately 2.0% by 2014 and rents to grow to nearly 4% annually in 2014. Increased tourism to San Francisco and Marin County's wine country is expected to drive retail growth during this time period.



Sources: Marcus & Millichap, RCG

Sources: Marcus & Millichap, RCG

Office

Downtown San Francisco is home to numerous law offices, advertising, engineering and financial firms that represent major tenants supporting the central business district office market. The office vacancy rate in San Francisco's central business district trended downward 30 basis points from year-end 2009 to 12.6% in first quarter of 2010. A rebound in hiring through the second half of the year as well as the improving leasing environment is expected to contribute to a rise in new and renewal leasing activity. As a result, RCG expects the vacancy rate to improve to 12.1% by year-end 2010 with no new construction activity through 2013.

Sources: Cushman & Wakefield, RCG

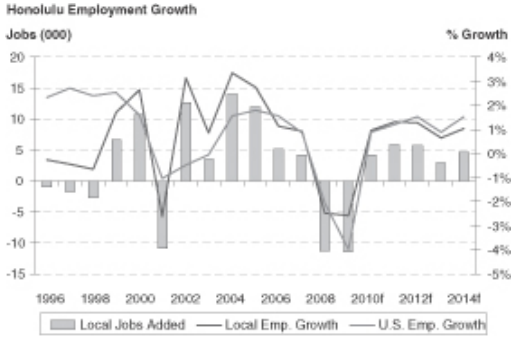
Sources: Cushman & Wakefield, RCG

Hawaii Economy

The State of Hawaii, which has a total population of approximately 1.9 million, consists of the eight major islands of Oahu, Maui, Kauai, Molokai, Lanai, Kahoolawe, Niihau and the Island of Hawaii. The Island of Oahu, which has a population of approximately 1.3 million, is the most populous, with approximately 74.3% of Hawaii's 587,900 jobs as of June 2010, and 70.1% of Hawaii's civilian workforce. The downtown area of Honolulu, Hawaii's capital city, is located at the southeast section of Oahu and represents the political, economic, and cultural center of Hawaii as well as a center of international trade and travel for the United States and Asia. In addition to Hawaii's tourism and construction industries and a strong military presence, the Hawaiian Islands derive a significant portion of their employment from the health care, finance, education and trade industries.

Honolulu, Hawaii

The Honolulu economy experienced a significant rebound in employment from September 2009 through March 2010, with the economy adding 5,000 jobs, regaining 20% of the jobs lost during the recent recession. According to RCG, this momentum is expected to continue through the remainder of 2010, with total employment expected to increase by 1.0% year-over-year in December. Tourism activity in Hawaii suffered through the recession and resulted in job losses in the leisure and hospitality sector. As the economic recovery continues, tourism is expected to increase, and hiring in the leisure and hospitality sector should follow suit. The education and health services sector, another major driver of economic growth, sustained healthy expansion through the recession, and is expected to drive overall employment growth. RCG expects total employment growth will accelerate to 1.3% in 2011 and 2012, slow to 0.7% in 2013, and increase in 2014 to 1.0%. The unemployment rate fell to 5.9% in March 2010 from 6.1% at year-end 2009. Given Hawaii's low rate of population growth (0.4% annually since 1990) and consequently smaller labor force, historically, the unemployment rate has trended much lower than the national average.



Sources: BLS, RCG

Retail

Honolulu's retail market is one of the healthiest commercial real estate sectors in Oahu. The Honolulu retail vacancy rate declined by 40 basis points in 2009 to 2.5%, and further to 2.2% in the first quarter of 2010. Rents continued to grow during the same period, increasing by 13.2% year-over-year in the fourth quarter of 2009, and increasing an additional 12.6% during the first quarter 2010. RCG believes that as hiring increases and the global economy improves, tourism activity will also increase, as will consumer spending by local residents who frequent restaurants and stores. The vacancy rate is expected to decline to 2.1% by year-end 2011, and will fluctuate between 2.0% and 3.2% through 2014. Rent growth is forecast to average 2.6% annually from 2011 through 2014.

Sources: CBRE, RCG

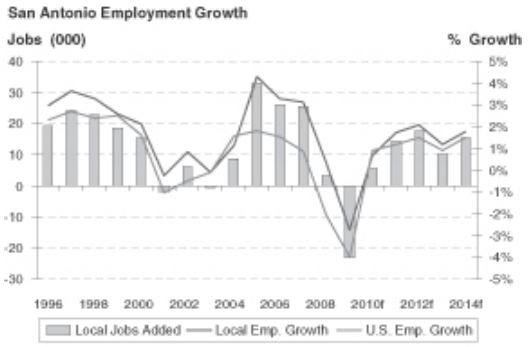
Sources: CBRE, RCG

Hospitality

Hawaii's hotel industry is in the early stages of recovery as tourism activity continues to gain momentum. Year-to-date through June 2010, the statewide hotel occupancy rate increased 7.5% to 69.0%, while revenue per available room (RevPAR) was up 1.2% during the same period to $118.58, according to Smith Travel Research. On the island of Oahu, occupancy was up 7.1% to 75.0% in the first half of 2010, while RevPAR grew 2.6% to $144.57. Across the country, the upscale and upper upscale segments of the market rebounded sooner than the lower end of the spectrum, and hotels in Hawaii are expected to react in a similar fashion. Instability in other tropical North American tourist destinations and an Asian economic recovery are expected to continue to boost visitor volumes to Hawaii and hotel industry performance.

San Antonio, Texas

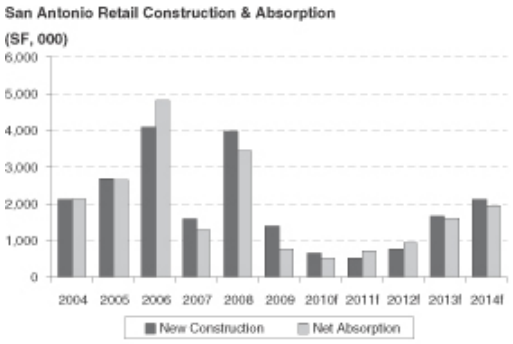
Home to a large military and student population, San Antonio has been ranked by Forbes magazine as one of the fastest-recovering cities in the United States. RCG expects job growth for the area to be slightly positive for 2010 at 0.7% and increase to 1.7% in 2011. San Antonio's job growth is forecast to outpace that of the broader country in each year, through 2014. Over the same time period, San Antonio personal income growth is projected to average 6.3% annually and household income growth is projected to average 4.5% annually. There are three military bases within the metropolitan San Antonio area supporting thousands of jobs and which could bring approximately 5,000 more as a result of the Base Realignment and Closure program.



Sources: BLS, RCG

Retail

San Antonio's retail market is supported by both local resident activity and tourism. Retail sales for the first quarter of 2010 improved over the prior quarter and construction activity slowed in 2009, both positive indicators for the retail real estate market. RCG expects retail occupancy and rental rates to improve in San Antonio as the economy continues to recover and consumers are more secure in their employment, with vacancy projected to decrease to 8.9% by 2014 and rents to increase 2.2% annually from 2011 through 2014.



Sources: Marcus & Millichap, RCG

Sources: Marcus & Millichap, RCG

BUSINESS AND PROPERTIES

Overview

We are a full service, vertically integrated and self-administered real estate investment trust, or REIT, that owns, operates, acquires and develops high quality retail and office properties in attractive, high-barrier-to-entry markets primarily in Southern California, Northern California and Hawaii. We were formed to succeed to the real estate business of American Assets, Inc., a privately held corporation founded in 1967 and, as such, we have significant experience, long-standing relationships and extensive knowledge of our core markets, submarkets and asset classes. Our senior management team's operational experience includes overseeing the acquisition or development of more than 9.5 million square feet of retail and office properties and more than 4,600 multifamily units, as well as the disposition of over 4.2 million square feet of retail and office properties and more than 3,600 multifamily units. Based on our experience, and given our focused market strategy, we believe our multi-asset class strategy positions us to maximize the value of our portfolio and pursue our growth strategies.

Upon consummation of this offering, we expect that our portfolio will be comprised of ten retail shopping centers; six office properties (including one owned pursuant to a joint venture); a mixed-use property consisting of a 369-room all-suite hotel and a retail shopping center; and four multifamily properties. A summary of certain information regarding our portfolio, as of June 30, 2010, is set forth below. The following information excludes revenue from the hotel portion of our mixed-use property.

- ***Retail:*** Ten properties comprising approximately 3.0 million rentable square feet, which are approximately 96.0% leased and constitute approximately 43.9% of the total annualized base rent of our pro rata portfolio as of June 30, 2010;

- ***Office:*** Six properties comprising approximately 2.2 million rentable square feet (including a 25% interest in a 710,000 square foot office property owned pursuant to our unconsolidated joint venture), which properties are approximately 94.4% leased and represent approximately 39.8% of the total annualized base rent of our pro rata portfolio as of June 30, 2010;

- ***Mixed-use:*** Our Waikiki Beach Walk property is comprised of approximately 97,000 rentable square feet of retail space and a 369-room all-suite hotel, which was redeveloped in 2007. The retail space represents approximately 6.5% of the total annualized base rent of our pro rata portfolio for as of June 30, 2010; and

- ***Multifamily:*** Three apartment communities with stabilized occupancy rates, as well as an RV resort, which is currently operated as part of our multifamily portfolio, in aggregate comprising 922 multifamily units, which are approximately 93.2% leased and represent approximately 9.9% of the total annualized base rent of our pro rata portfolio as of June 30, 2010.

We believe our core markets, which historically have included San Diego, the San Francisco Bay Area and Oahu, Hawaii, are characterized by some of the highest barriers to entry for new real estate construction in the United States, as well as strong demographics and dynamic, diversified economies that will continue to generate jobs and future demand for commercial real estate. We anticipate that the diversity of our asset classes and the depth and breadth of our real estate experience will allow us to capitalize on revenue-enhancing opportunities in our portfolio and source and execute new acquisition and development opportunities in our core markets, while maintaining stable cash flows throughout various business and economic cycles.

We were formed as a Maryland corporation in July 2010. Ernest S. Rady, our Executive Chairman, when combined with his affiliates, including the Ernest Rady Trust U/D/T March 10, 1983, is our largest stockholder. Mr. Rady has over 40 years of experience in the commercial real estate industry and has extensive public company experience, including acting as the founder, Chief Executive Officer and director of Westcorp Inc. and WFS Financial Inc., two financial services companies, in addition to serving on the board of three other

public companies. Upon completion of this offering, Mr. Rady and his affiliates, including the Ernest Rady Trust U/D/T March 10, 1983, or the Rady Trust, will own approximately % of our common stock, approximately % of our common units and approximately % of our company on a fully diluted basis (assuming the exchange of all common units for shares of our common stock). In addition to Mr. Rady, our highly experienced senior management team also includes, among others, John W. Chamberlain and Robert F. Barton, our Chief Executive Officer and Chief Financial Officer, respectively. Messrs. Chamberlain and Barton, who have worked alongside Mr. Rady for 22 and 12 years, respectively, are responsible, along with Mr. Rady, for our strategic planning and day-to-day operations. Our senior management team has been integrally involved in the acquisition, development and redevelopment, management, leasing and financing of, and the joint venture activity relating to, our portfolio. Furthermore, our senior management team has significant real estate experience, long-standing industry, corporate and institutional relationships, and extensive knowledge of our core markets, submarkets and assets classes, which we believe provide us with a significant competitive advantage that will enhance our ability to source leasing and acquisition opportunities and access capital.

Our Competitive Strengths

We believe the following competitive strengths distinguish us from other owners and operators of commercial real estate and will enable us to take advantage of new acquisition and development opportunities, as well as growth opportunities within our portfolio:

- ***Irreplaceable Portfolio of High Quality Retail and Office Properties.*** We have acquired and developed a high quality portfolio of retail and office properties located in affluent neighborhoods and sought-after business centers in Southern California, Northern California, Oahu, Hawaii and San Antonio, Texas. We believe many of our properties currently achieve rental and occupancy rates equal to or above those typically prevailing in their respective markets due to their desirable and competitively advantageous locations within their submarkets, as well as our hands-on management approach. Many of our properties are located in in-fill locations where developable land is scarce. In addition, even where land is available near our properties, we believe current zoning, environmental and entitlement regulations significantly restrict new or additional development.

- ***Experienced and Committed Senior Management Team with Strong Sponsorship.*** The members of our senior management team have an average of approximately 28 years of commercial real estate experience and have worked at American Assets, Inc. for an average of approximately 15 years. During their tenure at American Assets, Inc., our senior management has overseen the acquisition or development and operation of more than 9.5 million rentable square feet of retail and office properties and more than 4,600 multifamily units, including all of the properties in our portfolio. Many of our other real estate professionals have worked at American Assets, Inc. alongside our senior management team for over ten years. Our senior management team and real estate professionals have in-depth knowledge of our assets, core markets and future growth opportunities, as well as substantial expertise in all aspects of leasing, asset and property management, marketing, acquisitions, redevelopment and facility engineering and financing, all of which we believe will provide us with a significant competitive advantage. In addition, our Executive Chairman has significant experience in the public markets having served as a director for five public companies, including two companies that he took public. Upon the completion of this offering and our formation transactions, our senior management team will own approximately % of our company on a fully diluted basis (assuming the exchange of all common units for shares of our common stock), which we believe will align their interests with those of our stockholders.

- ***Properties Located in High-Barrier-to-Entry Markets with Strong Real Estate Fundamentals.*** Our core markets currently include San Diego, the San Francisco Bay Area and Oahu, Hawaii, which we believe have attractive long-term real estate fundamentals driven by favorable supply and demand characteristics. According to RCG, our core markets have high barriers to entry resulting

from the limited supply of developable land, high construction costs and rigorous zoning and entitlement processes, which will limit new real estate construction. For example, the California Coastal Commission, which regulates land use in the California coastal zone, has jurisdiction over several of the submarkets in which our assets are located and maintains a rigorous entitlement process that applies to our assets in these submarkets, in addition to the entitlement requirements of overlapping municipal and county jurisdictions. Accordingly, we believe that our portfolio of properties cannot be replicated. Additionally, we believe our markets have strong economic and demographic fundamentals, which will support continued demand for real estate. In particular, according to RCG, California has a large, diverse economy with concentrations of innovative, dynamic industries such as high technology, biotechnology and healthcare services that will drive economic growth over the long term. Furthermore, RCG estimates that California's population will grow at an average annual rate of 1.1%, increasing the state's total population to 59.5 million by 2030, which will support sustained, long-term economic growth. We believe that continued demand generated by long-term economic growth, coupled with the high barriers to entry in our markets that we believe limit supply, will increase rental rates at our properties and enable us to achieve internal cash flow growth over time through the lease-up of vacant space and the rollover of existing leases, particularly those of our anchor retail tenants, to higher rents.

- ***Extensive Market Knowledge and Long-Standing Relationships Facilitate Access to a Pipeline of Acquisition and Leasing Opportunities.*** We believe that our in-depth market knowledge and extensive network of long-standing relationships with real estate owners, developers, brokers, national and regional lenders and other market participants will provide us access to an ongoing pipeline of attractive acquisition and investment opportunities in and near our core markets. In addition, we have an extensive network of relationships with numerous national and regional tenants in our markets, many of whom currently are tenants in our retail and office buildings, which we expect will enhance our ability to retain and attract high quality tenants, facilitate our leasing efforts and provide us with opportunities to increase occupancy rates at our properties, thereby allowing us to maximize cash flows from our properties. We have successfully converted many of our strong relationships with our retail tenants into leasing opportunities at our properties. For example, California Pizza Kitchen recently opened its third location in our portfolio at Alamo Quarry; and we have similarly developed multi-tenant locations with a number of other tenants, including Gap, Banana Republic, Victoria's Secret, P.F. Chang's China Bistro, Pottery Barn and Chicos.

- ***Internal Growth Prospects through Development, Redevelopment and Repositioning.*** We believe that the development and redevelopment potential at several of our properties presents compelling growth prospects. We currently have entitlements to support approximately 140,000 additional square feet of office and retail space at our properties. In addition, we expect to obtain entitlements and approvals for a further 845,000 square feet of space, including an approximately 766,000 square foot mixed-use project at our joint venture property, Fireman's Fund Headquarters in Novato, California, incorporating retail, residential and hospitality uses. We also intend to exercise our option to purchase an approximately 80,000 square foot building located on our Carmel Mountain Plaza property, which was vacated by Mervyn's in conjunction with its bankruptcy. We will use a portion of the proceeds from this offering to fund the purchase of this building, which we intend to reposition and re-lease. Our senior management team successfully completed significant repositioning and redevelopment projects at many of our properties, including Del Monte Center, Solana Beach Towne Centre and Waikele Center. In addition, our senior management team has significant experience with the development and redevelopment of retail and office properties in our core markets, which we believe enhance our ability to capitalize on these internal growth opportunities. For example, we developed three of our retail properties, Carmel Country Plaza, Rancho Carmel Plaza and South Bay Marketplace, totaling approximately 263,000 square feet and three of our office properties, Torrey Reserve Campus, Valencia Corporate Center and a portion of

Solana Beach Corporate Centre, totaling approximately 863,000 square feet. We believe our in-house development and redevelopment expertise provides us a significant advantage over those of our competitors who rely exclusively on third parties to develop and maintain their properties.

- ***Broad Real Estate Expertise with Retail and Office Focus.*** Our senior management team has strong experience and capabilities across the real estate sector with significant experience and expertise in the retail and office asset classes, which we believe provides for flexibility in pursuing attractive acquisition, development, and repositioning opportunities. Since varying market conditions create opportunities at different times across property types, we believe our expertise enables us to target relatively more attractive investment opportunities throughout economic cycles. In addition, our fully integrated platform with in-house development capabilities allows us to pursue development and redevelopment projects with multiple uses. We believe that our ability to pursue these types of opportunities differentiates us from many competitors in our core markets.

Business and Growth Strategies

Our primary business objectives are to increase operating cash flows, generate long-term growth and maximize stockholder value. Specifically, we intend to pursue the following strategies to achieve these objectives:

- ***Capitalizing on Acquisition Opportunities in High-Barrier-to-Entry Markets.*** We intend to pursue growth through the strategic acquisition of high quality properties that are well-located in their submarkets. Our overall acquisition strategy focuses on acquiring properties in markets that generally are characterized by strong supply and demand characteristics, including high barriers to entry and diverse industry bases, that appeal to institutional investors. We target attractively priced properties that complement our existing portfolio from a risk management and diversification perspective. For retail properties, we intend to focus on acquiring and operating properties that are well positioned in their respective markets and are a primary shopping destination for local residents. For office properties, we intend to focus on acquiring and operating properties in the most prominent submarkets and that offer high quality amenities and superior access to transportation. We believe that properties located in the most prominent retail or business district of a high-barrier-to-entry market will experience greater value appreciation, greater rental rate increases and more stable occupancy rates than similar properties in less-prominent locations of high-barrier-to-entry markets or than properties generally in lower-barrier-to-entry markets.

- ***Repositioning/Redevelopment and Development of Office and Retail Properties.*** We intend to selectively reposition and redevelop several of our existing or newly-acquired properties, and we will also selectively pursue ground-up development of undeveloped land where we believe we can generate attractive risk-adjusted returns. As of June 30, 2010, we have approved entitlements for approximately 140,000 additional square feet of development at our properties and expect to obtain entitlements and approvals for approximately 845,000 additional square feet of development, including approximately 766,000 square feet at our joint venture property. By repositioning and redeveloping these properties and pursuing ground-up development of undeveloped land, we seek to increase occupancy and rental rates, thereby producing favorable risk-adjusted returns on our invested capital. Our senior management team has redeveloped or developed over 5.4 million of square feet of commercial and residential properties over their careers at American Assets, Inc., and we intend to leverage this expertise to pursue our strategy. Examples of our senior management team’s recent repositioning, redevelopment and development experience include the following:

    - *Del Monte Center*: Since acquiring the approximately 628,000 square foot Del Monte Center in Monterey, California in 2004, we have improved the tenant roster by executing a $25 million redevelopment plan, adding approximately 46,000 square feet, and re-leasing many of the stores to well-known, national retailers, including the Apple Store, Banana Republic, Lucky Brand

Jeans, Pottery Barn and Williams-Sonoma. We also attracted several restaurant tenants, including California Pizza Kitchen, Islands Bar and Grill and P.F. Chang's China Bistro. Given the limited alternative locations for such tenants in this market, we believe that our combination of well-known retail and restaurant tenants will attract additional customers, thereby increasing sales and enhancing the value of the property. Following our redevelopment and re-leasing efforts, tenants at Del Monte Center (exclusive of anchor tenants) improved their sales per square foot at Del Monte Center from $373 in 2003 to $539 in 2009.

- *Torrey Reserve Campus*: We acquired the Torrey Reserve Campus site in 1989 subject to a development agreement with the City of San Diego. After a lengthy entitlement and environmental review process due to the property's location in a coastal zone adjacent to a sensitive wildlife habitat, we received the necessary development approvals in 1993. After obtaining such development approvals, we initiated construction in 1996 and achieved fully stabilized occupancy in 2000, of Torrey Reserve Campus, which is comprised of seven multi-tenant office buildings and two single-tenant buildings on 11 acres offering an aggregate of approximately 457,000 net rentable square feet of office space.

- *Solana Beach Corporate Centre*: In 2005, we completed ground-up development at Solana Beach Corporate Centre of two office buildings totaling approximately 120,000 square feet, and an approximately 87,800 square foot subterranean parking lot, along with the renovation of two existing office buildings at this property. The jurisdiction in which this property is located has highly restrictive entitlement requirements, with an entitlement process that features four separate entitlement agencies: the City of Solana Beach; the California Department of Fish and Game; the Army Corp of Engineers; and the California Coastal Commission. Obtaining the necessary entitlements was an approximately five-year process that cost approximately $2.5 million.

- *Lomas Santa Fe Plaza/Solana Beach Towne Centre*: We redeveloped the Lomas Santa Fe Plaza in 1997 and Solana Beach Towne Centre in 2000 and 2004 in order to provide improved aesthetics and landscaping, increased parking, improved ingress/egress and increased square footage, all of which required the demolition and new construction of a portion of both centers and the re-alignment of a public street. As a result of this redevelopment, we increased the size of the Vons grocery store at Lomas Santa Fe Plaza from approximately 25,000 square feet to approximately 50,000 square feet, while Solana Beach Towne Centre benefited from the removal of an outdated and redundant 25,000 square foot Vons building, which resulted in enhanced pedestrian plazas and walkways, additional surface parking and the addition of several new tenants, including Henry's Marketplace, Starbucks, Jamba Juice, Togo's and Panda Express. Since the completion of the redevelopment, sales at both centers have increased. Moreover, despite a decrease of approximately 3,200 rentable square feet at Solana Beach Towne Centre resulting from the redevelopment, we estimate that annualized base rent as of June 30, 2010 was approximately $695,000 greater than what annualized base rent would have been if the redundant Vons grocery store had remained.

- ***Disciplined Capital Recycling Strategy.*** We intend to pursue an efficient asset allocation strategy that maximizes the value of our investments by selectively disposing of properties whose returns appear to have been maximized and redeploying capital into acquisition, repositioning, redevelopment and development opportunities with higher return prospects, in each case in a manner that is consistent with our qualification as a REIT. We have an extensive track record of completing many significant commercial real estate acquisitions and dispositions and remain thorough in our underwriting, carefully analyzing potential acquisitions to determine which best fit our investment criteria. We employ a rigorous underwriting process that leverages our extensive knowledge of our local markets to acquire assets that we believe will generate attractive risk- adjusted returns. An integral part of our disciplined approach to acquisitions involves focusing

primarily on long-term growth potential rather than short-term cash returns, in order to maximize our long-term return on invested capital. We spend significant time researching new markets prior to making a decision whether to expand into such markets. We believe our extensive network of long-standing relationships with real estate owners, developers, brokers, national and regional lenders, tenants and other market participants will allow us to capitalize on attractive acquisition opportunities as they arise in our markets, which opportunities may not be available to our competitors. Furthermore, we believe that our established operating platform and strong reputation within our markets make us a desirable buyer for those institutions and individuals seeking to sell properties.

- ***Proactive Asset and Property Management.*** We intend to continue to actively manage our properties, employ targeted leasing strategies, leverage our existing tenant relationships and focus on reducing operating expenses to increase occupancy rates at our properties, attract high quality tenants and increase property cash flows, thereby enhancing the value of our properties. We have a centralized senior management team in our San Diego headquarters, in addition to on-site professionals handling day-to-day property management, including anticipating and satisfying our tenants' needs and delivering customized space solutions to potential tenants. In addition, we utilize our extensive tenant relationships and leasing strategies to optimize our tenant mix to meet the needs of the local market and to maintain high occupancies across our portfolio. Examples of our proactive property management and leasing capabilities include our recent negotiation of the following two major office leases at The Landmark at One Market:

    - When Del Monte Foods announced in November 2009 that it would vacate its approximately 101,000 square feet of office space at The Landmark at One Market when its lease expires in December 2010 due to the lack of additional rentable space at The Landmark at One Market, we structured a lease transaction with another existing tenant, salesforce.com, to both (i) renew salesforce.com's current lease for approximately 126,000 square feet and (ii) expand into the approximately 101,000 square feet of space vacated by Del Monte Foods.

    - We renewed a lease for approximately 46,000 square feet of office space with Autodesk, Inc. and further expanded Autodesk into an additional 69,000 square feet of office space that would have become vacant in the next two years.

Through this proactive process, we entered into new leases for approximately 341,000 square feet, or 80.8%, of The Landmark at One Market with credit worthy tenants, which expire on a staggered basis in five separate years between 2015 and 2021.

Our Portfolio

Upon completion of this offering and consummation of the formation transactions, we will own full or partial interests in 21 properties located in the San Diego, San Francisco, Los Angeles, Honolulu and San Antonio markets, containing a total of approximately 3.0 million rentable square feet of retail space, 2.2 million rentable square feet of office space, a mixed-use property comprised of approximately 97,000 rentable square feet of retail space and a 369-room all-suite hotel, and 922 multifamily units, which we refer to as our portfolio. The following tables present an overview of our portfolio, based on information as of June 30, 2010.

Retail and Office Portfolios

Property	Location	Ownership Percentage	Year Built/ Renovated	Number of Buildings	Net Rentable Square Feet[1][2]	Percentage Leased[3]	Annualized Base Rent[4]	Annualized Base Rent per Leased Square Foot[5]	Average Net Effective Annual Base Rent per Leased Square Foot[6]
Retail Properties									
Carmel Country Plaza	San Diego, CA	100%	1991	9	77,813	100.0%	$ 3,398,160	$ 43.67	$ 42.50
Carmel Mountain Plaza[7]	San Diego, CA	100%	1994	13	440,228	97.2	8,648,658	20.21	20.48
South Bay Marketplace[8]	San Diego, CA	100%	1997	9	132,873	100.0	2,031,718	15.29	15.18
Rancho Carmel Plaza	San Diego, CA	100%	1993	3	30,421	69.3	673,911	31.98	34.97
Lomas Santa Fe Plaza	Solana Beach, CA	100%	1972/1997	9	209,569	93.7	5,028,573	25.60	24.85
Solana Beach Towne Centre	Solana Beach, CA	100%	1973/2000/2004	12	246,730	98.2	5,335,039	22.01	21.72
Del Monte Center[9]	Monterey, CA	100%	1967/1984/2006	16	674,224	97.4	8,956,064	13.63	12.58
The Shops at Kalakaua	Honolulu, HI	100%	1971/2006	3	11,671	100.0	1,535,028	131.52	136.07
Waikele Center	Waipahu, HI	100%	1993/2008	9	537,965	94.3	16,391,804	32.30	32.36
Alamo Quarry[10]	San Antonio, TX	100%	1997/1999	16	589,479	94.9	11,500,141	20.56	20.86
Subtotal/Weighted Average Retail Portfolio				99	2,950,973	96.0%	$ 63,499,096	$ 22.41	$ 22.28
Office Properties									
Wholly Owned									
Torrey Reserve Campus	San Diego, CA	100%	1996-2000	9	456,801	93.0%	$ 14,627,721	$ 34.44	$ 34.91
Solana Beach Corporate Centre	Solana Beach, CA	100%	1982/2005	4	211,796	88.6	6,665,555	35.51	33.86
Valencia Corporate Center	Santa Clarita, CA	100%	1999-2007	3	194,304	76.9	4,238,162	28.37	29.38
160 King Street[11]	San Francisco, CA	100%	2002	1	167,985	88.1	5,442,609	36.77	37.54
The Landmark at One Market[12]	San Francisco, CA	100%	1917/2000	1	421,934	100.0	21,504,396	50.97	48.74
Joint Ventures									
Fireman's Fund Headquarters[13]	Novato, CA	25%	1983/1993	3	710,330	100.0	20,227,880	28.48	28.48
Subtotal/Weighted Average Office Portfolio				21	2,163,150	94.4%	$ 72,706,323	$ 35.60	$ 35.10
Total/Weighted Average Retail and Office Portfolio				**120**	**5,114,123**	**95.3%**	**$136,205,418**	**$ 27.94**	**$ 27.70**
Retail and Pro Rata Office Portfolio									
Subtotal/Weighted Average Retail Portfolio				99	2,950,973	96.0%	$ 63,499,096	$ 22.41	$ 22.28
Subtotal/Weighted Average Pro Rata Office Portfolio[14]				21	1,630,403	92.6%	$ 57,535,413	$ 38.12	$ 37.26
Total/Weighted Average Retail and Pro Rata Office Portfolio[15]				**120**	**4,581,376**	**94.8%**	**$121,034,508**	**$ 27.87**	**$ 26.84**

Mixed-Use Portfolio

Retail Portion	Location	Ownership Percentage	Year Built/ Renovated	Number of Buildings	Net Rentable Square Feet[1]	Percentage Leased[3]	Annualized Base Rent[4]	Annualized Base Rent per Leased Square Foot[5]	Average Net Effective Annual Base Rent per Leased Square Foot[6]
Waikiki Beach Walk—Retail[16]	Honolulu, HI	100%	2006	1	96,569	96.5%	$ 9,400,219	$ 100.84	$ 99.75

Hotel Portion	Location	Ownership Percentage	Year Built/ Renovated	Number of Buildings	Units[17]	Average Occupancy[18]	Average Daily Rate[19]	Revenue per Available Room[20]	Total Revenue[21]
Waikiki Beach Walk—Hotel	Honolulu, HI	100%	2008	2	369	83.6%	$ 221.97	$ 185.46	$25,529,494

Multifamily Portfolio

Property	Location	Ownership Percentage	Year Built/ Renovated	Number of Buildings	Units[22]	Percentage Leased[3]	Annualized Base Rent[23]	Average Monthly Base Rent per Leased Unit[24]
Loma Palisades	San Diego, CA	100%	1958/2001-2008	80	548	93.4%	$ 9,573,349	$ 1,561
Imperial Beach Gardens	Imperial Beach, CA	100%	1959/2008-present	26	160	99.4	2,584,020	1,358
Mariner's Point	Imperial Beach, CA	100%	1986	8	88	97.7	1,140,795	1,101
Santa Fe Park RV Resort[25]	San Diego, CA	100%	1971/2007-2008	1	126	81.0	975,528	653
Total/Weighted Average Multifamily Portfolio				**115**	**922**	**93.2%**	**$14,273,692**	**$ 1,358**

(1) The net rentable square feet for each of our retail properties and the retail portion of our mixed-use property is the sum of (i) the square footages of existing leases, plus (ii) for available space, the field verified square footage.

(2) The net rentable square feet for each of our office properties is the sum of (i) the square footages of existing leases, plus (ii) for available space, management's estimate of net rentable square feet based, in part, on past leases. The net rentable square feet included in such leases is generally determined consistently with the Building Owners and Managers Association, or BOMA, 1996 measurement guidelines.

(3) Percentage leased for each of our retail and office properties is calculated as (i) square footage under commenced leases as of June 30, 2010, divided by (ii) net rentable square feet, expressed as a percentage. Percentage leased for our multifamily properties is calculated as (i) total units rented as of June 30, 2010, divided by (ii) total units available, expressed as a percentage.

(4) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010, by (ii) 12. Total abatements for leases in effect as of June 30, 2010 for our retail and office portfolio will equal approximately $237,000 for the 12 months ending June 30, 2011. Total abatements for leases in effect as of June 30, 2010 for our mixed-use portfolio will be zero for the 12 months ending June 30, 2011. In the case of triple net or modified gross leases, annualized base rent does not include tenant reimbursements for real estate taxes, insurance, common area or other operating expenses.

(5) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent, by (ii) square footage under commenced leases as of June 30, 2010.

(6) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of June 30, 2010, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of June 30, 2010.

(7) Net rentable square feet for Carmel Mountain Plaza includes 119,000 square feet leased pursuant to four ground leases for an aggregate annualized base rent of $821,075. See "—Ground Leases of Retail Portfolio."

(8) Net rentable square feet for South Bay Marketplace includes 2,824 square feet leased pursuant to a ground lease to McDonald's for an annualized base rent of $81,540. See "—Ground Leases of Retail Portfolio."

(9) Net rentable square feet for Del Monte Center includes 295,100 square feet leased pursuant to two ground leases for an aggregate annualized base rent of $201,291. See "—Ground Leases of Retail Portfolio."

(10) Net rentable square feet for Alamo Quarry includes 32,000 square feet leased pursuant to four ground leases for an aggregate annualized base rent of $428,250. See "—Ground Leases of Retail Portfolio."

(11) We have executed one lease at 160 King Street for 7,385 net rentable square feet and annualized base rent of $310,184, which commenced subsequent to June 30, 2010. Assuming inclusion of this lease, percentage leased would be 92.5%.
(12) This property contains 421,934 net rentable square feet consisting of The Landmark at One Market (377,714 net rentable square feet) as well as a separate long-term leasehold interest in approximately 44,220 net rentable square feet of space located in an adjacent six-story leasehold known as the Annex. We currently lease the Annex from Paramount Group pursuant to a long-term master lease effective through June 30, 2016, which we have the option to extend until 2026 pursuant to two five-year extension options.
(13) Fireman's Fund Headquarters is held through a joint venture in which we are a 25% owner. The remaining 75% interest in the joint venture is held, indirectly, by General Electric Pension Trust.
(14) Subtotals/weighted averages include our five wholly owned office properties and our pro rata share of Fireman's Fund Headquarters, in which we own a 25% joint venture interest.
(15) Total/weighted averages include our retail properties, our five wholly owned office properties and our pro rata share of Fireman's Fund Headquarters, in which we own a 25% joint venture interest.
(16) Waikiki Beach Walk—Retail contains 96,569 net rentable square feet consisting of 93,955 net rentable square feet that we own in fee and approximately 2,614 net rentable square feet of space in which we have a subleasehold interest pursuant to a sublease from First Hawaiian Bank effective through December 31, 2021.
(17) Units represent the total number of units available for sale at June 30, 2010.
(18) Average occupancy represents the percentage of available units that were sold during the 12-month period ended June 30, 2010, and is calculated by dividing (i) the number of units sold by (ii) the product of the total number of units and the total number of days in the period.
(19) Average daily rate represents the average rate paid for the units sold, and is calculated by dividing (i) the total room revenue (i.e., excluding food and beverage revenues or other hotel operations revenues such as telephone, parking and other guest services) for the 12-month period ended June 30, 2010, by (ii) the number of units sold.
(20) Revenue per available room, or RevPAR, represents the total unit revenue per total available units for the 12-month period ended June 30, 2010 and is calculated by multiplying average occupancy by the average daily rate. RevPAR does not include food and beverage revenues or other hotel operations revenues such as telephone, parking and other guest services.
(21) Total revenue is total revenue for Waikiki Beach Walk—Hotel for the 12-month period ended June 30, 2010.
(22) Units represent the total number of units available for rent at June 30, 2010.
(23) Annualized base rent is calculated by multiplying (i) base rental payments for the month ended June 30, 2010, by (ii) 12. Total abatements for leases in effect as of June 30, 2010 for our multifamily portfolio equaled approximately $897,636 for the 12 months ended June 30, 2010.
(24) Average monthly base rent per leased unit represents the average monthly base rent per leased units for the 12-month period ended June 30, 2010.
(25) The Santa Fe Park RV Resort is subject to seasonal variation, with higher rates of occupancy occurring during the summer months. During the 12 months ended June 30, 2010, the highest average monthly occupancy rate for this property was 100%, occurring in July 2009, and the lowest average monthly occupancy rate for this property was 68.0%, occurring in April 2010. For the 12-month period ended June 30, 2010, the total base rent for this property was $848,913. The number of units at the Santa Fe Park RV Resort includes 122 units and four apartments.

Retail Portfolio

Our retail portfolio contains ten retail properties comprising an aggregate of approximately 3.0 million rentable square feet. As of June 30, 2010, our retail properties were approximately 96.0% leased to approximately 339 tenants (or 96.3% leased, giving effect to leases signed but not commenced as of that date). All of our retail properties are located in prime California, Hawaii and Texas submarkets. As of June 30, 2010, the weighted average remaining lease term for our retail portfolio was 58.1 months.

Tenant Diversification of Retail Portfolio

As of June 30, 2010, our retail portfolio was leased to 339 tenants in a variety of industries with no single tenant representing more than 6.3% of total annualized base rent for the retail portfolio. The following table sets forth information regarding the ten largest tenants in our retail portfolio based on annualized base rent as of June 30, 2010:

Tenant	Number of Leases	Number of Properties	Property(ies)	Lease Expiration	Total Leased Square Feet	Percentage of Retail Portfolio Net Rentable Square Feet	Annualized Base Rent[1]	Percentage of Retail Portfolio Annualized Base Rent
Lowe's	1	1	Waikele Center	5/31/18	155,000	5.3%	$3,992,647	6.3%
Kmart	1	1	Waikele Center	6/30/18	119,590	4.1	3,468,110	5.5
Foodland Super Market[2]	1	1	Waikele Center	1/25/14	50,000	1.7	2,247,578	3.5
Sports Authority	2	2	Carmel Mountain Plaza, Waikele Center	11/30/13 7/8/13	90,722	3.1	2,076,602	3.3
Ross Dress for Less	3	3	South Bay Marketplace, Lomas Santa Fe Plaza, Carmel Mountain Plaza	1/31/13 1/31/14	81,125	2.7	1,595,826	2.5
Borders	3	3	Alamo Quarry, Del Monte Center, Waikele Center	11/30/12 1/31/11 1/31/14	59,615	2.0	1,324,500	2.1
Officemax	2	2	Alamo Quarry, Waikele Center	11/30/12 1/31/14	47,962	1.6	1,164,761	1.8
Old Navy	3	3	Alamo Quarry, South Bay Marketplace, Waikele Center	9/30/12 5/31/11 7/31/12	59,780	2.0	*	*
Vons	1	1	Lomas Santa Fe Plaza	12/31/17	49,895	1.7	1,058,000	1.7
Marshalls	2	2	Carmel Mountain Plaza, Solana Beach Towne Centre	1/31/19 1/13/15	68,055	2.3	1,044,887	1.6
Top 10 Tenants Total	**19**				**781,744**	**26.5%**		

* Data withheld at tenant's request.

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the applicable lease(s), by (ii) 12.

(2) Foodland Super Market, Ltd. has ceased all operations in its leased premises and has subleased the premises to International Church of the Foursquare Gospel. Although we are currently collecting the rent for the leased premises, Foodland Super Market, Ltd.'s lease expires in 2014 and it is unlikely that it will renew its lease with us. We expect to collect the full amount remaining under the lease in accordance with its terms; however, there can be no assurances that we will do so.

Lease Distribution of Retail Portfolio

The following table sets forth information relating to the distribution of leases in our retail portfolio, based on net rentable square feet under lease as of June 30, 2010:

Square Feet Under Lease	Number of Leases	Percentage of All Leases	Total Leased Square Feet	Percentage of Retail Portfolio Leased Square Feet	Annualized Base Rent[1]	Percentage of Retail Portfolio Annualized Base Rent
2,500 or less	214	53.8%	299,658	10.6%	$ 11,996,967	18.9%
2,501-10,000	133	33.4	624,381	22.0	19,850,987	31.3
10,001-20,000	15	3.8	209,099	7.4	4,233,411	6.7
20,001-40,000	23	5.8	634,600	22.4	11,168,074	17.6
40,001-100,000	9	2.3	470,918	16.6	8,240,359	13.0
Greater than 100,000	4	1.0	594,960	21.0	8,009,297	12.6
Retail Portfolio Total:	**398**	**100.0%**	**2,833,616**	**100.0%**	**$ 63,499,095**	**100.0%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the applicable leases, by (ii) 12.

Lease Expirations of Retail Portfolio

The following table sets forth a summary schedule of the lease expirations for leases in place as of June 30, 2010 plus available space, for each of the ten full calendar years beginning January 1, 2010 at the properties in our retail portfolio. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring[1]	Square Footage of Expiring Leases	Percentage of Retail Portfolio Net Rentable Square Feet	Annualized Base Rent[2]	Percentage of Retail Portfolio Annualized Base Rent	Annualized Base Rent per Leased Square Foot[3]
Available	—	117,357	4.0%	—	—	—
2010	27	63,485	2.2	$ 1,558,567	2.5%	$ 24.55
2011	61	143,823	4.9	4,613,596	7.3	32.08
2012	72	359,635	12.2	8,754,180	13.8	24.34
2013	72	488,117	16.5	12,695,197	20.0	26.01
2014	55	424,005	14.4	10,835,422	17.1	25.55
2015	44	209,832	7.1	5,407,974	8.5	25.77
2016	22	81,027	2.7	2,729,256	4.3	33.68
2017	14	101,076	3.4	2,460,508	3.9	24.34
2018	14	723,254	24.5	10,576,141	16.7	14.62
2019	8	59,448	2.0	1,682,583	2.6	28.30
Thereafter	9	179,914	6.1	2,185,669	3.4	12.15
Retail Portfolio Total:	**398**	**2,950,973**	**100.0%**	**$ 63,499,095**	**100.0%**	**$ 22.41**

(1) Number of leases expiring reflects potential early terminations applicable to certain leases in the event that specified sales targets are not achieved as of such date.
(2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.
(3) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

Ground Leases of Retail Portfolio

The following table sets forth certain information relating to the ground leases in place at the properties in our retail portfolio as of June 30, 2010. We are the lessor under each of these ground leases. As a result, except as noted in the footnotes below, upon termination of each of these ground leases, whether due to expiration or default by the tenant, we have the right to take possession of all improvements to the land.

Property	Tenant	Ground Leased Square Feet	Initial Expiration	Extension Options	Annualized Base Rent[1]
Carmel Mountain Plaza	Sears	107,900	6/30/18	6 x 5 yrs	$ 452,540
Carmel Mountain Plaza	California Pizza Kitchen	5,500	6/30/14	1 x 5 yrs	119,790
Carmel Mountain Plaza	In-N-Out Burger	2,900	8/31/13	2 x 5 yrs	119,471
Carmel Mountain Plaza	EZ Lube	2,700	5/31/14	2 x 5 yrs	129,274
Subtotal Carmel Mountain Plaza		**119,000**			**$ 821,075**
South Bay Marketplace	McDonald's	2,824	7/1/17	4 x 5 yrs	$ 81,540
Subtotal South Bay Marketplace		**2,824**			**$ 81,540**
Del Monte Center	Macy's[2]	212,500	7/31/18	5 x 10 yrs	$ 96,000[3]
Del Monte Center	KLA Monterey Leasehold, LLC (previously Mervyn's)	82,600	7/31/20	3 x 10 yrs	105,291[4]
Subtotal Del Monte Center		**295,100**			**$ 201,291**
Alamo Quarry	Chili's Grill & Bar	6,000	8/31/12	4 x 5 yrs	$ 90,000
Alamo Quarry	Joe's Crab Shack	11,300	10/30/17	2 x 5 yrs	107,250
Alamo Quarry	J. Alexander's Restaurant, Inc.	7,700	8/31/17	2 x 5 yrs	121,000
Alamo Quarry	P.F. Chang's China Bistro	7,000	9/30/13	3 x 5 yrs	110,000
Subtotal Alamo Quarry		**32,000**			**$ 428,250**
Total		**448,924**			**$ 1,532,156**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12. Except as described in the footnotes below, base rent is subject to either (i) fixed increases or (ii) increases based on the Consumer Price Index.
(2) Macy's has a continuing right to encumber the land and, in the event Macy's exercises such right, our interest in the land, including our rights to take possession of all improvements to the land upon termination or a default by Macy's, will be subordinate to that of any first-lien lender.
(3) Base rent is fixed at $8,000 per month.
(4) Base rent is fixed at $8,774 per month.

Historical Retail Tenant Improvements and Leasing Commissions

The following table sets forth certain historical information regarding tenant improvement and leasing commission costs per square foot for tenants at the properties in our retail portfolio for the years ended December 31, 2007, 2008 and 2009 and the six months ended June 30, 2010:

	Year Ended December 31,			Six Months Ended June 30, 2010	Weighted Average January 1, 2007 to June 30, 2010
	2007	2008	2009		
Expirations					
Number of leases expired during applicable period	87	84	73	28	74
Aggregate net rentable square footage of expiring leases	256,322	719,316	328,483	149,596	393,977
Renewals					
Number of leases/renewals	43	24	21	17	28
Square feet	130,565	83,639	76,304	85,752	95,253
Tenant improvement costs(1)	$ 421,316	$ 410,084	$ 115,132	$ 120,560	$ 281,450
Leasing commission costs(1)	446,512	202,916	121,550	66,485	213,000
Total tenant improvement and leasing commission costs(1)	$ 867,828	$ 613,000	$ 236,682	$ 187,045	$ 494,450
Tenant improvement costs per square foot(1)	$ 3.23	$ 4.90	$ 1.51	$ 1.41	$ 2.95
Leasing commission costs per square foot(1)	3.42	2.43	1.59	0.78	2.24
Total tenant improvement and leasing commission costs per square foot(1)	$ 6.65	$ 7.33	$ 3.10	$ 2.18	$ 5.19
New Leases					
Number of leases	33	22	19	10	23
Square feet	119,563	189,023	125,620	71,589	134,286
Tenant improvement costs(1)	$ 7,293,862	$ 12,206,218	$ 792,593	$ 1,332,101	$ 5,417,203
Leasing commission costs(1)	808,477	1,223,931	570,064	359,874	778,415
Total tenant improvement and leasing commission costs(1)	$ 8,102,339	$ 13,430,149	$ 1,362,656	$ 1,691,975	$ 6,195,617
Tenant improvement costs per square foot(1)	$ 61.00	$ 64.58	$ 6.31	$ 18.61	$ 40.34
Leasing commission costs per square foot(1)	6.76	6.48	4.54	5.03	5.80
Total tenant improvement and leasing commission costs per square foot(1)	$ 67.76	$ 71.06	$ 10.85	$ 23.64	$ 46.14
Total					
Number of leases	76	46	40	27	50
Square feet	250,128	272,662	201,924	157,341	229,538
Tenant improvement costs(1)	$ 7,715,178	$ 12,616,303	$ 907,725	$ 1,452,662	$ 5,655,002
Leasing commission costs(1)	1,254,989	1,426,847	691,614	426,359	985,731
Total tenant improvement and leasing commission costs(1)	$ 8,970,166	$ 14,043,149	$ 1,599,338	$ 1,879,021	$ 6,640,733
Tenant improvement costs per square foot(1)	$ 30.84	$ 46.27	$ 4.50	$ 9.23	$ 24.64
Leasing commission costs per square foot(1)	5.02	5.23	3.43	2.71	4.29
Total tenant improvement and leasing commission costs per square foot(1)	$ 35.86	$ 51.50	$ 7.93	$ 11.94	$ 28.93

(1) Assumes all tenant improvement and leasing commissions are paid in the calendar year in which the lease commences, which may be different than the year in which they were actually paid.

Description of Our Retail Properties

Waikele Center is our only retail property that accounted for more than 10% of our total assets, based on book value, or more than 10% of our gross revenues as of, and for the year ended, December 31, 2009. Our nine other retail properties described below each accounted for less than 10% of our total assets, based on book value, and less than 10% of our gross revenues as of, and for the year ended December 31, 2009.

Southern California

Carmel Country Plaza

Carmel Country Plaza is a neighborhood retail center with a total of approximately 78,000 rentable square feet. The property is located on Del Mar Heights Road approximately one mile east of Interstate 5 in the northern part of San Diego County. It caters to the upscale suburban communities of Carmel Valley and Del Mar. We acquired the parcel in 1989 and constructed the buildings in 1991. The retail center consists of nine buildings and 329 parking spaces on a 5.5 acre lot. As of June 30, 2010, the property was 100% occupied, with major tenants including HEI Corporation d/b/a Oggi's Pizza and Brewing Company, The Coffee Bean & Tea Leaf, La Salsa and Frazee Industries, Inc.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Carmel Country Plaza.

Carmel Country Plaza Demographics

The following table has been derived from the market study prepared for us by RCG:

	1-Mile Radius	3-Mile Radius	5-Mile Radius	California	United States
Population					
2010 Estimate	20,457	66,401	116,692	37,853,430	309,038,974
2015 Projection	22,485	72,913	126,977	40,136,564	321,675,005
Estimated Growth 2010-2015	9.9%	9.8%	8.8%	6.0%	4.1%
Households					
2010 Estimate	8,363	25,939	43,356	12,653,856	116,136,617
2015 Projection	9,238	28,514	47,149	13,342,972	120,947,177
Estimated Growth 2010-2015	10.5%	9.9%	8.7%	5.4%	4.1%
2010 Estimated Average Household Income	$131,604	$170,891	$161,687	$ 84,690	$ 71,071
2010 Estimated Median Household Income	$ 98,946	$126,339	$121,411	$ 62,401	$ 52,795

Source: Census, Claritas, Nielson Company

Carmel Country Plaza Primary Tenants

The following table summarizes information regarding the primary tenants of Carmel Country Plaza as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[1]	Annualized Base Rent per Leased Square Foot[2]	Percentage of Property Annualized Base Rent
Sharp Healthcare	Healthcare Services	3/31/18	—	6,987	9.0%	$ 333,563	$ 47.74	9.8%
Frazee Industries, Inc.	Paints	9/30/11	—	5,053	6.5	252,048	49.88	7.4
Blockbuster, Inc.	Entertainment	10/31/14	—	5,000	6.4	240,000	48.00	7.1
Katana Sushi	Restaurant	12/31/19	2 x 5 yrs	4,500	5.8	162,000	36.00	4.8
Oggi's Pizza & Brewing Company	Restaurant	8/15/11	—	3,151	4.0	129,371	41.06	3.8
Top 5 Total				**24,691**	**31.7%**	**$ 1,116,982**	**$ 45.24**	**32.9%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.

Carmel Country Plaza Lease Expirations

The following table sets forth the lease expirations for leases in place at the Carmel Country Plaza as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring[1]	Square Footage of Expiring Leases	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[2]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[3]
Available	—	—	—	—	—	—
2010	3	3,443	4.4%	$ 81,397	2.4%	$ 23.64
2011	11	21,618	27.8	970,084	28.5	44.87
2012	5	8,646	11.1	407,335	12.0	47.11
2013	4	7,535	9.7	349,872	10.3	46.43
2014	7	15,398	19.8	636,538	18.7	41.34
2015	4	5,008	6.4	217,785	6.4	43.49
2016	1	1,678	2.2	86,585	2.5	51.60
2017	—	—	—	—	—	—
2018	2	9,987	12.8	486,563	14.3	48.72
2019	1	4,500	5.8	162,001	4.8	36.00
Thereafter	—	—	—	—	—	—
Total/Weighted Average:	**38**	**77,813**	**100.0%**	**$3,398,160**	**100.0%**	**$ 43.67**

(1) Number of leases expiring reflects potential early terminations applicable to certain leases in the event that specified sales targets are not achieved as of such date.
(2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.

(3) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

Carmel Country Plaza Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for Carmel Country Plaza as of the dates indicated below:

Date	Percentage Leased[1]	Annualized Base Rent per Leased Square Foot[2]	Average Net Effective Annual Base Rent per Leased Square Foot[3]
June 30, 2010	100.0%	$ 43.67	$ 42.50
December 31, 2009	97.7	43.15	43.86
December 31, 2008	95.1	44.35	42.89
December 31, 2007	92.7	41.37	42.95
December 31, 2006	95.7	39.53	38.42
December 31, 2005	97.8	35.83	34.94

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage.
(2) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.
(3) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

The current real estate tax rate for Carmel Country Plaza is $10.1043 per $1,000 of assessed value. The total annual tax for Carmel Country Plaza at this rate for the tax year ended June 30, 2010 was $180,685 (at a taxable assessed value of $16.8 million). In addition, there was $11,292 in various direct assessments imposed on Carmel County Plaza by the City of San Diego and County of San Diego for the tax year ended June 30, 2010.

Carmel Mountain Plaza

Carmel Mountain Plaza is an approximately 440,000 square foot regional shopping center consisting of 13 buildings and 2,379 parking spaces spread over 39.7 acres. The property is situated on Carmel Mountain Road immediately east of Interstate 15, a major north-south corridor in San Diego County, and caters to the upscale, inland communities of Rancho Bernardo, Poway and Carmel Mountain Ranch. We acquired the property in 2003 and, as of June 30, 2010, the property was approximately 97.2% occupied, with major tenants including Sears, Roebuck and Co. d/b/a Sears, Sports Authority, Reading International, Inc. d/b/a Reading Cinemas, Sprouts Farmers Markets, LLC and Marshalls of CA, LLC d/b/a Marshalls. Additionally, we intend to exercise our option to purchase the approximately 80,000 rentable square foot building located on the property vacated by Mervyn's in conjunction with its bankruptcy, which will require a cash payment of approximately $13.2 million. We believe that the repositioning of this building will provide a significant opportunity to increase cash flow and increase customer traffic at the property. Currently, we are actively negotiating with prospective tenants to lease this space, however there can be no assurance as to when or if a lease for this space will be signed.

In addition to the 440,000 rentable square feet discussed above, Mervyn's, Chevy's Fresh Mex, Boston West, LLC d/b/a Boston Market and Texaco Refining & Marketing, Inc., d/b/a Shell Oil/Gas Station own and occupy an aggregate of 92,190 square feet of space in Carmel Mountain Plaza and pay their respective proportionate share, based on square footage, of the common area expenses for the property plus an administration fee on such amount.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Carmel Mountain Plaza, however, we continue to consider additional opportunities.

Carmel Mountain Plaza Demographics

The following table has been derived from the market study prepared for us by RCG:

	1-Mile Radius	3-Mile Radius	5-Mile Radius	California	United States
Population					
2010 Estimate	14,079	99,329	222,285	37,853,430	309,038,974
2015 Projection	14,684	105,759	238,991	40,136,564	321,675,005
Estimated Growth 2010-2015	4.3%	6.5%	7.5%	6.0%	4.1%
Households					
2010 Estimate	5,249	36,050	77,779	12,653,856	116,136,617
2015 Projection	5,519	38,338	83,451	13,342,972	120,947,177
Estimated Growth 2010-2015	5.1%	6.3%	7.3%	5.4%	4.1%
2010 Estimated Average Household Income	$116,323	$110,040	$122,978	$ 84,690	$ 71,071
2010 Estimated Median Household Income	$ 97,815	$ 90,125	$100,372	$ 62,401	$ 52,795

Source: Census, Claritas, Nielson Company

Carmel Mountain Plaza Primary Tenants

The following table summarizes information regarding the primary tenants of Carmel Mountain Plaza as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[1]	Annualized Base Rent per Leased Square Foot[2]	Percentage of Property Annualized Base Rent
Sears	Dept. Store	6/30/18	6 x 5 yrs	107,870	24.5%	$ 452,540	$ 4.20	5.2%
Sports Authority	Athletics	11/30/13	2 x 5 yrs	40,672	9.2	575,102	14.14	6.6
Reading Cinemas	Entertainment	7/31/13	2 x 5 yrs	34,561	7.9	853,009	24.68	9.9
Sprouts Farmers Market	Grocery	3/31/25	3 x 5 yrs	30,973	7.0	681,406	22.00	7.9
Marshalls	Dept. Store	1/31/19	1 x 5 yrs	28,760	6.5	491,221	17.08	5.7
Top 5 Total				**242,836**	**55.2%**	**$3,053,278**	**$ 12.57**	**35.3%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.

Carmel Mountain Plaza Lease Expirations

The following table sets forth the lease expirations for leases in place at the Carmel Mountain Plaza as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring[1]	Square Footage of Expiring Leases	Percentage of Property Square Feet[2]	Annualized Base Rent[3]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[4]
Available	—	12,381	2.8%	—	—	—
2010	2	3,856	0.9	$ 112,721	1.3%	$ 29.23
2011	10	14,430	3.3	646,735	7.5	44.82
2012	9	34,781	7.9	1,197,980	13.9	34.44
2013	13	101,574	23.1	2,485,466	28.7	24.47
2014	8	69,902	15.9	1,478,566	17.1	21.15
2015	7	28,301	6.4	767,097	8.9	27.10
2016	2	5,600	1.3	243,264	2.8	43.44
2017	1	1,800	0.4	91,662	1.1	50.92
2018	1	107,870	24.5	452,540	5.2	4.20
2019	1	28,760	6.5	491,221	5.7	17.08
Thereafter	1	30,973	7.0	681,406	7.9	22.00
Total/Weighted Average:	**55**	**440,228**	**100.0%**	**$8,648,658**	**100.0%**	**$ 20.21**

(1) Number of leases expiring reflects potential early terminations applicable to certain leases in the event that specified sales targets are not achieved as of such date.
(2) Percentage of property net rentable square feet includes an aggregate of 119,000 square feet leased pursuant to four ground leases to Sears, California Pizza Kitchen, Inc., In-N-Out Burger and EZ Lube, Inc. See "—Ground Leases of Retail Portfolio."
(3) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12. Annualized base rent includes $821,075 pursuant to the four ground leases described above. See "—Ground Leases of Retail Portfolio."
(4) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

Carmel Mountain Plaza Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for Carmel Mountain Plaza as of the dates indicated below:

Date	Percentage Leased[1]	Annualized Base Rent per Leased Square Foot[2]	Average Net Effective Annual Base Rent per Leased Square Foot[3]
June 30, 2010	97.2%	$ 20.21	$ 20.48
December 31, 2009	89.7	20.11	20.86
December 31, 2008	97.2	19.65	19.87
December 31, 2007	100.0	19.22	18.87
December 31, 2006	100.0	17.01	18.40
December 31, 2005	100.0	17.64	17.96

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage. Square footage includes an aggregate of 119,000 square feet leased pursuant to ground leases to Sears, California Pizza Kitchen, In-N-Out and EZ Lube. See "—Ground Leases of Retail Portfolio."

(2) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above. Annualized base rent includes $821,075 pursuant to the four ground leases described above. See "—Ground Leases of Retail Portfolio."

(3) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

The current real estate tax rate for Carmel Mountain Plaza is $10.368 per $1,000 of assessed value. The total annual tax for Carmel Mountain Plaza at this rate for the tax year ended June 30, 2010 was $1,123,966 (at a taxable assessed value of $105.9 million). In addition, there was $26,449 in various direct assessments imposed on Carmel Mountain Plaza by the City of San Diego and County of San Diego for the tax year ended June 30, 2010.

South Bay Marketplace

South Bay Marketplace is an approximately 133,000 square foot neighborhood shopping center with 529 parking spaces on a 12.1 acre lot. The property is located on East Plaza Boulevard midway between Interstate 5 and Interstate 805, serving San Diego's South Bay cities of National City and Chula Vista. The property is also in close proximity to San Diego's U.S. Navy Base and over 8,484 units of housing for military personnel and their families. We developed the property in 1997 after acquiring the land in 1996. We successfully undertook a rigorous and complex entitlement process that involved two permitting jurisdictions in order to complete the development. As of June 30, 2010, the property was 100% occupied, with major tenants including Ross Dress For Less, Inc., Grocery Outlet, Inc., Office Depot, Inc., and Old Navy (California) LLC d/b/a Old Navy.

In addition to the 133,000 rentable square feet discussed above, Dixieline Lumber Company owns and occupies 21,795 square feet of space in South Bay Marketplace and pays its proportionate share, based on square footage, of the common area expenses for the property plus an administration fee on such amount.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of South Bay Marketplace.

South Bay Marketplace Demographics

The following table has been derived from the market study prepared for us by RCG:

	1-Mile Radius	3-Mile Radius	5-Mile Radius	California	United States
Population					
2010 Estimate	24,407	174,422	426,891	37,853,430	309,038,974
2015 Projection	25,817	184,837	448,624	40,136,564	321,675,005
Estimated Growth 2010-2015	5.8%	6.0%	5.1%	6.0%	4.1%
Households					
2010 Estimate	8,386	51,873	122,415	12,653,856	116,136,617
2015 Projection	8,744	54,393	127,711	13,342,972	120,947,177
Estimated Growth 2010-2015	4.3%	4.9%	4.3%	5.4%	4.1%
2010 Estimated Average Household Income	$48,964	$ 57,243	$ 63,791	$ 84,690	$ 71,071
2010 Estimated Median Household Income	$38,901	$ 45,036	$ 49,270	$ 62,401	$ 52,795

Source: Census, Claritas, Nielson Company

South Bay Marketplace Primary Tenants

The following table summarizes information regarding the primary tenants of South Bay Marketplace as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[(1)]	Annualized Base Rent per Leased Square Foot[(2)]	Percentage of Property Annualized Base Rent
Office Depot Inc.	Office Supplies	4/30/12	3 x5 yrs	30,686	23.1%	$485,462	$ 15.82	23.9%
Ross Dress for Less	Apparel	1/31/13	3 x 5 yrs	27,125	20.4	294,306	10.85	14.5
Grocery Outlet Inc.	Grocery	10/19/14	1 x 5 yrs	22,560	17.0	324,864	14.40	16.0
Old Navy	Apparel	5/31/11	3 x 5 yrs	20,000	15.1	*	*	*
FP Stores Inc.	Apparel	4/30/12	—	15,024	11.3	136,343	9.08	6.7
Top 5 Total				**115,395**	**86.8%**			

* Data withheld at tenant's request.
(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.

South Bay Marketplace Lease Expirations

The following table sets forth the lease expirations for leases in place at the South Bay Marketplace as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring[1]	Square Footage of Expiring Leases	Percentage of Property Net Rentable Square Feet[2]	Annualized Base Rent[3]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[4]
Available	—	—	—	—	—	—
2010	1	1,394	1.0%	$ 44,031	2.2%	$ 31.59
2011	2	22,880	17.2	378,891	18.6	16.56
2012	4	54,650	41.1	855,969	42.1	15.66
2013	2	28,565	21.5	346,423	17.1	12.13
2014	1	22,560	17.0	324,864	16.0	14.40
2015	—	—	—	—	—	—
2016	—	—	—	—	—	—
2017	1	2,824	2.1	81,540	4.0	28.87
2018	—	—	—	—	—	—
2019	—	—	—	—	—	—
Thereafter	—	—	—	—	—	—
Total/Weighted Average:	**11**	**132,873**	**100.0%**	**$2,031,718**	**100.0%**	**$ 15.29**

(1) Number of leases expiring reflects potential early terminations applicable to certain leases in the event that specified sales targets are not achieved as of such date.
(2) Percentage of property net rentable square feet includes 2,824 square feet ground leased to McDonald's. See "—Ground Leases of Retail Portfolio."
(3) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12. Annualized base rent includes $81,540 pursuant to a ground lease to McDonald's. See "—Ground Leases of Retail Portfolio."
(4) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

South Bay Marketplace Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for South Bay Marketplace as of the dates indicated below:

Date	Percentage Leased[1]	Annualized Base Rent per Leased Square Foot[2]	Average Net Effective Annual Base Rent per Leased Square Foot[3]
June 30, 2010	100.0%	$ 15.29	$ 15.18
December 31, 2009	100.0	15.26	14.91
December 31, 2008	100.0	14.95	14.73
December 31, 2007	100.0	14.54	13.98
December 31, 2006	100.0	13.69	13.27
December 31, 2005	100.0	12.99	12.80

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage. Square footage includes 2,824 square feet ground leased to McDonald's. See "—Ground Leases of Retail Portfolio."

(2) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above. Annualized base rent includes $81,540 pursuant to a ground lease to McDonald's. See "—Ground Leases of Retail Portfolio."

(3) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

Upon completion of this offering and the consummation of the formation transactions, South Bay Marketplace will be subject to a $23.0 million mortgage loan, as described in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering."

The current real estate tax rate for South Bay Marketplace is $11.071 per $1,000 of assessed value. The total annual tax for South Bay Marketplace at this rate for the tax year ended June 30, 2010 was $168,407 (at a taxable assessed value of $15.0 million). In addition, there was $1,957 in various direct assessments imposed on South Bay Marketplace by the City of National City and County of San Diego for the tax year ended June 30, 2010.

Rancho Carmel Plaza

Rancho Carmel Plaza is a neighborhood shopping center consisting of approximately 30,000 rentable square feet and 68 parking spaces situated on a 3.3 acre lot. The three building property, acquired and developed by us in 1990 and 1993, respectively, is located on Rancho Carmel Drive near the intersection of Interstate 15 and Highway 56 in San Diego and serves the upscale community of Carmel Mountain. The neighborhood center is a key transportation hub for the area and includes the first structured Park-N-Ride commuter parking lot in California. Additionally, several nearby retailers, including Costco, Reading Cinemas, Ross Dress for Less, Sports Authority and Barnes & Noble, attract potential customers to the area and create significant synergies with our center. As of June 30, 2010, the property was approximately 69.3% occupied, with major tenants including Oggi's Pizza & Brewery, Sprint PCS Assets, LLC d/b/a Sprint and USE Credit Union.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Rancho Carmel Plaza.

Rancho Carmel Plaza Demographics

The following table has been derived from the market study prepared for us by RCG:

	1-Mile Radius	3-Mile Radius	5-Mile Radius	California	United States
Population					
2010 Estimate	17,020	116,369	250,260	37,853,430	309,038,974
2015 Projection	18,341	124,838	268,414	40,136,564	321,675,005
Estimated Growth 2010-2015	7.8%	7.3%	7.3%	6.0%	4.1%
Households					
2010 Estimate	6,330	40,295	85,976	12,653,856	116,136,617
2015 Projection	6,810	43,190	92,018	13,342,972	120,947,177
Estimated Growth 2010-2015	7.6%	7.2%	7.0%	5.4%	4.1%
2010 Estimated Average Household Income	$104,016	$117,920	$119,175	$ 84,690	$ 71,071
2010 Estimated Median Household Income	$ 86,281	$ 98,077	$ 97,179	$ 62,401	$ 52,795

Source: Census, Claritas, Nielson Company

Rancho Carmel Plaza Primary Tenants

The following table summarizes information regarding the primary tenants of Rancho Carmel Plaza as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[1]	Annualized Base Rent per Leased Square Foot[2]	Percentage of Property Annualized Base Rent
Oggi's Pizza & Brewing Co.	Restaurant	8/31/15	2 x 5 yrs	5,090	16.7%	$129,749	$ 25.49	19.3%
Sprint PCS Assets	Telecommunications	12/31/10	—	3,103	10.2	129,500	41.73	19.2
USE Credit Union	Financial Services	5/31/15	2 x 5 yrs	2,233	7.3	68,330	30.60	10.1
Sang Wook Lee d/b/a Carmel Plaza Cleaners	Dry Cleaning	7/31/13	—	1,683	5.5	70,102	41.65	10.4
Sandra Simpson Management, LLC d/b/a Doctors Weight Loss Clinic	Health	6/30/12	1 x 3 yrs	1,268	4.2	30,432	24.00	4.5
Top 5 Total				**13,377**	**44.0%**	**$428,114**	**$ 32.00**	**63.5%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.

Rancho Carmel Plaza Lease Expirations

The following table sets forth the lease expirations for leases in place at the Rancho Carmel Plaza as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring[1]	Square Footage of Expiring Leases	Percentage of Property Square Feet	Annualized Base Rent[2]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[3]
Available	—	9,349	30.7%	—	—	—
2010	1	3,103	10.2	$129,500	19.2%	$ 41.73
2011	2	1,924	6.3	66,446	9.9	34.54
2012	3	3,557	11.7	99,896	14.8	28.08
2013	2	2,947	9.7	116,971	17.4	39.69
2014	—	—	—	—	—	—
2015	3	8,527	28.0	225,511	33.5	26.45
2016	1	1,014	3.3	35,587	5.3	35.10
2017	—	—	—	—	—	—
2018	—	—	—	—	—	—
2019	—	—	—	—	—	—
Thereafter	—	—	—	—	—	—
Total/Weighted Average:	**12**	**30,421**	**100.0%**	**$673,911**	**100.0%**	**$ 31.98**

(1) Number of leases expiring reflects potential early terminations applicable to certain leases in the event that specified sales targets are not achieved as of such date.
(2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.
(3) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

Rancho Carmel Plaza Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for Rancho Carmel Plaza as of the dates indicated below:

Date	Percentage Leased[1]	Annualized Base Rent per Leased Square Foot[2]	Average Net Effective Annual Base Rent per Leased Square Foot[3]
June 30, 2010	69.3%	$ 31.98	$ 34.97
December 31, 2009	81.6	30.46	32.65
December 31, 2008	100.0	30.88	28.47
December 31, 2007	100.0	29.75	27.77
December 31, 2006	100.0	27.80	26.39
December 31, 2005	100.0	26.22	25.56

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage.
(2) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.
(3) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

Upon completion of this offering and the consummation of the formation transactions, Rancho Carmel Plaza will be subject to a $8.1 million mortgage loan, as described in “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering.”

The current real estate tax rate for Rancho Carmel Plaza is $10.368 per $1,000 of assessed value. The total annual tax for Rancho Carmel Plaza at this rate for the tax year ended June 30, 2010 was $71,762 (at a taxable assessed value of $6.7 million). In addition, there was $2,440 in various direct assessments imposed on Ranch Carmel Plaza by the City of San Diego and County of San Diego for the tax year ended June 30, 2010.

Lomas Santa Fe Plaza

Lomas Santa Fe Plaza is an approximately 210,000 rentable square foot grocery anchored neighborhood shopping center built in 1972 consisting of nine buildings and 740 parking spaces on a 17.4 acre lot. The property is situated on Lomas Santa Fe Drive, immediately east of Interstate 5, and is located approximately one mile from public beaches, providing essential retail services to the upscale coastal communities of Solana Beach and Rancho Santa Fe. We acquired the shopping center in 1995 and immediately redeveloped the anchor space by doubling its size to 50,000 square feet and signing a new lease with Vons Companies, Inc. d/b/a Vons. Other major tenants include Ross Stores, Inc. d/b/a Ross Dress for Less, We-R-Fabrics, Big 5 Sporting Goods Corp and 24 Hour Fitness USA, Inc., and, as of June 30, 2010, the property was approximately 93.7% occupied.

We have approved entitlements on Lomas Santa Fe Plaza for the redevelopment and development of 65,340 rentable square feet (including 45,553 additional rentable square feet). Subject to future market conditions, we may decide to redevelop the property based on the approved entitlements. We expect that such redevelopment and development would cost approximately $27.8 million and would be funded out of cash on hand, borrowings under our anticipated credit facility, standard construction loans and/or, potentially, proceeds from this offering. Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Lomas Santa Fe Plaza.

Lomas Santa Fe Plaza Demographics

The following table has been derived from the market study prepared for us by RCG:

	1-Mile Radius	3-Mile Radius	5-Mile Radius	California	United States
Population					
2010 Estimate	9,097	41,032	125,960	37,853,430	309,038,974
2015 Projection	9,273	42,639	135,083	40,136,564	321,675,005
Estimated Growth 2010-2015	1.9%	3.9%	7.2%	6.0%	4.1%
Households					
2010 Estimate	3,913	17,539	49,840	12,653,856	116,136,617
2015 Projection	4,021	18,379	53,537	13,342,972	120,947,177
Estimated Growth 2010-2015	2.8%	4.8%	7.4%	5.4%	4.1%
2010 Estimated Average Household Income	$145,673	$144,177	$150,037	$ 84,690	$ 71,071
2010 Estimated Median Household Income	$ 98,958	$100,077	$106,634	$ 62,401	$ 52,795

Source: Census, Claritas, Nielson Company

Lomas Santa Fe Plaza Primary Tenants

The following table summarizes information regarding the primary tenants of Lomas Santa Fe Plaza as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[1]	Annualized Base Rent per Leased Square Foot[2]	Percentage of Property Annualized Base Rent
Vons	Grocery	12/31/17	2 x 5 yrs 1 x 4 yrs	49,895	23.8%	$1,058,000	$ 21.20	21.0%
Ross Stores, Inc.	Apparel	1/31/13	1 x 5 yrs	30,000	14.3	900,000	30.00	17.9
We-R-Fabrics	Home Design	3/31/13	2 x 3 yrs	13,926	6.6	144,000	10.34	2.9
Big 5 Sporting Goods	Sporting Goods	1/31/13	1 x 5 yrs	9,761	4.7	148,767	15.24	3.0
24 Hour Fitness	Fitness Center	9/7/14	2 x 5 yrs	8,355	4.0	224,797	26.91	4.5
Top 5 Total				**111,937**	**53.4%**	**$2,475,565**	**$ 22.12**	**49.2%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.

Lomas Santa Fe Plaza Lease Expirations

The following table sets forth the lease expirations for leases in place at Lomas Santa Fe Plaza as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring[1]	Square Footage of Expiring Leases	Percentage of Property Square Feet	Annualized Base Rent[2]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[3]
Available	—	13,175	6.3%	—	—	—
2010	8	15,868	7.6	$ 262,963	5.2%	$ 16.57
2011	7	18,329	8.7	644,892	12.8	35.18
2012	10	12,774	6.1	462,338	9.2	36.19
2013	9	61,509	29.4	1,491,440	29.7	24.25
2014	6	20,378	9.7	488,106	9.7	23.95
2015	5	6,529	3.1	234,489	4.7	35.91
2016	1	4,816	2.3	178,577	3.6	37.08
2017	2	56,191	26.8	1,265,768	25.2	22.53
2018	—	—	—	—	—	—
2019	—	—	—	—	—	—
Thereafter	—	—	—	—	—	—
Total/Weighted Average:	**48**	**209,569**	**100.0%**	**$5,028,573**	**100.0%**	**$ 25.60**

(1) Number of leases expiring reflects potential early terminations applicable to certain leases in the event that specified sales targets are not achieved as of such date.
(2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.
(3) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

Lomas Santa Fe Plaza Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for Lomas Santa Fe Plaza as of the dates indicated below:

Date	Percentage Leased[1][2]	Annualized Base Rent per Leased Square Foot[3]	Average Net Effective Annual Base Rent per Leased Square Foot[4]
June 30, 2010	93.7%	$ 25.60	$ 24.85
December 31, 2009	96.1	25.74	25.37
December 31, 2008	98.0	25.73	25.61
December 31, 2007	99.0	22.45	22.45
December 31, 2006	99.3	21.14	21.37
December 31, 2005	97.7	20.48	20.88

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage.
(2) We have executed two leases at Lomas Santa Fe Plaza for an aggregate of 2,334 net rentable square feet and an aggregate annualized base rent of $75,381, which commenced subsequent to June 30, 2010.
(3) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.

(4) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

The current real estate tax rate for Lomas Santa Fe Plaza is $10.1043 per $1,000 of assessed value. The total annual tax for Lomas Santa Fe Plaza at this rate for the tax year ended June 30, 2010 was $316,141 (at a taxable assessed value of $25.6 million). In addition, there was $57,762 in various direct assessments imposed on Lomas Santa Fe Plaza by the City of Solana Beach and County of San Diego for the tax year ended June 30, 2010.

Solana Beach Towne Centre

Solana Beach Towne Centre is a grocery anchored neighborhood center consisting of 12 buildings, approximately 247,000 rentable square feet and 1,124 parking spaces that we acquired in 1997. The property, located immediately west of Interstate 5 at the Lomas Santa Fe Drive exit, caters to the San Diego communities of Solana Beach, Del Mar and Rancho Santa Fe. As of June 30, 2010, the property was approximately 98.2% occupied, with major tenants including Henry's Holdings, LLC d/b/a Henry's Marketplace, CVS Pharmacy, Marshalls of CA, LLC d/b/a Marshalls, ProBuild Company, LLC d/b/a Dixieline ProBuild and Staples Properties, Inc. d/b/a Staples.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Solana Beach Towne Centre. However, we have entitlements to develop an additional approximately 13,000 square feet on a neighboring lot which will serve to connect the Solana Beach Towne Centre with our neighboring office property, Solana Beach Corporate Centre. Subject to future market conditions, we may decide to develop the property based on the approved entitlements. We expect that such development would cost approximately $5.9 million and would be funded out of cash on hand, borrowings under our anticipated credit facility, standard construction loans and/or, potentially, proceeds from this offering.

Solana Beach Towne Centre Demographics

The following table has been derived from the market study prepared for us by RCG:

	1-Mile Radius	3-Mile Radius	5-Mile Radius	California	United States
Population					
2010 Estimate	11,250	40,476	122,298	37,853,430	309,038,974
2015 Projection	11,478	41,993	130,929	40,136,564	321,675,005
Estimated Growth 2010-2015	2.0%	3.7%	7.1%	6.0%	4.1%
Households					
2010 Estimate	4,996	17,304	48,697	12,653,856	116,136,617
2015 Projection	5,142	18,109	52,240	13,342,972	120,947,177
Estimated Growth 2010-2015	2.9%	4.7%	7.3%	5.4%	4.1%
2010 Estimated Average Household Income	$130,502	$143,500	$148,107	$ 84,690	$ 71,071
2010 Estimated Median Household Income	$ 88,920	$ 99,778	$105,007	$ 62,401	$ 52,795

Source: Census, Claritas, Nielson Company

Solana Beach Towne Centre Primary Tenants

The following table summarizes information regarding the primary tenants of Solana Beach Towne Centre as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[1]	Annualized Base Rent per Leased Square Foot[2]	Percentage of Property Annualized Base Rent
Dixieline ProBuild	Lumber & Supplies	6/30/14	2 x 5 yrs	41,400	16.8%	$ 541,235	$ 13.07	10.1%
Marshalls	Department Store	1/31/15	1 x 5 yrs	39,295	15.9	553,667	14.09	10.4
CVS Pharmacy	Pharmacy	9/10/14	3 x 5 yrs	25,500	10.3	60,000	2.35	1.1
Staples	Office Supplies	4/30/15	1 x 5 yrs	21,875	8.9	365,969	16.73	6.9
Henry's Marketplace	Grocery	6/30/14	3 x 5 yrs	14,986	6.1	356,418	23.78	6.7
Top 5 Total				**143,056**	**58.0%**	**$1,877,289**	**$ 13.12**	**35.2%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.

Solana Beach Towne Centre Lease Expirations

The following table sets forth the lease expirations for leases in place at the Solana Beach Towne Centre as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring[1]	Square Footage of Expiring Leases	Percentage of Property Square Feet	Annualized Base Rent[2]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[3]
Available	—	4,349	1.8%	—	—	—
2010	3	9,043	3.7	$ 232,304	4.4%	$ 25.69
2011	11	12,504	5.1	504,425	9.5	40.34
2012	9	22,236	9.0	702,054	13.2	31.57
2013	2	4,830	2.0	200,512	3.8	41.51
2014	11	111,504	45.2	1,910,278	35.8	17.13
2015	8	69,805	28.3	1,255,488	23.5	17.99
2016	2	8,794	3.6	325,224	6.1	36.98
2017	—	—	—	—	—	—
2018	1	906	0.4	39,754	0.7	43.88
2019	—	—	—	—	—	—
Thereafter	1	2,759	1.1	165,000	3.1	59.80
Total/Weighted Average:	**48**	**246,730**	**100.0%**	**$5,335,039**	**100.0%**	**$ 22.01**

(1) Number of leases expiring reflects potential early terminations applicable to certain leases in the event that specified sales targets are not achieved as of such date.
(2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.
(3) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

Solana Beach Towne Centre Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for Solana Beach Towne Centre as of the dates indicated below:

Date	Percentage Leased[1]	Annualized Base Rent per Leased Square Foot[2]	Average Net Effective Annual Base Rent per Leased Square Foot[3]
June 30, 2010	98.2%	$ 22.01	$ 21.72
December 31, 2009	97.8	21.42	21.05
December 31, 2008	98.0	20.31	20.01
December 31, 2007	98.5	19.75	19.02
December 31, 2006	100.0	18.43	17.82
December 31, 2005	96.7	17.72	17.54

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage.
(2) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.
(3) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

Upon completion of this offering and the consummation of the formation transactions, Solana Beach Towne Centre will be subject to a $40 million mortgage loan, as described in “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering.”

The current real estate tax rate for Solana Beach Towne Centre is $10.043 per $1,000 of assessed value. The total annual tax for Solana Beach Towne Centre at this rate for the tax year ended June 30, 2010 was $394,228 (at a taxable assessed value of $31.0 million). In addition, there was $82,440.40 in various direct assessments imposed on Solana Beach Towne Centre by the City of Solana Beach and County of San Diego for the tax year ended June 30, 2010.

Del Monte Center

Del Monte Center is an approximately 674,000 rentable square foot open-air regional shopping center in Monterey, California, which we have the ability to expand by an additional 15,000 rentable square feet. Located at the intersection of Highway 1 and Munras Avenue and serving as the area’s only regional shopping center, Del Monte Center has attracted major tenants such as The Apple Store, Pottery Barn, Williams-Sonoma, California Pizza Kitchen, Macy’s West, Inc. d/b/a Macy’s, Whole Foods Market California, Inc. d/b/a Whole Foods Market, Petco, Rite Aid and Century Theaters, Inc., as well as more than 70 national retailers, locally owned specialty shops and restaurants. The area’s strict zoning restrictions and regulations serve as high barriers to entry to competitors seeking to replicate Del Monte Center’s offerings in nearby locations. In 2007, two years after we acquired the property, we significantly renovated and repositioned the property. Del Monte Center is subject to an ongoing environmental remediation. See “—Regulation—Environmental Matters.”

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Del Monte Center.

Del Monte Center Demographics

The following table has been derived from the market study prepared for us by RCG:

	1-Mile Radius	3-Mile Radius	5-Mile Radius	California	United States
Population					
2010 Estimate	6,212	53,276	90,347	37,853,430	309,038,974
2015 Projection	6,031	52,439	90,487	40,136,564	321,675,005
Estimated Growth 2010-2015	(2.9)%	(1.6)%	0.2%	6.0%	4.1%
Households					
2010 Estimate	2,917	23,499	36,792	12,653,856	116,136,617
2015 Projection	2,849	23,274	36,813	13,342,972	120,947,177
Estimated Growth 2010-2015	(2.3)%	(1.0)%	0.1%	5.4%	4.1%
2010 Estimated Average Household Income	$84,231	$88,931	$88,090	$ 84,690	$ 71,071
2010 Estimated Median Household Income	$65,184	$65,851	$64,336	$ 62,401	$ 52,795

Source: Census, Claritas, Nielson Company

Del Monte Center Primary Tenants

The following table summarizes information regarding the primary tenants of Del Monte Center as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[1]	Annualized Base Rent per Leased Square Foot[2]	Percentage of Property Annualized Base Rent
Macy's	Depart. Store	7/31/18	5 x 10 yrs	212,500	31.5%	$ 96,000	$ 0.45	1.1%
KLA Monterey	General Retail[3]	7/31/20	—	82,600	12.3	105,291	1.27	1.2
Century Theatres, Inc.	Entertainment	12/31/24	2 x 10 yrs	43,839	6.5	687,396	15.68	7.7
Macy's Furniture Gallery	Furniture	8/31/15	1 x 5 yrs	39,713	5.9	584,545	14.72	6.5
Whole Foods Market	Grocery	7/31/18	3 x 5 yrs	24,976	3.7	368,396	14.75	4.1
Top 5 Total				**403,628**	**59.9%**	**$1,841,627**	**$ 4.56**	**20.6%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.
(3) Our tenant KLA Monterey is currently remodeling this space and is negotiating with an apparel company to sublease this space.

Del Monte Center Lease Expirations

The following table sets forth the lease expirations for leases in place at Del Monte Center as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring[1]	Square Footage of Expiring Leases	Percentage of Property Net Rentable Square Feet[2]	Annualized Base Rent[3]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[4]
Available	—	17,362	2.6%	—	—	—
2010	9	26,778	4.0	$ 695,650	7.8%	$ 25.98
2011	14	43,562	6.5	1,179,376	13.2	27.07
2012	9	30,516	4.5	1,046,489	11.7	34.29
2013	9	24,514	3.6	853,156	9.5	34.80
2014	8	68,805	10.2	1,470,289	16.4	21.37
2015	8	55,378	8.2	1,075,105	12.0	19.41
2016	3	6,179	0.9	194,042	2.2	31.40
2017	6	15,097	2.2	586,418	6.5	38.84
2018	4	243,224	36.1	618,848	6.9	2.54
2019	1	1,635	0.2	32,700	0.4	20.00
Thereafter	5	141,174	20.9	1,203,991	13.4	8.53
Total/Weighted Average:	**76**	**674,224**	**100.0%**	**$8,956,064**	**100.0%**	**$ 13.63**

(1) Number of leases expiring reflects potential early terminations applicable to certain leases in the event that specified sales targets are not achieved as of such date.
(2) Percentage of property net rentable square feet includes an aggregate of 295,100 square feet ground leased to Macy's and KLA Monterey Leasehold, LLC. See "—Ground Leases of Retail Portfolio."
(3) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12. Annualized base rent includes $201,291 pursuant to the two ground leases described above. See "—Ground Leases of Retail Portfolio."
(4) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

Del Monte Center Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for Del Monte Center as of the dates indicated below:

Date	Percentage Leased[1][2]	Annualized Base Rent per Leased Square Foot[3]	Average Net Effective Annual Base Rent per Leased Square Foot[4]
June 30, 2010	97.4%	$ 13.63	$ 12.58
December 31, 2009	98.0	15.35	12.73
December 31, 2008	98.7	15.27	12.34
December 31, 2007	94.3	13.52	11.97
December 31, 2006	96.6	12.96	11.60
December 31, 2005	97.8	13.25	11.54

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage. Square footage includes an aggregate of 295,100 square feet ground leased to Macy's and KLA Monterey Leasehold, LLC. See "—Ground Leases of Retail Portfolio."
(2) We have executed two leases at Del Monte Center for an aggregate of 2,565 net rentable square feet and an aggregate annualized base rent of $27,060, which commenced subsequent to June 30, 2010.
(3) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above. Annualized base rent includes $201,291 pursuant to the two ground leases described above. See "—Ground Leases of Retail Portfolio."
(4) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

Upon completion of this offering and the consummation of the formation transactions, Del Monte Center will be subject to an $82.3 million mortgage loan, as described in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering."

The current real estate tax rate for Del Monte Center is $10.00 per $1,000 of assessed value. The total annual tax for Del Monte Center at this rate for the tax year ended June 30, 2010 was $959,726 (at a taxable assessed value of $93.8 million). In addition, there was $21,780 in various direct assessments imposed on Del Monte Center by the City of Monterey and County of Monterey for the 2009 tax year.

Oahu, Hawaii

The Shops at Kalakaua

The Shops at Kalakaua is an approximately 12,000 rentable square foot retail destination located in Honolulu, Hawaii. This project, located in the core of the Waikiki Special District, features four storefronts (three buildings) facing heavily trafficked Kalakaua Avenue, the primary thoroughfare in Waikiki. The Shops at Kalakaua is part of the hub of upscale retailers, restaurants, hotels and business plazas that make the area a heavily visited tourist destination. Conveniently located across the street from our mixed-use property, Waikiki Beach Walk, The Shops at Kalakaua was 100% occupied as of June 30, 2010 and features Oakley, Food Pantry, LTD d/b/a Whalers General Store, Swarovski Crystal and Diesel USA, Inc. Originally built in 1971, the property was renovated in 2006 as part of the Waikiki revitalization effort. Given its central Waikiki location, The Shops at Kalakaua enjoy excellent visibility, strong foot traffic and frequent business from both tourist as well as local shoppers.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of The Shops at Kalakaua.

The Shops at Kalakaua Demographics

The following table has been derived from the market study prepared for us by RCG:

	1-Mile Radius	3-Mile Radius	5-Mile Radius	Hawaii	United States
Population					
2010 Estimate	48,076	181,672	270,108	1,300,985	309,038,974
2015 Projection	48,598	183,417	270,755	1,335,889	321,675,005
Estimated Growth 2010-2015	1.1%	1.0%	0.2%	2.7%	4.1%
Households					
2010 Estimate	25,499	83,578	111,981	444,202	116,136,617
2015 Projection	25,791	85,093	113,401	460,493	120,947,177
Estimated Growth 2010-2015	1.1%	1.8%	1.3%	3.7%	4.1%
2010 Estimated Average Household Income	$56,418	$ 69,774	$ 75,911	$ 85,525	$ 71,071
2010 Estimated Median Household Income	$43,215	$ 49,193	$ 52,464	$ 66,754	$ 52,795

Source: Census, Claritas, Nielson Company

The Shops at Kalakaua Primary Tenants

The following table summarizes information regarding the tenants of The Shops at Kalakaua as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[1]	Annualized Base Rent per Leased Square Foot[2]	Percentage of Property Annualized Base Rent
Whalers General Store	General Merchandise	5/31/14	2 x 5 yrs	3,597	30.8%	$ 410,058	$ 114.00	26.7%
Diesel U.S.A. Inc.	Apparel	1/31/14	1 x 5 yrs	3,340	28.6	462,924	138.60	30.2
Swarovski Crystal	Jewelry & Collectibles	1/31/21	—	2,606	22.3	299,690	115.00	19.5
Oakley	Eyewear	1/31/16	1 x 5 yrs	2,128	18.2	362,356	170.28	23.6
Total				**11,671**	**100.0%**	**$1,535,028**	**$ 131.52**	**100.0%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.

The Shops at Kalakaua Lease Expirations

The following table sets forth the lease expirations for leases in place at The Shops at Kalakaua as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options or early termination rights.

Year of Lease Expiration	Number of Leases Expiring[1]	Square Footage of Expiring Leases	Percentage of Property Square Feet	Annualized Base Rent[2]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[3]
Available	—	—	—	—	—	—
2010	—	—	—	—	—	—
2011	—	—	—	—	—	—
2012	—	—	—	—	—	—
2013	—	—	—	—	—	—
2014	2	6,937	59.4%	$ 872,982	56.9%	$ 125.84
2015	—	—	—	—	—	—
2016	1	2,128	18.2	362,356	23.6	170.28
2017	—	—	—	—	—	—
2018	—	—	—	—	—	—
2019	—	—	—	—	—	—
Thereafter	1	2,606	22.3	299,690	19.5	115.00
Total/Weighted Average:	**4**	**11,671**	**100.0%**	**$1,535,028**	**100.0%**	**$ 131.52**

(1) Number of leases expiring reflects potential early terminations applicable to certain leases in the event that specified sales targets are not achieved as of such date.
(2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.
(3) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

The Shops at Kalakaua Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for The Shops at Kalakaua as of the dates indicated below:

Date	Percentage Leased[1]	Annualized Base Rent per Leased Square Foot[2]	Average Net Effective Annual Base Rent per Leased Square Foot[3]
June 30, 2010	100.0%	$ 131.52	$ 136.07
December 31, 2009	100.0	139.42	138.58
December 31, 2008	100.0	133.96	138.58
December 31, 2007	100.0	133.96	138.58
December 31, 2006	100.0	133.96	138.58
December 31, 2005	100.0	132.11	137.45

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage.
(2) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.
(3) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

The current real estate tax rate for The Shops at Kalakaua is $12.40 per $1,000 of assessed value. The total annual tax for The Shops at Kalakaua at this rate for the tax year ended June 30, 2010 was $115,775 (at a taxable assessed value of $9.0 million). In addition, there was $4,140 in various direct assessments imposed on The Shops at Kalakaua by the City of Honolulu and County of Honolulu for the tax year ended June 30, 2010.

Waikele Center

Waikele Center is a 538,000 rentable square foot regional open-air shopping center located in Waipahu, Hawaii, approximately 15 miles west of Honolulu. The property, positioned along a rapidly developing corridor of West Oahu, enjoys over 3,000 feet of frontage along Interstate H-1, which provides high visibility and convenient access to the highway. Waikele Center is situated on 41.85 acres and includes nine structures with 2,060 parking spaces. Initially built in phases between 1992 and 1993, construction of the ninth building, the Waikele Professional Center, was completed in 2008. This shopping complex is one of Central Oahu's largest and highest profile retail projects, and it is anchored by Lowe's Home Improvement, Kmart Corporation, Borders Book & Music, Officemax, Inc. and TSA Stores, Inc. d/b/a The Sports Authority. Along with Old Navy, the shopping center is home to multiple specialty retailers and restaurants that include Chili's Grill & Bar, Starbucks Corporation d/b/a Starbucks Coffee, Jamba Juice, McDonald's, KFC and various other quick-serve restaurants. Supported by solid demographics in the surrounding area, nearly all tenants in Waikele Center outperform their sister stores in Hawaii by a significant margin as measured by sales per square foot. In addition, Waikele Professional Center offers 17,177 rentable square feet of office/retail space, which is particularly attractive to medical and service practitioners integral to the community, adding a supportive service oriented dynamic to this property.

Additionally, the property is uniquely positioned by its proximity to the Waikele Premium Outlets, a factory outlet retail center. Catering to tourist and local trade, both our Waikele Center and the Waikele Premium Outlets enjoy a synergistic and symbiotic relationship, each with complimentary offerings that support a diverse shopping experience. Transport between these properties is encouraged via a free trolley service that circulates customers to various destinations.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Waikele Center.

Waikele Center Demographics

The following table has been derived from the market study prepared for us by RCG:

	1-Mile Radius	3-Mile Radius	5-Mile Radius	Hawaii	United States
Population					
2010 Estimate	29,451	106,739	206,328	1,300,985	309,038,974
2015 Projection	30,425	108,785	211,364	1,335,889	321,675,005
Estimated Growth 2010-2015	3.3%	1.9%	2.4%	2.7%	4.1%
Households					
2010 Estimate	8,106	30,457	62,692	444,202	116,136,617
2015 Projection	8,502	31,312	64,694	460,493	120,947,177
Estimated Growth 2010-2015	4.9%	2.8%	3.2%	3.7%	4.1%
2010 Estimated Average Household Income	$103,133	$ 94,534	$ 97,103	$ 85,525	$ 71,071
2010 Estimated Median Household Income	$ 88,237	$ 81,458	$ 83,819	$ 66,754	$ 52,795

Source: Census, Claritas, Nielson Company

Waikele Center Primary Tenants

The following table summarizes information regarding the primary tenants of the Waikele Center as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration[1]	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[2]	Annualized Base Rent per Leased Square Foot[3]	Percentage of Property Annualized Base Rent
Lowe's	Hardware	5/31/18	3 x 5 yrs	155,000	28.8%	$3,992,647	$ 25.8	24.4%
Kmart	Discount Dept. Store	6/30/18	5 x 5 yrs	119,590	22.2	3,468,110	29.0	21.2
Sports Authority	Athletics	7/18/13	3 x 5 yrs	50,050	9.3	1,501,500	30.0	9.2
Foodland Super Market[4]	Grocery	1/25/14	—	50,000	9.3	2,247,578	45.0	13.7
Old Navy	Apparel	7/31/12	2 x 4 yrs	24,759	4.6	*	*	*
Top 5 Total				**399,399**	**74.2%**			

* Data withheld at tenant's request.
(1) Expiration dates assume no exercise of renewal, extension or termination options.
(2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(3) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.
(4) Foodland Super Market, Ltd. has ceased all operations in its leased premises and has subleased the premises to International Church of the Foursquare Gospel. Although we are currently collecting the rent for the leased premises, Foodland Super Market, Ltd.'s lease expires in 2014 and it is unlikely that it will renew its lease with us. We expect to collect the full amount remaining under the lease in accordance with its terms; however, there can be no assurances that we will do so.

Waikele Center Lease Expirations

The following table sets forth the lease expirations for leases in place at the Waikele Center as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring[1]	Square Footage of Expiring Leases	Percentage of Property Square Feet	Annualized Base Rent[2]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[3]
Available	—	30,484	5.7%	—	—	—
2010	—	—	—	—	—	—
2011	—	—	—	—	—	—
2012	2	26,943	5.0	$ 735,462	4.5%	$ 27.30
2013	7	67,348	12.5	2,589,676	15.8	38.45
2014	12	109,549	20.4	4,369,743	26.7	39.89
2015	3	9,470	1.8	509,220	3.1	53.77
2016	5	15,063	2.8	503,792	3.1	33.45
2017	—	—	—	—	—	—
2018	3	276,052	51.3	7,524,004	45.9	27.26
2019	2	3,056	0.6	159,908	1.0	52.33
Thereafter	—	—	—	—	—	—
Total/Weighted Average:	**34**	**537,965**	**100.0%**	**$16,391,804**	**100.0%**	**$ 32.30**

(1) Number of leases expiring reflects potential early terminations applicable to certain leases in the event that specified sales targets are not achieved as of such date.
(2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.
(3) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

Waikele Center Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for the Waikele Center as of the dates indicated below:

Date	Percentage Leased[1]	Annualized Base Rent per Leased Square Foot[2]	Average Net Effective Annual Base Rent per Leased Square Foot[3]
June 30, 2010	94.3%	$ 32.30	$ 32.36
December 31, 2009	94.3	32.19	32.18
December 31, 2008	97.4	30.33	30.61
December 31, 2007	100.0	28.88	31.03
December 31, 2006	100.0	27.68	31.12
December 31, 2005	99.0	27.04	30.83

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage.
(2) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.

(3) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

Upon completion of this offering and the consummation of the formation transactions, Waikele Center will be subject to a $140.7 million mortgage loan, as described in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering."

The current real estate tax rate for Waikele Center is $12.40 per $1,000 of assessed value. The total annual tax for Waikele Center at this rate for the tax year ended June 3, 2010 was $1,880,167 (at a taxable assessed value of $151.6 million). There were no direct assessments imposed on Waikele Center by the City of Waipahu or County of Honolulu for the tax year ended June 30, 2010.

San Antonio, Texas

Alamo Quarry

Alamo Quarry is a 59-acre lifestyle center, which offers shopping, dining and entertainment with a total of approximately 590,000 rentable square feet, and is located in San Antonio, Texas. Once the home of Alamo Cement Company, Alamo Quarry was constructed in 1997 and incorporates the property's original smokestacks, rock crusher building and other historic features. The property has highly visible frontage along the east side of Highway 281, one of San Antonio's busiest thoroughfares, and is easily accessible via the Basse Road and Jones-Maltsberger Road exits. Among more than 70 retail stores and restaurants, major tenants include Borders Books & Music, Whole Foods, Bed Bath & Beyond, Officemax, Old Navy, Michaels Stores, Inc. d/b/a Michaels Arts & Crafts and a Regal Cinemas, Inc. 16-Plex movie theatre.

Anticipated capital expenditure requirements for this property include a multi-year roof replacement project phased over four years. The anticipated capital expenditures for this project are $1,007,500; $735,300; $712,200; and $231,400 for 2010, 2011, 2012 and 2013, respectively. These anticipated capital expenditures will be funded with cash on hand.

Alamo Quarry Demographics

The following table has been derived from the market study prepared for us by RCG:

	1-Mile Radius	3-Mile Radius	5-Mile Radius	Texas	United States
Population					
2010 Estimate	9,417	116,173	306,905	25,006,778	309,038,974
2015 Projection	10,086	121,176	319,219	26,983,559	321,675,005
Estimated Growth 2010-2015	7.1%	4.3%	4.0%	7.9%	4.1%
Households					
2010 Estimate	4,199	46,565	119,431	8,796,031	116,136,617
2015 Projection	4,521	48,384	124,067	9,473,062	120,947,177
Estimated Growth 2010-2015	7.7%	3.9%	3.9%	7.7%	4.1%
2010 Estimated Average Household Income	$99,839	$ 63,864	$ 54,307	$ 68,330	$ 71,071
2010 Estimated Median Household Income	$70,017	$ 42,460	$ 38,844	$ 49,723	$ 52,795

Source: Census, Claritas, Nielson Company

Alamo Quarry Primary Tenants

The following table summarizes information regarding the primary tenants of Alamo Quarry as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[1]	Annualized Base Rent per Leased Square Foot[2]	Percentage of Property Annualized Base Rent
Regal Cinemas	Entertainment	3/31/18	2 x 5 yrs	72,447	12.3%	$1,014,258	$ 14.00	8.8%
Bed Bath & Beyond	Housewares	1/31/13	3 x 5 yrs	40,015	6.8	510,000	12.75	4.4
Whole Foods Market	Grocery	10/31/12	4 x 5 yrs	38,005	6.4	436,867	11.49	3.8
Borders Books & Music	Books	11/30/12	4 x 5 yrs	30,000	5.1	585,000	19.50	5.1
Bally Total Fitness Corp.	Service	8/31/13	3 x 5 yrs	26,000	4.4	435,500	16.75	3.8
Top 5 Total				**206,467**	**35.0%**	**$2,981,625**	**$ 14.44**	**25.9%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.

Alamo Quarry Lease Expirations

The following table sets forth the lease expirations for leases in place at the Alamo Quarry as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring[1]	Square Footage of Expiring Leases	Percentage of Property Net Rentable Square Feet[2]	Annualized Base Rent[3]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[4]
Available	—	30,257	5.1%	—	—	—
2010	—	—	—	—	—	—
2011	4	8,576	1.5	$ 222,746	1.9%	$ 25.97
2012	21	165,532	28.1	3,246,658	28.2	19.61
2013	22	182,358	30.9	3,388,701	29.5	18.58
2014	2	5,909	1.0	157,039	1.4	26.58
2015	5	24,686	4.2	760,923	6.6	30.82
2016	7	37,883	6.4	1,162,184	10.1	30.68
2017	4	25,164	4.3	435,120	3.8	17.29
2018	3	85,215	14.5	1,454,434	12.6	17.07
2019	2	18,891	3.2	537,065	4.7	28.43
Thereafter	2	5,008	0.8	135,272	1.2	27.01
Total/Weighted Average:	**72**	**589,479**	**100.0%**	**$11,500,141**	**100.0%**	**$ 20.56**

(1) Number of leases expiring reflects potential early terminations applicable to certain leases in the event that specified sales targets are not achieved as of such date.
(2) Percentage of property net rentable square feet includes an aggregate of 32,000 square feet ground leased to Joe's Crab Shack, J. Alexander's Restaurant, P.F. Chang's China Bistro and Chili's Grill & Bar. See "—Ground Leases of Retail Portfolio."
(3) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12. Annualized base rent includes $428,250 pursuant to four ground leases. See "—Ground Leases of Retail Portfolio."
(4) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

Alamo Quarry Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for Alamo Quarry as of the dates indicated below:

Date	Percentage Leased[1][2]	Annualized Base Rent per Leased Square Foot[3]	Average Net Effective Annual Base Rent per Leased Square Foot[4]
June 30, 2010	94.9%	$ 20.56	$ 20.86
December 31, 2009	94.2	20.52	20.81
December 31, 2008	96.7	20.57	20.50
December 31, 2007	96.3	19.68	19.73
December 31, 2006	96.1	18.87	19.58
December 31, 2005	97.8	18.06	19.23

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage. Square footage includes an aggregate of 32,000 square feet ground leased to Joe's Crab Shack, J. Alexander's Restaurant, P.F. Chang's China Bistro and Chili's Grill & Bar. See "—Ground Leases of Retail Portfolio."

(2) We have executed a lease at Alamo Quarry for 5,500 net rentable square feet and annualized base rent of $165,000, which commenced subsequent to June 30, 2010.

(3) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above. Annualized base rent includes $428,250 pursuant to four ground leases. See "—Ground Leases of Retail Portfolio."

(4) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

Upon completion of this offering and the consummation of the formation transactions, Alamo Quarry will be subject to a $98.9 million mortgage loan, as described in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering."

The current real estate tax rate for Alamo Quarry is $24.726 per $1,000 of assessed value. The total annual tax for Alamo Quarry at this rate for the tax year ended December 31, 2009 was $3,531,595 (at a taxable assessed value of $138.8 million). There were no direct assessments imposed on Alamo Quarry by the City of San Antonio or County of Bexar for the tax year ended December 31, 2009.

Office Portfolio

Our office portfolio consists of six office properties (including one owned pursuant to a joint venture) comprising an aggregate of approximately 2.2 million rentable square feet. As of June 30, 2010, our office properties were approximately 94.4% leased to 123 tenants (or 95.6% leased, giving effect to leases signed but not commenced as of that date). All of our office properties are located in prime California submarkets. As of June 30, 2010, the weighted average remaining lease term for our pro rata office portfolio was 55.6 months.

Tenant Diversification of Office Portfolio

As of June 30, 2010, the properties in our office portfolio were leased to 123 tenants in a variety of industries with no single tenant representing more than 13.0% of total annualized base rent of our pro rata office portfolio. In addition, as of June 30, 2010, the 710,330 square feet at Fireman's Fund Headquarters, our 25% joint venture property, were 100% leased pursuant to two leases to Fireman's Fund Insurance Company. The following table sets forth information regarding the ten largest tenants in our pro rata office portfolio based on annualized base rent as of June 30, 2010:

Tenant	Number of Leases	Number of Properties	Property(s)	Lease Expiration	Total Leased Square Feet	Percentage of Pro Rata Office Portfolio Net Rentable Square Feet	Annualized Base Rent[1]	Percentage of Pro Rata Office Portfolio Annualized Base Rent
Wholly Owned Properties								
salesforce.com, inc.[2]	2	1	The Landmark at One Market	4/30/20 6/30/19	125,663	7.7%	$ 7,411,917	12.9%
Del Monte Corporation[2]	2	1	The Landmark at One Market	12/18/10	101,229	6.2	5,456,239	9.5
Insurance Company of the West[3]	3	2	Torrey Reserve Campus, Valencia Corporate Center	12/31/16[4] 6/30/19	147,196	9.0	4,303,140	7.5
DLA Piper[5]	1	1	160 King Street	2/28/12	69,656	4.3	3,234,661	5.6
Microsoft[6]	2	1	The Landmark at One Market	12/31/12	45,795	2.8	2,885,085	5.0
Autodesk[6]	2	1	The Landmark at One Market	12/31/15 12/31/17	46,170	2.8	2,202,706	3.8
Brown & Toland	1	1	160 King Street	7/31/17	53,147	3.3	1,403,717	2.4
Evelyn & Walter Haas Jr. Fund[6]	1	1	The Landmark at One Market	1/5/11	22,699	1.4	1,316,542	2.3
California Bank & Trust	2	1	Torrey Reserve Campus	5/31/19 10/31/19	29,985	1.8	1,310,616	2.3
Joint Venture Property								
Fireman's Fund	2	1	Fireman's Fund Headquarters	11/6/18	177,583[7]	10.9	5,056,970[8]	8.8
Total					**819,123**	**50.2%**	**$34,581,593**	**60.1%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease(s), by (ii) 12.
(2) Del Monte Corporation announced that it will vacate its 101,229 square feet of office space at The Landmark at One Market when its lease expires in December 2010. Salesforce.com, which currently leases 125,653 square feet of office space at this property, has signed a lease to expand into the entire space to be vacated by Del Monte Corporation. Pursuant to the terms of this lease, which commences in June 2011 and has an initial term of ten years, salesforce.com will receive one year of free rent. Total abatements under the new lease are $4,276,899, including $356,408 for the month of June 2011.
(3) Insurance Company of the West was founded, and is indirectly controlled, by Mr. Rady, who currently serves as the chairman of its board of directors.
(4) The earliest optional termination date under this lease is June 30, 2012.

(5) DLA Piper has leased two floors of 160 King Street. DLA Piper has vacated this space in conjunction with its relocation to a new office building but will continue to pay rent on this space until the lease expires in February 2012. As part of DLA Piper's relocation, the manager of DLA Piper's new building is responsible for subleasing DLA Piper's vacated space in 160 King Street. As of July 31, 2010, 28,175 square feet, 28,788 square feet and 3,570 square feet of DLA Piper's vacated space has been subleased to Pier 38 Maritime Business, Greenberg Traurig, LLP and Capsilon Corporation, respectively, and the remainder remains available. We will continue to collect rent from DLA Piper through February 2012 regardless of whether the remaining space is subleased.
(6) Autodesk has entered into leases to expand into the approximately 69,000 square feet of space currently leased by Microsoft and Evelyn & Walter Haas Jr. Fund. Since December 2007, Autodesk has subleased 45,795 square feet of space leased to Microsoft at The Landmark at One Market. We have entered into a lease with Autodesk, for Autodesk to take over Microsoft's entire 45,795 square feet of space upon the termination of Microsoft's lease in December 2012. In addition, Autodesk is currently subleasing 5,334 square feet of space leased to Evelyn & Walter Haas Jr. Fund, or the Haas Fund, at The Landmark at One Market. We have entered into a lease with Autodesk, for Autodesk to take over the Haas Fund's entire 22,699 square feet of space upon the termination of the Haas Fund's lease in January 2011.
(7) Reflects our pro rata share of total leased square feet at Fireman's Fund Headquarters. Total leased square feet was 710,330 as of June 30, 2010.
(8) Reflects our pro rata share of annualized base rent of Fireman's Fund Headquarters. Total annualized base rent was $20,227,880 as of June 30, 2010.

Lease Distribution of Office Portfolio

The following table sets forth information relating to the distribution of leases in our pro rata office portfolio, based on net rentable square feet under lease as of June 30, 2010:

Square Feet Under Lease	Number of Leases	Percentage of Office Leases	Total Leased Square Feet	Percentage of Pro Rata Office Portfolio Leased Square Feet	Annualized Base Rent[1]	Percentage of Pro Rata Office Portfolio Annualized Base Rent
Wholly Owned						
2,500 or less	36	26.9%	56,381	3.7%	$ 1,902,254	3.3%
2,501-10,000	67	50.0	359,455	23.8	12,729,929	22.1
10,001-20,000	16	11.9	233,169	15.4	8,037,643	14.0
20,001-40,000	7	5.2	213,743	14.2	8,925,217	15.5
40,001-100,000	5	3.7	352,158	23.3	13,790,137	24.0
Greater than 100,000	1	0.7	116,851	7.7	7,093,263	12.3
Wholly Owned Office Portfolio Total:	**132**	**98.5%**	**1,331,757**	**88.2%**	**$52,478,443**	**91.2%**
Joint Venture						
Greater than 100,000[2]	2	1.5%	177,583[3]	11.8%	$ 5,056,970[4]	8.8%
Total Pro Rata Office Portfolio[5]	**134**	**100%**	**1,509,340**	**100%**	**$57,535,413**	**100%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease(s), by (ii) 12.
(2) Comprised of Fireman's Fund Headquarters lease, in which we have a 25% interest through a joint venture with an affiliate of General Electric Pension Trust.
(3) Reflects our pro rata share of total leased square feet at Fireman's Fund Headquarters. Total leased square feet was 710,330 as of June 30, 2010.
(4) Reflects our pro rata share of annualized base rent of Fireman's Fund Headquarters. Total annualized base rent was $20,227,880 as of June 30, 2010.
(5) Pro rata office portfolio has been adjusted to reflect our 25% ownership interest in Fireman's Fund Headquarters.

Lease Expirations of Office Portfolio

The following table sets forth a summary schedule of the lease expirations for leases in place as of June 30, 2010 plus available space, for each of the ten full calendar years beginning January 1, 2010 at the properties in our pro rata office portfolio. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring	Square Footage of Expiring Leases	Percentage of Pro Rata Office Portfolio Net Rentable Square Feet	Annualized Base Rent[1]	Percentage of Pro Rata Office Portfolio Annualized Base Rent	Annualized Base Rent per Leased Square Foot[2]
Wholly Owned						
Available	—	121,063	7.4%	—	—	—
2010	21	173,297	10.6	$ 7,758,072	13.5%	$ 44.77
2011	22	90,118	5.5	3,812,029	6.6	42.30
2012	27	341,551	20.9	13,137,662	22.8	38.46
2013	24	176,629	10.8	5,877,476	10.2	33.28
2014	11	73,000	4.5	2,481,769	4.3	34.00
2015	11	103,949	6.4	4,141,754	7.2	39.84
2016	3	30,275	1.9	733,813	1.3	24.24
2017	2	68,459	4.2	1,910,545	3.3	27.91
2018	2	32,710	2.0	1,479,726	2.6	45.24
2019	6	94,010	5.8	3,614,916	6.3	38.45
Thereafter	3	147,759	9.1	7,530,681	13.1	50.97
Wholly Owned Office Portfolio Total:	**132**	**1,452,820**	**89.1%**	**$52,478,443**	**91.2%**	**$ 39.41**
Joint Venture						
2018[3]	2	177,583[4]	10.9%	$ 5,056,970[5]	8.8%	$ 28.48
Pro Rata Office Portfolio Total[6]	**134**	**1,630,403**	**100.0%**	**$57,535,413**	**100.0%**	**$ 38.12[7]**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.
(3) Comprised of Fireman's Fund Headquarters lease, in which we have a 25% interest through a joint venture with an affiliate of General Electric Pension Trust.
(4) Reflects our pro rata share of total leased square feet at Fireman's Fund Headquarters. Total leased square feet was 710,330 as of June 30, 2010.
(5) Reflects our pro rata share of annualized base rent of Fireman's Fund Headquarters. Total annualized base rent was $20,227,880 as of June 30, 2010.
(6) Pro rata office portfolio has been adjusted to reflect our 25% ownership interest in Fireman's Fund Headquarters.
(7) Calculated based on our pro rata share of total leased square feet and annualized base rent.

Historical Office Tenant Improvements and Leasing Commissions

The following table sets forth certain historical information regarding tenant improvement and leasing commission costs per square foot for tenants at the properties in our office portfolio for the years ended December 31, 2007, 2008 and 2009 and the six months ended June 30, 2010:

	Year Ended December 31,			Six Months Ended June 30, 2010	Weighted Average January 1, 2007 to June 30, 2010
	2007	2008	2009		
Expirations					
Number of leases expired during applicable period	17	16	34	14	21
Aggregate net rentable square footage of expiring leases	68,266	61,146	218,706	57,087	107,618
Renewals					
Number of leases/renewals	16	15	12	8	13
Square feet	112,374	160,828	136,363	267,175	155,186
Tenant improvement costs(1)	$ 233,613	$ 1,136,538	$ 352,108	$ 473,557	$ 559,294
Leasing commission costs(1)	585,248	1,036,349	716,818	2,100,242	923,981
Total tenant improvement and leasing commission costs(1)	$ 818,861	$ 2,172,887	$ 1,068,926	$ 2,573,799	$ 1,483,275
Tenant improvement costs per square foot(1)	$ 2.08	$ 7.07	$ 2.58	$ 1.77	$ 3.60
Leasing commission costs per square foot(1)	5.21	6.44	5.26	7.86	5.95
Total tenant improvement and leasing commission costs per square foot(1)	$ 7.29	$ 13.51	$ 7.84	$ 9.63	$ 9.55
New Leases					
Number of leases	32	8	9	8	15
Square feet	175,280	127,110	79,787	125,493	127,121
Tenant improvement costs(1)	$ 5,009,678	$ 1,222,534	$ 2,134,466	$ 240,351	$ 2,393,821
Leasing commission costs(1)	1,182,371	933,627	291,988	1,544,508	868,200
Total tenant improvement and leasing commission costs(1)	$ 6,192,049	$ 2,156,161	$ 2,426,453	$ 1,784,859	$ 3,262,021
Tenant improvement costs per square foot(1)	$ 28.58	$ 9.62	$ 26.75	$ 1.92	$ 18.83
Leasing commission costs per square foot(1)	6.75	7.35	3.66	12.31	6.83
Total tenant improvement and leasing commission costs per square foot(1)	$ 35.33	$ 16.97	$ 30.41	$ 14.23	$ 25.66
Total					
Number of leases	48	23	21	16	29
Square feet	287,654	287,938	216,150	392,668	282,307
Tenant improvement costs(1)	$ 5,243,291	$ 2,359,072	$ 2,486,574	$ 713,909	$ 3,132,300
Leasing commission costs(1)	1,767,619	1,969,976	1,008,805	3,644,750	1,798,280
Total tenant improvement and leasing commission costs(1)	$ 7,010,910	$ 4,329,048	$ 3,495,379	$ 4,358,658	$ 4,930,580
Tenant improvement costs per square foot(1)	$ 18.23	$ 8.19	$ 11.50	$ 1.82	$ 11.10
Leasing commission costs per square foot(1)	6.14	6.84	4.67	9.28	6.37
Total tenant improvement and leasing commission costs per square foot(1)	$ 24.37	$ 15.03	$ 16.17	$ 11.10	$ 17.47

(1) Assumes all tenant improvement and leasing commissions are paid in the calendar year in which the lease commences, which may be different than the year in which they were actually paid.

Description of Our Office Properties

The Landmark at One Market will account for more than 10% of our total assets, based on book value, or more than 10% of our gross revenues as of, and for the year ended, December 31, 2009. Our five other office properties described below will each account for less than 10% of our total assets, based on book value, and less than 10% of our gross revenues as of, and for the year ended December 31, 2009.

Southern California

Torrey Reserve Campus

Torrey Reserve Campus is an office campus situated in a prime coastal location in the Del Mar Heights area of San Diego between La Jolla and Del Mar and is conveniently accessible from Interstate 5, Interstate 805 and Highway 56. The campus has views of the Pacific Ocean and the Torrey Pines state park, and is extensively landscaped with numerous high quality tenant amenities including two fully equipped gymnasiums for exclusive tenant use and a 41,000 square foot parking lot.

Torrey Reserve Campus is comprised of seven multi-tenant office buildings and two single-tenant buildings on 11 acres offering approximately 457,000 rentable square feet of space, as described below:

- *ICW Plaza*: ICW Plaza is an approximately 156,000 rentable square foot office building with Insurance Company of the West as a major tenant. ICW Plaza will serve as the headquarters of American Assets Trust, Inc.

- *Torrey Reserve—North Court*: Torrey Reserve—North Court consists of two buildings totaling approximately 130,000 rentable square feet of office space with major tenants including the law firm McDermott Will & Emery and California Bank and Trust.

- *Torrey Reserve—South Court*: Torrey Reserve—South Court consists of two buildings totaling approximately 130,000 rentable square feet of office space with international executive training firm Vistage Worldwide as a major tenant.

- *Torrey Reserve—VC I*: Torrey Reserve—VC I is an office building consisting of approximately 11,000 rentable square feet occupied by California Bank and Trust.

- *Torrey Reserve—VC II*: Torrey Reserve—VC II is a single tenant building consisting of approximately 8,000 rentable square feet occupied by a Ruth's Chris Steak House.

- *Torrey Reserve—VC III*: Torrey Reserve—VC III is an office building consisting of approximately 14,000 rentable square feet occupied by the San Diego Fertility Center and Changes Plastic Surgery.

- *Torrey Reserve—Daycare*: Torrey Reserve—Daycare is a single tenant building consisting of approximately 8,000 rentable square feet occupied by Bright Horizons, a daycare center.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Torrey Reserve Campus. However, we have approved entitlements to further develop two parcels totaling approximately 17 acres. On one parcel, we have approved entitlements to build three additional office buildings totaling approximately 41,692 square feet, as well as a subterranean parking structure. On the other parcel, we have approved entitlements to build two additional office buildings, totaling approximately 40,000 square feet. Subject to future market conditions, we may decide to develope the property based on the approved entitlements. We expect that such development would cost approximately $16.7 million and would be funded out of cash on hand, borrowings under our anticipated credit facility, standard construction loans and/or, potentially, proceeds from this offering.

Torrey Reserve Campus Primary Tenants

The following table summarizes information regarding the primary tenants of Torrey Reserve Campus as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[1]	Annualized Base Rent per Leased Square Foot[2]	Percentage of Property Annualized Base Rent
Insurance Company of the West[3]	Insurance	12/31/16[4]	2 x 5 yrs	92,982	20.4%	$2,747,069	$ 29.54	18.8%
Vistage Worldwide Inc.	Executive Training	6/30/13	1 x 5 yrs	36,980	8.1	1,131,588	30.60	7.7
California Bank and Trust	Financial Services	5/31/19 10/31/19	2 x 5 yrs	29,985	6.6	1,310,616	43.71	9.0
McDermott Will & Emery	Legal Services	11/30/18[5]	2 x 5 yrs	25,044	5.5	1,228,634	49.06	8.4
Barrister Executive Suites, Inc.	Executive Suite Rental	12/31/12	—	18,657	4.1	589,641	31.60	4.0
Top 5 Total				**203,648**	**44.6%**	**$7,007,548**	**$ 34.41**	**47.9%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.
(3) Insurance Company of the West was founded, and is indirectly controlled, by Mr. Rady, who currently serves as the chairman of its board of directors.

(4) The earliest optional termination date under this lease is June 30, 2012.
(5) The earliest optional termination under this lease date is December 1, 2011.

Torrey Reserve Campus Lease Expirations

The following table sets forth the lease expirations for leases in place at Torrey Reserve Campus as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring	Square Footage of Expiring Leases	Percentage of Property Square Feet	Annualized Base Rent[1]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[2]
Available	—	32,040	7.0%	—	—	—
2010	3	9,391	2.1	$ 232,716	1.6%	$ 24.78
2011	8	32,001	7.0	1,184,960	8.1	37.03
2012	5	13,285	29.2	4,244,467	29.0	31.85
2013	9	75,424	16.5	2,555,514	17.5	33.88
2014	5	45,024	9.9	1,535,700	10.5	34.11
2015	5	26,718	5.8	941,122	6.4	35.22
2016	2	26,365	5.8	602,437	4.1	22.85
2017	—	—	—	—	—	—
2018	2	32,710	7.2	1,479,726	10.1	45.24
2019	4	43,843	9.6	1,851,078	12.0	42.22
Thereafter	—	—	—	—	—	—
Total/Weighted Average:	**43**	**456,801**	**100.0%**	**$14,627,721**	**100.0%**	**$ 34.44**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

Torrey Reserve Campus Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for Torrey Reserve Campus as of the dates indicated below:

Date	Percentage Leased[1][2]	Annualized Base Rent per Leased Square Foot[3]	Average Net Effective Annual Base Rent per Leased Square Foot[4]
June 30, 2010	93.0%	$ 34.44	$ 34.91
December 31, 2009	90.7	35.37	37.47
December 31, 2008	96.9	34.50	34.99
December 31, 2007	99.3	32.11	30.73
December 31, 2006	91.1	25.54	26.82
December 31, 2005	88.8	25.56	26.32

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage.
(2) We have executed two leases at Torrey Reserve Campus for an aggregate of 9,066 net rentable square feet and an aggregate annualized base rent of $318,691, which commenced subsequent to June 30, 2010.

(3) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.
(4) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

Upon completion of this offering and the consummation of the formation transactions, Torrey Reserve Campus will be subject to an $72.8 million mortgage loan, as described in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering."

The current real estate tax rate for Torrey Reserve Campus is $10.1043 per $1,000 of assessed value. The total annual tax for Torrey Reserve Campus at this rate for the tax year ended June 30, 2010 was $1,235,311 (at a taxable assessed value of $113.1 million). In addition, there was $92,457 in various direct assessments imposed on Torrey Reserve Campus by the City of San Diego and County of San Diego for the tax year.

Solana Beach Corporate Centre

Solana Beach Corporate Centre is located adjacent to Solana Beach Towne Centre between the Lomas Santa Fe and Via de La Valle exits off Interstate 5 in San Diego. Solana Beach Corporate Centre, which was constructed between 1982 and 2005, is comprised of four three-story buildings totaling approximately 212,000 rentable square feet of office space and offers the convenience of nearby restaurants and shopping. The property's tenant base primarily consists of smaller legal, professional, medical office and financial service firms.

Other than (1) a facade beam replacement, which is expected to occur within the next two years and to cost approximately $1 million, and (2) recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Solana Beach Corporate Centre. The facade beam replacement will be funded out of cash on hand. In addition, as discussed above with respect to Solana Beach Towne Centre, we have entitlements to develop an additional approximately 13,000 square feet on the property, which will serve to connect the Solana Beach Corporate Centre with our neighboring retail property. Subject to future market conditions, we may decide to develop the property based on the approved entitlements. We expect that such development would cost approximately $5.9 million and would be funded out of cash on hand, borrowings under our anticipated credit facility, standard construction loans and/or, potentially, proceeds from this offering.

Solana Beach Corporate Centre Primary Tenants

The following table summarizes information regarding the primary tenants of the Solana Beach Corporate Centre as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[1]	Annualized Base Rent per Leased Square Foot[2]	Percentage of Property Annualized Base Rent
Daley & Heft Attorneys at Law	Legal Services	8/31/15	1 x 5 yrs	13,162	6.2%	$ 355,374	$ 27.00	5.3%
Arthur L. Gruen M.D.	Medical Services	3/31/12	1 x 5 yrs	13,075	6.2	486,390	37.20	7.3
Zenith Insurance Company	Insurance	5/31/11	1 x 5 yrs	9,740	4.6	388,071	39.84	5.8
Taiyo Yuden (USA), Inc.	General Office	4/30/14	2 x 5 yrs	9,698	4.6	358,611	36.98	5.4
Leavitt Group Agency of San Diego, Inc.	Insurance	3/31/13	2 x 5 yrs	9,072	4.3	278,299	30.68	4.2
Top 5 Total				**54,747**	**25.8%**	**$1,866,745**	**$ 34.10**	**28.0%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.

Solana Beach Corporate Centre Lease Expirations

The following table sets forth the lease expirations for leases in place at the Solana Beach Corporate Centre as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring	Square Footage of Expiring Leases	Percentage of Property Square Feet	Annualized Base Rent[1]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[2]
Available	—	24,097	11.4%	—	—	—
2010	10	41,523	19.6	$1,610,333	24.2%	$ 38.78
2011	12	34,748	16.4	1,287,727	19.3	37.06
2012	13	47,764	22.6	1,708,483	25.6	35.77
2013	7	25,926	12.2	848,177	12.7	32.72
2014	3	13,929	6.6	483,366	7.3	34.70
2015	3	19,899	9.4	596,093	8.9	29.96
2016	1	3,910	1.8	131,376	2.0	33.60
2017	—	—	—	—	—	—
2018	—	—	—	—	—	—
2019	—	—	—	—	—	—
Thereafter	—	—	—	—	—	—
Total/Weighted Average	**49**	**211,796**	**100.0%**	**$6,665,555**	**100.0%**	**$ 35.51**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.

(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

Solana Beach Corporate Centre Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for the Solana Beach Corporate Centre as of the dates indicated below:

Date	Percentage Leased[1][2]	Annualized Base Rent per Leased Square Foot[3]	Average Net Effective Annual Base Rent per Leased Square Foot)[4]
June 30, 2010	88.6%	$ 35.51	$ 33.86
December 31, 2009	88.7	35.31	34.96
December 31, 2008	93.1	34.94	35.08
December 31, 2007	92.0	33.40	30.55
December 31, 2006	68.4	32.33	31.29
December 31, 2005	55.0	26.68	25.29

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage.
(2) We have executed three leases at Solana Beach Corporate Centre for an aggregate of 9,103 net rentable square feet and an aggregate annualized base rent of $168,608, which commenced subsequent to June 30, 2010.
(3) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.
(4) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

Upon completion of this offering and the consummation of the formation transactions, Solana Beach Corporate Centre will be subject to a $49.3 million mortgage loan, as described in “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering.”

The current real estate tax rate for Solana Beach Corporate Centre is $10.043 per $1,000 of assessed value. The total annual tax for Solana Beach Corporate Centre at this rate for the tax year ended June 30, 2010 was $453,622 (at a taxable assessed value of $37.1 million). In addition, there was $81,385 in various direct assessments imposed on Solana Beach Corporate Centre by the City of Solana Beach and County of San Diego for the tax year ended June 30, 2010.

Valencia Corporate Center

Valencia Corporate Center is an approximately 194,000 rentable square foot office complex consisting of three buildings located just off the Golden State Freeway in the rapidly developing Santa Clarita Valley of Los Angeles County. The entire complex was approximately 76.9% leased as of June 30, 2010. Two buildings, which were constructed in 1999, were approximately 83.9% leased as of June 30, 2010. The most recently constructed building, which was completed in 2007, offers lease-up potential and was approximately 57.2% leased as of June 30, 2010. We believe that this property’s high quality construction will attract new tenants in the Valencia submarket, while maintaining cash flow from the existing tenant base. Major tenants include Insurance Company of the West, the Los Angeles Department of Children and Family Services and Psomas.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Valencia Corporate Center.

Valencia Corporate Center Tenants

The following table summarizes information regarding the primary tenants of the Valencia Corporate Center as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[1]	Annualized Base Rent per Leased Square Foot[2]	Percentage of Property Annualized Base Rent
Insurance Company of the West[3]	Insurance	6/30/19	2 x 5 yrs	54,214	27.9%	$1,556,071	$ 28.70	36.7%
Los Angeles Department of Children and Family Services	Services	5/20/12	2 x 5 yrs	32,743	16.9	719,036	21.96	17.0
Psomas	Engineering	11/30/17	1 x 5 yrs	15,312	7.9	506,828	33.10	12.0
North LA County Regional Center	Non-profit Services	7/31/13	1 x 5 yrs	10,743	5.5	318,680	29.66	7.5
Creativa Associates Financial and Insurance Services, Inc.	Insurance	3/31/13	1 x 5 yrs	6,843	3.5	216,177	31.59	5.1
Top 5 Total				**119,855**	**61.7%**	**$3,316,793**	**$ 27.67**	**78.3%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.
(3) Insurance Company of the West was founded by, and is indirectly controlled by, Mr. Rady, who currently serves as the chairman of its board of directors. Insurance Company of the West has two leases at Valencia Corporate Center, one for 43,956 square feet expiring June 30, 2019 and one for 10,258 square feet that is month-to-month.

Valencia Corporate Center Lease Expirations

The following table sets forth the lease expirations for leases in place at the Valencia Corporate Center as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring	Square Footage of Expiring Leases	Percentage of Property Square Feet	Annualized Base Rent[1]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[2]
Available	—	44,939	23.1%	—	—	—
2010	3	16,267	8.4	$ 359,751	8.5%	$ 22.11
2011	—	—	—	—	—	—
2012	2	34,202	17.6	761,620	18.0	22.27
2013	4	25,581	13.2	775,853	18.3	30.33
2014	3	14,047	7.2	462,703	10.9	32.94
2015	—	—	—	—	—	—
2016	—	—	—	—	—	—
2017	1	15,312	7.9	506,828	12.0	33.10
2018	—	—	—	—	—	—
2019	1	43,956	22.6	1,371,427	32.4	31.20
Thereafter	—	—	—	—	—	—
Total/Weighted Average:	**14**	**194,304**	**100.0%**	**$4,238,162**	**100.0%**	**$ 28.37**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

Valencia Corporate Center Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for the Valencia Corporate Center as of the dates indicated below:

Date	Percentage Leased[1][2]	Annualized Base Rent per Leased Square Foot[3]	Average Net Effective Annual Base Rent per Leased Square Foot[4]
June 30, 2010	75.1%	$ 28.37	$ 29.38
December 31, 2009	69.8	28.87	29.55
December 31, 2008	79.4	26.51	23.48
December 31, 2007	76.0	26.20	20.65
December 31, 2006	100.0	25.28	21.33
December 31, 2005	97.0	23.64	19.86

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage.
(2) We have executed a lease at Valencia Corporate Center for 2,223 net rentable square feet and annualized base rent of $97,096, which commenced subsequent to June 30, 2010.
(3) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.
(4) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

The current real estate tax rate for Valencia Corporate Center is $11.6118 per $1,000 of assessed value. The total annual tax for Valencia Corporate Center at this rate for the tax year ended June 30, 2010 was $364,703 (at a taxable assessed value of $25.6 million). In addition, there was $67,644 in various direct assessments imposed on Valencia Corporate Center by the City of Santa Clarita and County of Los Angeles for the 2009 tax year.

Northern California—Wholly Owned

160 King Street

160 King Street is a nine story, high quality office building in the South of Market, or SOMA, submarket of San Francisco, California. Built in 2002, the building contains approximately 168,000 rentable square feet and a five-level structured parking garage that offers 376 reserved and public spaces on-site. The property is located directly across the street from AT&T Park, home of the San Francisco Giants, and is close to the city's financial district and the Moscone Convention Center. It is easily accessible by both public transportation and Highway 280 to residents throughout the San Francisco Peninsula and East Bay areas. The SOMA submarket historically has had a high concentration of technology and Internet-related tenants. As investments in technology-related businesses continue to increase, we believe that 160 King Street will attract many of these companies, enlarging and diversifying the potential tenant base for this property beyond more traditional knowledge-based tenants such as law firms and medical groups.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of 160 King Street.

160 King Street Primary Tenants

The following table summarizes information regarding the primary tenants of 160 King Street as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[1]	Annualized Base Rent per Leased Square Foot[2]	Percentage of Property Annualized Base Rent
DLA Piper[3]	Legal Services	2/28/12	1 x 5 yrs	69,656	41.5%	$3,234,661	$ 46.44	59.4%
Brown & Toland	Medical Services	7/31/17	1 x 5 yrs	53,147	31.6	1,403,717	26.41	25.8
Liebert Cassidy Whitmore	Legal Services	2/28/15	1 x 5 yrs	11,162	6.6	401,832	36.00	7.4
Ligne Roset San Francisco	Interior Design	7/31/12	1 x 5 yrs	6,646	4.0	186,686	28.09	3.4
KlingStubbins	Architecture	10/31/10	1 x 5 yrs	3,184	1.9	99,054	31.11	1.8
Top 5 Total				**143,795**	**85.6%**	**$5,325,951**	**$ 37.04**	**97.9%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.
(3) DLA Piper has leased two floors of 160 King Street. DLA Piper has vacated this space in conjunction with its relocation to a new office building but will continue to pay rent on this space until the lease expires in February 2012. As part of DLA Piper's relocation, the manager of DLA Piper's new building is responsible for subleasing DLA Piper's vacated space in 160 King Street. As of July 31, 2010, 28,175 square feet, 28,788 square feet and 3,570 square feet of DLA Piper's vacated space has been subleased to Pier 38 Maritime Business, Greenberg Traurig, LLP and Capsilon Corporation, respectively, and the remainder remains available. We will continue to collect rent from DLA Piper through February 2012 regardless of whether the remaining space is subleased.

160 King Street Lease Expirations

The following table sets forth the lease expirations for leases in place at 160 King Street as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring	Square Footage of Expiring Leases	Percentage of Property Square Feet	Annualized Base Rent[1]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[2]
Available	—	19,987	11.9%	—	—	—
2010	1	3,184	1.9	$ 99,054	1.8%	$ 31.11
2011	—	—	—	—	—	—
2012	5	80,505	47.9	3,538,006	65.0	43.95
2013	—	—	—	—	—	—
2014	—	—	—	—	—	—
2015	1	11,162	6.6	401,832	7.4	36.00
2016	—	—	—	—	—	—
2017	1	53,147	31.6	1,403,717	25.8	26.41
2018	—	—	—	—	—	—
2019	—	—	—	—	—	—
Thereafter	—	—	—	—	—	—
Total/Weighted Average	**8**	**167,985**	**100.0%**	**$5,442,602**	**100.0%**	**$ 36.77**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

160 King Street Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for 160 King Street as of the dates indicated below:

Date	Percentage Leased[1][2]	Annualized Base Rent per Leased Square Foot[3]	Average Net Effective Annual Base Rent per Leased Square Foot[4]
June 30, 2010	88.1%	$ 36.77	$ 37.54
December 31, 2009	96.2	35.45	34.77
December 31, 2008	96.2	35.04	34.67
December 31, 2007	100.0	33.25	33.22
December 31, 2006	100.0	31.45	40.36
December 31, 2005	98.5	28.66	36.93

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage.
(2) We have executed one lease at 160 King Street for 7,385 net rentable square feet and annualized base rent of $310,184, which commenced subsequent to June 30, 2010. Assuming inclusion of this lease, percentage leased would be 92.5%.
(3) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.
(4) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

The current real estate tax rate for 160 King Street is $11.59 per $1,000 of assessed value. The total annual tax for 160 King Street at this rate for the tax year ended June 30, 2010 was $865,782 (at a taxable assessed value of $74.7 million). In addition, there was $236 in various direct assessments imposed on 160 King Street by the City of San Francisco and County of San Francisco for the tax year ended June 30, 2010.

The Landmark at One Market

The Landmark at One Market is an 11-story, steel-framed, historic high quality office building located in San Francisco, California. The property has approximately 422,000 rentable square feet consisting of the Landmark office building, including approximately 44,220 rentable square feet of space located in an adjacent six-story leasehold known as the Annex, which we lease as lessee. We currently have a long-term master lease on the Annex with the master lessor, Paramount Group, effective through June 30, 2011, which we have the option to extend until 2026 by way of three five-year extension options. Subsequent to June 30, 2010, we exercised a renewal option for a renewal term of July 1, 2011 through June 30, 2016. Monthly lease payments during this renewal term will be the greater of current payments or 97.5% of the prevailing rate at the start of the renewal term. Currently, minimum annual payments under the lease are $1,403,000. The property is located across the street from the Embarcadero Centre and the historic Ferry Building at the corner of Market Street and Steuart Street in the core of San Francisco’s Financial District. This location provides access to numerous tenant amenities, a developed transportation infrastructure and diverse cultural attractions. The Landmark at One Market is also the only building in San Francisco with panoramic views of the San Francisco Bay and both California and Market streets. The building, which was originally built in 1917 and served as the headquarters of the Southern Pacific Railroad until 1998, received a complete seismic retrofit and renovation in 2000. We believe The Landmark at One Market occupies a premier location in San Francisco’s Financial District and will continue to command market leading rents from premier Bay Area tenants.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of The Landmark at One Market.

The Landmark at One Market Primary Tenants

The following table summarizes information regarding the primary tenants of The Landmark at One Market as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet(1)	Percentage of Property Net Rentable Square Feet	Annualized Base Rent(2)	Annualized Base Rent per Leased Square Foot(3)	Percentage of Property Annualized Base Rent
salesforce.com(4)	Business Solutions	4/30/20 6/30/19	2 x 5 yrs	125,663	29.8%	$ 7,411,917	$ 58.98	34.5%
Del Monte Corporation(4)	Brand Management	12/18/10	2 x 5 yrs	101,229	24.0	5,456,239	53.90	25.4
Autodesk(5)	Software	12/31/15 12/31/17	1 x 3 yrs 1 x 4 yrs 1 x 6 yrs	46,170	10.9	2,202,706	47.71	10.2
Microsoft Corporation(5)	Software	12/31/12	—	45,795	10.9	2,885,085	63.00	13.4
Simpson Gumpertz & Heger	Architecture	10/31/13	—	27,226	6.5	782,322	28.73	3.6
Top 5 Total				**346,083**	**82.1%**	**$18,738,268**	**$ 54.14**	**87.1%**

(1) Total leased square feet includes approximately 44,220 rentable square feet of space leased to us under the master lease with Paramount Group.
(2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(3) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.
(4) Del Monte Corporation announced that it will vacate its 101,229 square feet of office space at The Landmark at One Market when its lease expires in December 2010. Salesforce.com, which currently leases 125,653 square feet of office space of this property, has signed a lease to expand into the entire space to be vacated by Del Monte Corporation. Pursuant to the terms of this lease, which commences in June 2011 and has an initial term of ten years, salesforce.com will receive one year of free rent. Total abatements under the new lease are $4,276,899, including $356,408 for the month of June 2011.
(5) Autodesk has entered into leases to expand into the approximately 69,000 square feet of space currently leased by Microsoft and Evelyn & Walter Haas Jr. Fund. Since December 2007, Autodesk has subleased 45,795 square feet of space leased to Microsoft at The Landmark at One Market. We have entered into a lease with Autodesk, for Autodesk to take over Microsoft's entire 45,795 square feet of space upon the termination of Microsoft's lease in December 2012. In addition, Autodesk is currently subleasing 5,334 square feet of space leased to Evelyn & Walter Haas Jr. Fund, or the Haas Fund, at The Landmark at One Market. We have entered into a lease with Autodesk, for Autodesk to take over the Haas Fund's entire 22,699 square feet of space upon the termination of the Haas Fund's lease in January 2011.

The Landmark at One Market Lease Expirations

The following table sets forth the lease expirations for leases in place at The Landmark at One Market as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring	Square Footage of Expiring Leases[1]	Percentage of Property Net Rentable Square Feet[1]	Annualized Base Rent[2]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[3]
Available	—	—	—	—	—	—
2010	4	102,932	24.4%	$ 5,456,239	25.4%	$ 53.01
2011	2	23,369	5.5	1,339,342	6.2	57.31
2012	2	45,795	10.9	2,885,085	13.4	63.00
2013	4	49,698	11.8	1,697,932	7.9	34.16
2014	—	—	—	—	—	—
2015	2	46,170	10.9	2,202,706	10.2	47.71
2016	—	—	—	—	—	—
2017	—	—	—	—	—	—
2018	—	—	—	—	—	—
2019	1	6,211	1.5	392,411	1.8	63.18
Thereafter	3	147,759	35.0	7,530,681	35.0	50.97
Total/Weighted Average:	**18**	**421,934**	**100.0%**	**$21,504,396**	**100.0%**	**$ 50.97**

(1) Amount includes approximately 44,220 rentable square feet of space leased to us under the master lease with Paramount Group, which we have subsequently subleased to tenants. Amounts are included for the years in which the leases with such tenants expire.
(2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.
(3) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

The Landmark at One Market Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for The Landmark at One Market as of the dates indicated below:

Date	Percentage Leased[1]	Annualized Base Rent per Leased Square Foot[2]	Average Net Effective Annual Base Rent per Leased Square Foot[3]
June 30, 2010	100.0%	$ 50.97	$ 48.74
December 31, 2009	100.0	50.71	49.28
December 31, 2008	100.0	50.11	49.27
December 31, 2007	100.0	49.24	49.04
December 31, 2006	90.0	54.44	54.48
December 31, 2005	99.0	56.17	47.94

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage.
(2) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.

(3) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

Upon completion of this offering and the consummation of the formation transactions, The Landmark at One Market will be subject to a $133 million mortgage loan, as described in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering."

The current real estate tax rate for The Landmark at One Market is $11.59 per $1,000 of assessed value. The total annual tax for The Landmark at One Market at this rate for the tax year ended June 30, 2010 was $2,407,249 (at a taxable assessed value of $207.7 million). In addition, there was $236 in various direct assessments imposed on The Landmark at One Market by the City of San Francisco and County of San Francisco for the tax year ended June 30, 2010.

Northern California—Joint Venture

Fireman's Fund Headquarters

Fireman's Fund Headquarters consists of three, four-story, steel-framed, high quality office buildings totaling approximately 710,000 rentable square feet spread over an extensively landscaped 65 acre site, which includes a two-acre man-made lake and 1,834 surface parking spaces. The property is located immediately off of U.S. Highway 101 in Marin County providing convenient access to San Francisco and the East Bay area, and offers excellent visibility from one of the Bay Area's most heavily traveled freeways. The largest of the three buildings was constructed in 1983 and was renovated in 1993 during construction of the other two buildings. The property is 100% leased on a triple net basis to Fireman's Fund Insurance Company, or Fireman's Fund (rated as of June 20, 2010, "A-2" by Moody's and "AA-" by Standard & Poor's), a wholly owned subsidiary of Allianz AG, serving as its headquarters campus. Fireman's Fund, which is one of Marin County's largest private employers, has a current lease extending through 2018, with no renewal options. As of June 30, 2010 annualized base rent for Fireman's Fund Headquarters was $20,227,800 with annualized base rent per leased square foot of $28.48. The rent pursuant to this lease will be subject to adjustments in 2013 and 2016 based upon the consumer price index, subject to a maximum total increase of 7.5% during the course of the lease. Fireman's Fund has an irrevocable right of first offer to purchase the property if we propose to sell all or a portion of the property. In the event that we choose to dispose of this property, we would be required to notify Fireman's Fund, prior to offering this property to any other potential buyer, of the price at which we would be willing to sell the property, and Fireman's Fund would have the right, within 30 days of receiving such notice, to agree to purchase the property at that price. In such event, if Fireman's Fund elected not to exercise its right to purchase, we would not be permitted to sell the property within six months thereafter to a third party unless the sale price is at least 97% of the price at which the property was offered to Fireman's Fund.

We hold a 25% interest in the joint venture that owns Fireman's Fund Headquarters. The remaining 75% interest is held, indirectly, by General Electric Pension Trust. As a result of the formation transactions our operating partnership indirectly will become the managing member and will be responsible for day-to-day management of the joint venture; however, major decisions regarding the joint venture will require approval of both members. Unless specifically exempted by the joint venture operating agreement, if either member wishes to transfer its interest in the joint venture, it must give the other member 60 days written notice setting forth the terms, including the price, at which the transferring member would be willing to transfer its interest in the joint venture. The member receiving such notice will have a right of first offer with respect to such interest that may be exercised within 45 days. If the right of first offer is not exercised, or waived, the transferring member may sell its interest in the joint venture for not less than 95% of the price that was offered, at any time during the following 180 days. In addition, either member, for a period of 30 days following the occurrence of a "triggering event," may provide notice to the other member of its intent to either (1) purchase the interest of the other

member or (2) sell its interest to the other member, for a price to be determined by the joint venture's accountant. The member receiving such notice has the choice of either (1) purchasing the interest of the notifying member or (2) selling its interest to the notifying member at such price. "Triggering events" include, among other things, disagreements as to any major decision and the discovery of a transfer in violation of the joint venture operating agreement.

Other than recurring capital expenditures, which are the obligation of the joint venture and not our obligation, there are no immediate plans with respect to major renovation or redevelopment of Fireman's Fund Headquarters. We believe there are significant expansion opportunities on this property, and we have applications pending for entitlements totaling approximately 766,000 square feet, however there can be no assurances that we will be able to obtain the entitlements. We are currently in the design and planning phases for neighboring retail and lodging facilities, which we believe will allow us to capitalize on the incremental development potential. If we obtain the entitlements**,** subject to future market conditions, we may decide to develop the property based on such entitlements. At this time we are unable to estimate the cost of such development.

Fireman's Fund Headquarters Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for the Fireman's Fund Headquarters as of the dates indicated below:

Date	Percentage Leased[1]	Annualized Base Rent per Leased Square Foot[2]	Average Net Effective Annual Base Rent per Leased Square Foot[3]
June 30, 2010	100.0%	$ 28.48	$ 28.48
December 31, 2009	100.0	28.48	28.48
December 31, 2008	100.0	28.48	28.48
December 31, 2007	100.0	28.48	28.48
December 31, 2006	100.0	26.49	26.49
December 31, 2005	100.0	26.49	26.49

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage.
(2) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.
(3) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

Upon completion of this offering and the consummation of the formation transactions, Fireman's Fund Headquarters will be subject to a $176.5 million mortgage loan, as described in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering."

The current real estate tax rate for Fireman's Fund Headquarters is $11.028 per $1,000 of assessed value. The total annual tax for Fireman's Fund Headquarters at this rate for the tax year ended June 30, 2010 was $3,291,930 (at a taxable assessed value of $275.7 million). In addition, there was $251,444 in various direct assessments imposed on Fireman's Fund Headquarters by the City of Novato and County of Marin for the 2009 tax year.

Future Office Development

In addition to the properties discussed above, upon completion of this offering and consummation of the formation transactions, we will own two parcels of undeveloped land located in San Diego, California, collectively referred to as Sorrento Pointe, totaling approximately 14 acres. On March 8, 1998, we submitted to the City of San Diego a proposed development plan for Sorrento Pointe, which contemplates a two building, 79,053 square foot office project. If we obtain the entitlements, subject to future market conditions, we may decide to develop the property based on such entitlements. We expect that such development would cost approximately $30.3 million and would be funded out of cash on hand, borrowings under our anticipated credit facility, standard construction loans and/or, potentially, proceeds from this offering.

Currently, we lease portions of Sorrento Pointe to certain cellular providers to host cellular telecommunications installations. We receive $17,600 per month in aggregate rent under these leases. These cellular telecommunications installations will be incorporated into any future development of the property. The Sorrento Pointe land also contains a billboard that we expect to remove upon commencement of any development.

Mixed-Use Portfolio

Our mixed-use portfolio includes a mixed-use property comprised of approximately 97,000 rentable square feet of retail space and a 369-room all-suite hotel. As of June 30, 2010, the retail portion of our mixed-use property was approximately 96.5% leased to 49 tenants. As of June 30, 2010 the weighted average remaining lease term for the retail portion of our mixed-use portfolio was 79.5 months. In addition, for the 12 months ended June 30, 2010, the average occupancy at the hotel portion of our mixed-use property was approximately 83.6%. Our mixed-use property is located in Honolulu, Hawaii.

Oahu, Hawaii

Waikiki Beach Walk

Waikiki Beach Walk is a mixed-use retail and hotel property in Honolulu, Hawaii, located just steps from the destination beaches of Waikiki, as well as the upscale offerings of Kalakaua Street. It contains approximately 97,000 rentable square feet of restaurant and retail space, for which construction was completed in 2008, and is conveniently located at the base of our 369-room hotel, which was redeveloped and reconfigured as an all-suite hotel in 2007, and is managed by Outrigger Hotels & Resorts, or Outrigger. The 97,000 rentable square feet of restaurant and retail space includes approximately 3,000 rentable square feet that we lease from First Hawaiian Bank pursuant to a sublease, effective through December 31, 2021. Among the more than 40 retailers and restaurants at Waikiki Beach Walk, major tenants include Yard House Waikiki, LLC d/b/a Yard House Restaurant, QS Retail, Inc. d/b/a Quicksilver, Beachwalk Steak House, LLC d/b/a Ruth’s Chris Steak House and Roy’s Waikiki. At the hotel portion of this property, for the twelve month period ended June 30, 2010, we achieved an average occupancy of 83.6%, an average daily rate of $221.97, revenue per available room of $185.46 and total revenue of $25.5 million.

By providing centralized and convenient dining, shopping and lodging options for tourists, this property benefits from the synergies and competitive advantages created by a mixed-use property. For example the hotel consistently outperforms in its upscale and upper upscale peer groups for the local market. Further, because the property is at the heart of a tourist destination, local traffic accounts for a considerable portion of sales across most of our restaurants and shops.

Under our management agreement with Outrigger, we pay Outrigger a monthly management fee of 6.0% of gross operating profit, provided that the aggregate management fee for any year shall not exceed 3.5% of gross revenues for such fiscal year. This 6.0% fee includes the fee payable to the franchisor of the brand under which

this hotel operates. Pursuant to the terms of the management agreement, if the management agreement is terminated in certain instances, including upon a transfer by us of the hotel or upon a default by us under the management agreement, we will be required to pay a cancellation fee calculated by multiplying (1) the management fees for the previous 12 months by (2) (A) eight, if the agreement is terminated in the first 11 years, or (B) four, three, two or one, if the agreement is terminated in the twelfth, thirteenth, fourteenth or fifteenth year, respectively, of the term of the agreement. We may not terminate the management agreement without cause.

Pursuant to a letter agreement dated September 6, 2010, we have agreed, provided that this offering is consummated, to: (1) use our best efforts to obtain the release of Outrigger from its guarantee with respect to a $130.3 million mortgage loan related to Waikiki Beach Walk—Retail that will remain outstanding after this offering, provided that, if the lender of such loan does not agree to such a release, we will use our best efforts to cause the lender to agree to look to us or the operating partnership for primary recourse under such guarantee prior to looking to Outrigger for any recourse under such guarantee and we or the operating partnership, will indemnify, defend and hold harmless Outrigger for any losses, costs and expenses it incurs as a secondary guarantor of such loan, provided further that, if neither of the foregoing proposals are accepted by such lender, then we and the operating partnership, will indemnify, defend and hold harmless Outrigger for any losses, costs and expenses it incurs under such guarantee; (2) assume the indemnification obligation which American Assets, Inc. had with respect to Outrigger with regarding any adverse tax consequences arising from the formation of the Waikiki Beach Walk–Hotel tenancy in common; and (3) along with the operating partnership, waive and relinquish all rights and benefits afforded to us or the operating partnership, other than pursuant to documents entered into pursuant to the formation transactions to which certain affiliates of Outrigger are a party, for claims against Outrigger and/or its affiliates, for actions or omissions by Outrigger and/or its affiliates taken prior to the completion of the formation transactions.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Waikiki Beach Walk.

Waikiki Beach Walk—Retail Demographics

The following table has been derived from the market study prepared for us by RCG:

	1-Mile Radius	3-Mile Radius	5-Mile Radius	Hawaii	United States
Population					
2010 Estimate	44,896	173,966	264,609	1,300,985	309,038,974
2015 Projection	45,469	175,657	265,394	1,335,889	321,675,005
Estimated Growth 2010-2015	1.3%	1.0%	0.3%	2.7%	4.1%
Households					
2010 Estimate	23,722	79,961	110,727	444,202	116,136,617
2015 Projection	24,039	81,411	112,189	460,493	120,947,177
Estimated Growth 2010-2015	1.3%	1.8%	1.3%	3.7%	4.1%
2010 Estimated Average Household Income	$57,067	$ 70,098	$ 75,938	$ 85,525	$ 71,071
2010 Estimated Median Household Income	$43,768	$ 49,432	$ 52,484	$ 66,754	$ 52,795

Source: Census, Claritas, Nielson Company

Waikiki Beach Walk—Retail Primary Tenants

The following table summarizes information regarding the primary tenants of the Waikiki Beach Walk—Retail as of June 30, 2010:

Tenant	Principal Nature of Business	Lease Expiration	Renewal Options	Total Leased Square Feet	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[1]	Annualized Base Rent per Leased Square Foot[2]	Percentage of Property Annualized Base Rent
Yardhouse Restaurant	Restaurant	2/28/20	2 x 5 yrs	11,558	12.0%	$ 369,902	$ 32.00	3.9%
Roy's	Restaurant	1/31/22	—	10,229	10.6	442,448	43.25	4.7
Ruth's Chris Steak House	Restaurant	2/28/19	2 x 5 yrs	6,288	6.5	251,268	39.96	2.7
Quicksilver	Apparel	12/31/15	6 x 1 yr	6,214	6.4	1,528,644	246.00	16.3
G.P. Lewers, LLC d/b/a/ Giovanni's Pastrami	Restaurant	1/31/17	1 x 3 yrs 1 x 4 yrs	5,402	5.6	337,110	62.40	3.6
Top 5 Total				**39,691**	**41.1%**	**$2,929,372**	**$ 73.80**	**31.2%**

(1) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 under the applicable lease, by (ii) 12.
(2) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent under the applicable lease, by (ii) square footage under such lease.

Waikiki Beach Walk—Retail Lease Expirations

The following table sets forth the lease expirations for leases in place at Waikiki Beach Walk – Retail as of June 30, 2010, plus available space, for each of the ten full calendar years beginning January 1, 2010. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

Year of Lease Expiration	Number of Leases Expiring[1]	Square Footage of Expiring Leases	Percentage of Property Net Rentable Square Feet	Annualized Base Rent[2]	Percentage of Property Annualized Base Rent	Annualized Base Rent per Leased Square Foot[3]
Available	—	3,354	3.5%	—	—	—
2010	3	5,300	5.5	$ 377,068	4.0%	$ 71.14
2011	2	790	0.8	164,774	1.8	208.58
2012	4	6,184	6.4	986,701	10.5	159.56
2013	7	6,456	6.7	954,600	10.2	147.86
2014	2	1,959	2.0	222,135	2.4	113.39
2015	2	12,697	13.1	1,912,891	20.3	150.66
2016	5	10,191	10.6	1,721,086	18.3	168.88
2017	4	11,452	11.9	1,030,744	11.0	90.01
2018	2	4,673	4.8	617,910	6.6	132.23
2019	1	6,288	6.5	251,268	2.7	39.96
Thereafter	4	27,225	28.2	1,161,042	12.4	42.65
Total/Weighted Average:	**36**	**96,569**	**100%**	**$9,400,219**	**100.0%**	**$ 100.84**

(1) Number of leases expiring reflects potential early terminations applicable to certain leases in the event that specified sales targets are not achieved as of such date.
(2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements)) for the month ended June 30, 2010 for the leases expiring during the applicable period, by (ii) 12.
(3) Annualized base rent per leased square foot is calculated by dividing (i) annualized base rent for leases expiring during the applicable period, by (ii) square footage under such expiring leases.

Waikiki Beach Walk—Retail Percentage Leased and Base Rent

The following table sets forth the percentage leased, annualized base rent per leased square foot and average net effective annual base rent per leased square foot for Waikiki Beach Walk – Retail as of the dates indicated below:

Date	Percentage Leased[1]	Annualized Base Rent per Leased Square Foot[2]	Average Net Effective Annual Base Rent per Leased Square Foot[3]
June 30, 2010	96.5%	$ 100.84	$ 99.75
December 31, 2009	97.4	99.77	105.10
December 31, 2008	98.7	107.80	113.36
December 31, 2007	98.0	81.46	92.93
December 31, 2006	90.9	160.71	179.52

(1) Percentage leased is calculated as (i) square footage under commenced leases as of the dates indicated above, divided by (ii) net rentable square feet, expressed as a percentage.
(2) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.
(3) Average net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

Upon completion of this offering and the consummation of the formation transactions, Waikiki Beach Walk—Retail will be subject to a $130.3 million mortgage loan, as described in “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering.”

The current real estate tax rate for Waikiki Beach Walk is $12.40 per $1,000 of assessed value. The total annual tax for Waikiki Beach Walk at this rate for the tax year ended June 30, 2010 was $772,847 (at a taxable assessed value of $62.3 million). In addition, there was $9,556 in various direct assessments imposed on Waikiki Beach Walk by the City of Honolulu and County of Honolulu for the tax year ended December 31, 2009.

Historical Mixed-Use Tenant Improvements and Leasing Commissions

The following table sets forth certain historical information regarding tenant improvement and leasing commission costs per square foot for tenants at the retail portion of our mixed-use property for the years ended December 31, 2007, 2008 and 2009 and the six months ended June 30, 2010:

	Year Ended December 31,			Six Months Ended June 30, 2010	Weighted Average January 1, 2010 to June 30, 2010
	2007	2008	2009		
Expirations					
Number of leases expired during applicable period	1	3	4	3	3
Aggregate net rentable square footage of expiring leases	522	6,936	3,380	2,836	3,502
Renewals					
Number of leases/renewals….	—	—	1	—	—
Square Feet….	—	—	959	—	274
Tenant improvement costs(1)	$ —	$ —	$100,005	$ —	$ 8,164
Leasing commission costs(1)	—	—	—	—	—
Total tenant improvement and leasing commission costs(1)	$ —	$ —	$100,005	$ —	$ 8,164
Tenant improvement costs per square foot(1)	$ —	$ —	$ 104.28	$ —	$ 29.79
Leasing commission costs per square foot(1)	—	—	—	—	—
Total tenant improvement and leasing commission costs per square foot(1)	$ —	$ —	$ 104.28	$ —	$ 29.79
New Leases					
Number of leases….	4	4	5	2	4
Square Feet….	3,080	7,366	2,920	1,925	4,094
Tenant improvement costs(1)	$131,762	$ —	$ —	$ —	$ 50,039
Leasing commission costs(1)	13,614	86,182	25,024	—	28,879
Total tenant improvement and leasing commission costs(1)	$145,376	$86,182	$ 25,024	$ —	$ 78,918
Tenant improvement costs per square foot(1)	$ 42.78	$ —	$ —	$ —	$ 12.22
Leasing commission costs per square foot(1)	4.42	11.70	8.57	—	7.05
Total tenant improvement and leasing commission costs per square foot(1)	$ 47.20	$ 11.70	$ 8.57	$ —	$ 19.27
Total					
Number of leases….	4	4	6	2	4
Square Feet….	3,080	7,366	3,879	1,925	4,368
Tenant improvement costs(1)	$131,762	$ —	$404,502	$ —	$183,525
Leasing commission costs(1)	13,614	86,182	33,243	—	30,812
Total tenant improvement and leasing commission costs(1)	$145,376	$86,182	$437,745	$ —	$214,337
Tenant improvement costs per square foot(1)	$ 42.78	$ —	$ 104.28	$ —	$ 42.02
Leasing commission costs per square foot(1)	4.42	11.70	8.57	—	7.05
Total tenant improvement and leasing commission costs per square foot(1)	$ 47.20	$ 11.70	$ 112,85	$ —	$ 49.07

(1) Assumes all tenant improvement and leasing commissions are paid in the calendar year in which the lease commences, which may be different than the year in which they were actually paid.

Multifamily Portfolio

Our multifamily portfolio consists of four multifamily properties comprising an aggregate of 922 units. As of June 30, 2010, our multifamily properties were approximately 93.2% leased. All of our multifamily properties are located in costal submarkets in San Diego, California. Our multifamily leases, other than at our RV resort, generally have lease terms ranging from 7 to 15 months, with a majority having twelve-month lease terms. Spaces at the RV resort can be rented at a daily, weekly or monthly rate.

Property	Location	Year Built/Renovated	Number of Buildings	Units[1]	Percentage Leased[2]	Annualized Base Rent[3]	Average Monthly Base Rent per Leased Unit[4]
Multifamily Properties							
Loma Palisades	San Diego, CA	1958/2001-2008	80	548	93.4%	$ 9,573,349	$ 1,561
Imperial Beach Gardens	Imperial Beach, CA	1959/2008-present	26	160	99.4	2,584,020	1,358
Mariner's Point	Imperial Beach, CA	1986	8	88	97.7	1,140,795	1,101
Santa Fe Park RV Resort[5]	San Diego, CA	1971/2007-2008	1	126	81.0	975,528	653
Total/Weighted Average			**115**	**922**	**93.2%**	**$14,273,692**	**$ 1,358**

(1) Units represent the total number of units available for rent at June 30, 2010.
(2) Percentage leased is calculated as (i) total units rented as of June 30, 2010, divided by (ii) total units available, expressed as a percentage.
(3) Annualized base rent is calculated by multiplying (i) base rental payments for the month ended June 30, 2010, by (ii) 12. Total abatements for leases in effect as of June 30, 2010 for our multifamily portfolio will equal approximately $328,251 for the 12 months ending December 31, 2010.
(4) Average monthly base rent per leased unit represents the average monthly base rent per leased units for the 12-month period ended June 30, 2010.
(5) The Santa Fe Park RV Resort is subject to seasonal variation with higher rates of occupancy occurring during the summer months. During the year ended December 31, 2010, the highest average monthly occupancy rate for this property was 100%, occurring in July 2009, and the lowest average monthly occupancy rate for this property was 60.0%, occurring in April 2009. For the twelve month period ended June 30, 2010, the total base rent for this property was $848,913. The number of units at the Santa Fe Park RV Resort includes 122 units and four apartments.

Description of our Multifamily Properties

Each of the following four multifamily properties will account for less than 10% of our total assets, based on book value, and less than 10% of our gross revenues as of, and for the year ended December 31, 2009.

Southern California

Loma Palisades

Loma Palisades is a high quality multifamily community comprised of 548 units consisting of single level, ranch-style and townhome-style two and three bedroom apartments. Centrally-located in San Diego's Point Loma community, the property offers apartments with balcony views, private garden patios and garage parking. Loma Palisades enjoys convenient access to all major San Diego freeways, the San Diego Airport and is approximately ten minutes to Downtown San Diego. The property was built in 1958 and over 91% of units received significant renovations during 2001-2008. Amenities, including eight swimming pools, two children's pools, a spa, a fully equipped fitness center, a half-court basketball court, sand volleyball court and 513 parking spaces, drive strong occupancy of 93.4% for the property. For the six months ended June 30, 2010, Loma Palisades had an average monthly base rent per leased unit of $1,561.

Other than certain roof repairs, which we expect to cost approximately $250,000 and recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Loma Palisades. These anticipated capital expenditures will be funded with cash on hand.

Upon completion of this offering and the consummation of the formation transactions, Loma Palisades will be subject to a $73.7 million mortgage loan, as described in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering."

The current real estate tax rate for Loma Palisades is $11.0195 per $1,000 of assessed value. The total annual tax for Loma Palisades at this rate for the tax year ended June 30, 2010 was $471,806, (at a taxable assessed value of $42.6 million). In addition, there was $2,664 in various direct assessments imposed on Loma Palisades by the City of San Diego and County of San Diego for the tax year ended June 30, 2010.

Imperial Beach Gardens

Imperial Beach Gardens is a high quality multifamily property containing 160 units consisting of spacious two and three bedroom townhouse apartments. Originally built in 1959, the property enjoys a small town feel while being conveniently located approximately 15 minutes from metropolitan San Diego. Residents of the townhouse-style homes benefit from a neighboring wildlife preserve, a lagoon and the Pacific Ocean. In addition to convenient access to the I-5, I-805 and San Diego Trolley, Imperial Beach Gardens is within two blocks of the beach and the Imperial Beach fishing pier. Kitchen and bathroom renovations in 2008 and 2009 contribute to Imperial Beach Gardens' 99.4% occupancy as of June 30, 2010. Amenities for the property include two swimming pools, 160 covered carports with storage, a fitness center and "Smart Card" laundry facilities. Imperial Beach Gardens is competitively priced and located to serve San Diego's naval demographic with many of its units leased to U.S. Navy personnel. As of June 30, 2010, the average base leased rental rate was $1,358 per unit.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Imperial Beach Gardens.

Upon completion of this offering and the consummation of the formation transactions, Imperial Beach Gardens will be subject to a $20.0 million mortgage loan, as described in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering."

The current real estate tax rate for Imperial Beach Gardens is $11.3646 per $1,000 of assessed value. The total annual tax for Imperial Beach Gardens at this rate for the tax year ended June 30, 2010 was $128,973 (at a taxable assessed value of $9.7 million). In addition, there was $19,061 in various direct assessments imposed on Imperial Beach Gardens by the City of Imperial Beach and County of San Diego for the tax year ended June 30, 2010.

Mariner's Point

Mariner's Point is the neighboring property to Imperial Beach Gardens and contains 88 one and two bedroom units. Located within three blocks of the Pacific Ocean, the community offers residents convenient beach access as well as views of the nearby wildlife reserve. Built in 1986, Mariner's Point is conveniently located near I-5 and I-805, offering easy commutes to downtown San Diego, Coronado and nearby Naval facilities. Amenities include a dedicated spa and swimming pool and a fitness center. The property contains 128 dedicated parking spaces. As of June 30, 2010, Mariner's Point was 97.7% occupied and had an average base rental rate of $1,101.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of Mariner's Point.

Upon completion of this offering and the consummation of the formation transactions, Mariner's Point will be subject to a $7.7 million mortgage loan, as described in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Consolidated Indebtedness to be Outstanding after this Offering."

The current real estate tax rate for Mariner's Point is $11.3646 per $1,000 of assessed value. The total annual tax for Mariner's Point at this rate for the tax year ended June 30, 2010 was $116,035 (at a taxable assessed value of $8.5 million). In addition, there was $19,619 in various direct assessments imposed on Mariner's Point by the City of Imperial Beach and County of San Diego for the tax year June 30, 2010.

Santa Fe Park RV Resort

The Santa Fe Park RV Resort offers 122 RV spaces and four apartment units, conveniently located directly off the I-5. Designed for comfort and convenience, the resort offers spaces by the day, by the week, by the month, or longer. The Santa Fe Park RV Resort offers both locals and tourists looking to enjoy San Diego's mild, year-round climate the chance to take up temporary residence with a complete list of amenities. Full-hook up spaces with pads include free Satellite TV, free Wi-Fi, spa and swimming pool, a fully equipped fitness center and a mini theater. Developed in 1971 and renovated from 2007-2008, the Santa Fe Park RV Resort experiences strong occupancy. As of June 30, 2010, the Santa Fe Park RV Resort had an average monthly base rental rate of $653. As of June 30, 2010, the Santa Fe Park RV Resort was 81.0% occupied. Occupancy and rental rates at Santa Fe Park RV Resort are subject to seasonal variations as a result of its use by tourists visiting the San Diego area. Accordingly, occupancies and rents at Santa Fe Park RV Resort tend to peak in the summer months—the height of San Diego's tourist season—and again in the winter months, when many tourists visit the San Diego area to enjoy its mild year-round climate.

Other than recurring capital expenditures, we have no immediate plans with respect to major renovation or redevelopment of the Santa Fe Park RV Resort.

The current real estate tax rate for Santa Fe Park RV Resort is $11.0195 per $1,000 of assessed value. The total annual tax for Santa Fe Park RV Resort at this rate for the tax year ended June 30, 2010 was $27,181 (at a taxable assessed value of $2.5 million). In addition, there was $174 in various direct assessments imposed on Santa Fe Park RV Resort by the City of San Diego and County of San Diego for the tax year ended June 30, 2010.

Depreciation

The following table sets forth for each property that comprised 10% or more of our total consolidated assets as of December 31, 2009 or that had gross revenues that amounted to 10% or more of our consolidated gross revenues for the year end December 31, 2009 and component thereof upon which depreciation is taken, the (1) federal tax basis upon completion of this offering and the formation transactions, (2) depreciation rate, (3) method, and (4) life claimed with respect to such property or component thereof for purposes of depreciation.

Property	Federal Tax Basis	Rate	Method[1][2]	Life Claimed
Waikele Center	$ 183,028,920	2.564%-9.88%	Straight-Line, Declining Balance	15-39 years
The Landmark at One Market	$ 151,660,427	2.564%-9.88%	Straight-Line, Declining Balance	15-39 years

(1) Unless otherwise noted, depreciation method and life claimed for each property and component thereof is determined by reference to the IRS-mandated method for depreciating assets placed into service after 1986, known as the Modified Accelerated Cost Recovery System.

(2) Buildings, building improvements and tenant improvements are depreciated over 39 years using the straight-line method with the mid-month convention, or straight-line. Land improvements are depreciated over 15 years using the 150% declining balance switching to straight-line method, or declining balance.

In addition, we had an aggregate of approximately $2,936,821 in additional tax basis of depreciable furniture, fixtures and equipment associated with the properties in our portfolio as of December 31, 2009. Depreciation on this furniture, fixtures and equipment is computed on the straight-line and double declining balance methods over the claimed life of such property, which is either five or seven years.

Seasonality

The hotel portion of Waikiki Beach Walk and Santa Fe Park RV Resort are seasonal in nature. The hotel portion of Waikiki Beach Walk's occupancy tends to fluctuate in conjunction with the typical school year and has higher occupancy and rates in March, April, June, July, August and December. Santa Fe Park RV Resort's occupancy rates are the highest in the months of July and August and are lowest during months of April and May. This seasonality can be expected to cause quarterly fluctuations in our revenues for these properties.

Property Revenue and Operating Expenses

Due to the geographic diversity of our portfolio, our portfolio contains full service gross, modified gross and triple net leases. In the case of modified gross leases and triple net leases, base rent does not include tenant reimbursements for real estate taxes, insurance, common area or other operating expenses. In order to provide a better understanding of how these expenses impact the comparability of the leases in place at the properties comprising our portfolio, the tables below include information regarding base rent, additional property income, billed expense reimbursements and property operating expenses associated with each of the properties in our portfolio. As our properties are self-managed, property operating expenses do not include property management fees (other than with respect to our Alamo Quarry property and our mixed-use property).

Retail Portfolio

Property	Base Rent[1]	Additional Property Income[2]	Billed Expense Reimbursements[3]	Property Operating Expenses[4]
Carmel Country Plaza	$ 3,305,487	$ 122,755[5]	$ 625,248	$ (548,480)
Carmel Mountain Plaza	8,238,460	115,160	2,361,033	(2,355,479)
South Bay Market Place	2,017,145	2,316	578,371	(589,164)
Rancho Carmel Plaza	801,542	43,460	186,386	(256,925)
Lomas Santa Fe Plaza	5,147,761	29,101	808,643	(1,096,275)
Solana Beach Towne Centre	5,195,468	53,874	1,196,656	(1,076,904)
Del Monte Shopping Center	8,264,372	1,467,661[6]	3,754,496	(4,203,260)[7]
The Shops at Kalakaua	1,498,289	86,158	179,137	(290,412)
Waikele Center	16,370,190	1,224,685	4,136,830	(4,825,459)
Alamo Quarry	11,549,255	333,754	4,841,631	(6,309,205)
Subtotal Retail Portfolio	**$62,387,969**	**$3,478,924**	**$ 18,668,431**	**$(21,551,563)**

(1) Represents base rent for the 12 months ended June 30, 2010 (before abatements). Total abatements for our retail portfolio were $217,925 for the 12 months ended June 30, 2010. In the case of triple net or modified gross leases, annualized base rent does not include tenant reimbursements for real estate taxes, insurance, common area or other operating expenses.
(2) Represents additional property-related income for the 12 months ended June 30, 2010, which includes (i) percentage rent, (ii) other rent (such as storage rent, license fees, film shooting income and association fees) and (iii) other property income (such as late fees, default fees, lease termination fees, parking revenue and the reimbursement of general excise taxes).
(3) Represents billed tenant expense reimbursements relating to the 12 months ended June 30, 2010. Includes accrued amount to be billed of approximately $335,000 for Macy's cost reimbursements at Del Monte Center.
(4) Represents property operating expenses for the 12 months ended June 30, 2010. Property operating expenses includes all rental expenses.
(5) Includes approximately $63,852 of lease termination fees.

(6) Includes recognition of approximately $562,054 as additional property income as a result of settlement of an acquisition-related liability in 2009.
(7) Reflects the impact of a $59,448 insurance refund.

Office Portfolio

Property	Base Rent[1]	Additional Property Income[2]	Billed Expense Reimbursements[3]	Property Operating Expenses[4]
Wholly Owned				
Torrey Reserve Campus	$14,682,007	$ 272,191	$ 474,439	$ (3,247,012)
Solana Beach Corporate Centre	6,677,443	(5,014)	139,465	(1,328,251)
Valencia Corporate Center	4,023,803	12,709	34,508	(1,312,970)
160 King Street	5,653,746	1,134,316	1,199,977	(2,330,259)
The Landmark at One Market	21,447,483	106,461	1,450,345	(7,654,342)
Joint Venture				
Fireman's Fund Headquarters	20,227,880[5]	3,026[5]	3,291,930[5]	(3,347,688)[5]
Subtotal Office Portfolio	**$72,712,362**	**$1,523,689**	**$ 6,590,664**	**$(19,220,522)**

(1) Represents base rent for the 12 months ended June 30, 2010 (before abatements). Total abatements for our office portfolio were $188,839 for the 12 months ended June 30, 2010. In the case of triple net or modified gross leases, annualized base rent does not include tenant reimbursements for real estate taxes, insurance, common area or other operating expenses.
(2) Represents additional property-related income for the 12 months ended June 30, 2010, which includes (i) percentage rent, (ii) other rent (such as storage rent and license fees) and (iii) other property income.
(3) Represents billed tenant expense reimbursements relating to the 12 months ended June 30, 2010.
(4) Represents property operating expenses for the 12 months ended June 30, 2010. Property operating expenses includes all rental expenses.
(5) Represents the gross amount for Fireman's Fund Headquarters. Fireman's Fund Headquarters is held through a joint venture in which we are a 25% owner.

Mixed-Use Portfolio

Property	Base Rent/ Actual Revenue[1]	Additional Property Income[2]	Billed Expense Reimbursements[3]	Property Operating Expenses[4]
Waikiki Beach Walk – Retail	$ 9,400,000	$ 3,218,000	$ 2,367,000	$ (5,749,005)
Waikiki Beach Walk – Hotel	24,979,154	549,832	—	(19,275,386)
Subtotal Mixed-Use Portfolio	**$ 34,388,154**	**$ 3,767,832**	**$ 2,367,000**	**$ (25,024,391)**

(1) For Waikiki Beach Walk—Retail, represents base rent for the 12 months ended June 30, 2010 (before abatements). Total abatements for Waikiki Beach Walk—Retail were zero for the 12 months ended June 30, 2010. In the case of triple net or modified gross leases, annualized base rent does not include tenant reimbursements for real estate taxes, insurance, common area or other operating expenses. For Waikiki Beach Walk – Hotel, we have included the actual room revenue for the 12 months ended June 30, 2010.
(2) Represents additional property-related income for the 12 months ended June 30, 2010, which includes (i) percentage rents, (ii) other rent, and (iii) other property income.
(3) Represents billed expense reimbursements relating to the 12 months ended June 30, 2010.
(4) Represents property operating expenses for the 12 months ended June 30, 2010. Property operating expenses for Waikiki Beach Walk—Retail include all rental expenses. Property operating expenses for Waikiki Beach Walk—Hotel includes on-site general and administrative expenses of $1.8 million for the 12 months ended June 30, 2010.

Multifamily Portfolio

Property	Base Rent [1]	Additional Property Income [2]	Billed Expense Reimbursements [3]	Property Operating Expenses [4]
Loma Palisades	$ 8,875,862	$ 708,977	$ —	($ 3,030,461)
Imperial Beach Gardens	2,402,817	196,874	—	(770,186)
Mariner's Point	1,058,392	93,933	—	(420,658)
Santa Fe Park RV Resort	848,913	71,704	—	(471,670)
Subtotal Multifamily Portfolio	**$13,185,984**	**$1,071,188**	**$ —**	**$ (4,692,975)**

(1) Represents base rent less vacancy allowance, employee rent credits and concessions and includes additional rents (additional rents include insufficient notice penalties, month-to-month charges and pet rent) for the 12 months ended June 30, 2010 (before abatements). Total abatements for our multifamily portfolio were approximately $897,636 for the 12 months ended June 30, 2010.
(2) Represents additional property-related income for the 12 months ended June 30, 2010 (such as laundry revenue).
(3) Represents property operating expenses for the 12 months ended June 30, 2010. Property operating expenses includes all rental expenses.

Regulation

General

Our properties are subject to various covenants, laws, ordinances and regulations, including regulations relating to common areas and fire and safety requirements. We believe that each of the properties in our portfolio has the necessary permits and approvals to operate its business.

Americans With Disabilities Act

Our properties must comply with Title III of the Americans with Disabilities Act, or ADA, to the extent that such properties are "public accommodations" as defined by the ADA. Under the ADA, all public accommodations must meet federal requirements related to access and use by disabled persons. The ADA may require removal of structural barriers to access by persons with disabilities in certain public areas of our properties where such removal is readily achievable. Although we believe that the properties in our portfolio in the aggregate substantially comply with present requirements of the ADA, we have not conducted a comprehensive audit or investigation of all of our properties to determine our compliance, and we are aware that some particular properties may currently be in non-compliance with the ADA. Noncompliance with the ADA could result in the incurrence of additional costs to attain compliance, the imposition of fines or an award of damages to private litigants. The obligation to make readily achievable accommodations is an ongoing one, and we will continue to assess our properties and to make alterations as appropriate in this respect.

Environmental Matters

Under various federal, state and local laws and regulations relating to the environment, as a current or former owner or operator of real property, we may be liable for costs and damages resulting from the presence or discharge of hazardous or toxic substances, waste or petroleum products at, on, in, under, or migrating from such property, including costs to investigate and clean up such contamination and liability for harm to natural resources. Such laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the presence of such contamination, and the liability may be joint and several. These liabilities could be substantial and the cost of any required remediation, removal, fines, or other costs could exceed the value of the property and/or our aggregate assets. In addition, the presence of contamination or the failure to remediate contamination at our properties may expose us to third-party liability for costs of remediation and/or personal or property damage or materially adversely affect our ability to sell, lease or develop our properties or to borrow using the properties as collateral. In addition, environmental laws may create liens on contaminated sites in favor of the government for damages and costs it incurs to address such contamination. Moreover, if contamination is discovered on our properties, environmental laws may impose restrictions on the manner in which property may be used or businesses may be operated, and these restrictions may require substantial expenditures.

Some of our properties contain, have contained, or are adjacent to or near other properties that have contained or currently contain storage tanks for the storage of petroleum products or other hazardous or toxic substances. Similarly, some of our properties were used in the past for commercial or industrial purposes, or are currently used for commercial purposes, that involve or involved the use of petroleum products or other hazardous or toxic substances, or are adjacent to or near properties that have been or are used for similar commercial or industrial purposes. As a result, some of our properties have been or may be impacted by

contamination arising from the releases of such hazardous substances or petroleum products. Where we have deemed appropriate, we have taken steps to address identified contamination or mitigate risks associated with such contamination; however, we are unable to ensure that further actions will not be necessary. As a result of the foregoing, we could potentially incur materially liability.

We possess Phase I Environmental Site Assessments for certain of the properties in our portfolio. Other than as discussed below with respect to Del Monte Center, none of the site assessments identified any known past or present contamination that we believe would have a material adverse effect on our business, assets or operations. However, the assessments are limited in scope (e.g., they do not generally include soil sampling, subsurface investigations or hazardous materials survey) and may have failed to identify all environmental conditions or concerns. A prior owner or operator of a property or historic operations at our properties may have created a material environmental condition that is not known to us or the independent consultants preparing the site assessments. Material environmental conditions may have arisen after the review was completed or may arise in the future, and future laws, ordinances or regulations may impose material additional environmental liability. Furthermore, we do not have Phase I Environmental Site Assessment reports for all of the properties in our portfolio and, therefore, may not be aware of all potential or existing environmental contamination liabilities at our properties.

A Phase I Environmental Site Assessment is a report prepared for real estate holdings that identifies potential or existing environmental contamination liabilities. Site assessments are intended to discover and evaluate information regarding the environmental condition of the surveyed property and surrounding properties. An Environmental Site Assessment conducted in 1996 for the prior owner of Del Monte Center identified a release of dry cleaning solvent chemicals by a former tenant of Del Monte Center into a portion of the property, impacting the soil and groundwater. The primary constituent of concern is tetrachloroethylene (PCE), a chlorinated hydrocarbon. In January 1997, the prior owner entered into a fixed fee environmental services agreement with an environmental remediation consultant pursuant to which the consultant agreed to complete any necessary remediation for $3,533,000. Pursuant to the terms of the agreement, the remediation costs are paid for through an escrow that was funded by the prior owner. The California Regional Water Quality Control Board – Central Coast Region, or the RWQCB, approved the remediation plan to remove the source of dry cleaning chemicals and prevent any further contamination of the groundwater, creek and nearby habitat in accordance with the requirements of the RWQCB. In 2004, our predecessor acquired Del Monte Center and all of the prior owner’s rights and obligations under the environmental services agreement. As of July 31, 2010, the balance in this escrow account was approximately $873,000. We expect that this escrow account will cover all remaining costs and expenses of the environmental remediation concluding in a “no further action” letter issued by the RWQCB. However, if the RWQCB were to require further work costing more than the remaining escrowed funds, we could be required to pay such overage, although we may have a contractual claim for such costs against the prior owner or our environmental remediation consultant. Our environmental engineers expect to complete the environmental remediation in the next two to three years.

Environmental laws also govern the presence, maintenance and removal of asbestos-containing building materials, or ACBM, and may impose fines and penalties for failure to comply with these requirements or expose us to third-party liability. Such laws require that owners or operators of buildings containing ACBM (and employers in such buildings) properly manage and maintain the asbestos, adequately notify or train those who may come into contact with asbestos, and undertake special precautions, including removal or other abatement, if asbestos would be disturbed during renovation or demolition of a building. In addition, the presence of ACBM in our properties may expose us to third-party liability (e.g. liability for personal injury associated with exposure to asbestos). We are not presently aware of any material adverse issues at our properties including ACBM.

Similarly, environmental laws govern the presence, maintenance and removal of lead-based paint in residential buildings, and may impose fines and penalties for failure to comply with these requirements. Such laws require, among other things, that owners or operators of residential facilities that contain or potentially contain lead-based paint notify residents of the presence or potential presence of lead-based paint prior to

occupancy and prior to renovations and manage lead-based paint waste appropriately. In addition, the presence of lead-based paint in our buildings may expose us to third-party liability (e.g., liability for personal injury associated with exposure to lead-based paint). We are not presently aware of any material adverse issues at our properties involving lead-based paint.

In addition, the properties in our portfolio also are subject to various federal, state, and local environmental and health and safety requirements, such as state and local fire requirements. Moreover, some of our tenants routinely handle and use hazardous or regulated substances and wastes as part of their operations at our properties, which are subject to regulation. Such environmental and health and safety laws and regulations could subject us or our tenants to liability resulting from these activities. Environmental liabilities could affect a tenant's ability to make rental payments to us. In addition, changes in laws could increase the potential liability for noncompliance. Our leases sometimes require our tenants to comply with environmental and health and safety laws and regulations and to indemnify us for any related liabilities. But in the event of the bankruptcy or inability of any of our tenants to satisfy such obligations, we may be required to satisfy such obligations. In addition, we may be held directly liable for any such damages or claims regardless of whether we knew of, or were responsible for, the presence or disposal of hazardous or toxic substances or waste and irrespective of tenant lease provisions. The costs associated with such liability could be substantial and could have a material adverse effect on us.

When excessive moisture accumulates in buildings or on building materials, mold growth may occur, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. Some molds may produce airborne toxins or irritants. Indoor air quality issues can also stem from inadequate ventilation, chemical contamination from indoor or outdoor sources, and other biological contaminants such as pollen, viruses and bacteria. Indoor exposure to airborne toxins or irritants above certain levels can be alleged to cause a variety of adverse health effects and symptoms, including allergic or other reactions. As a result, the presence of significant mold or other airborne contaminants at any of our properties could require us to undertake a costly remediation program to contain or remove the mold or other airborne contaminants from the affected property or increase indoor ventilation. In addition, the presence of significant mold or other airborne contaminants could expose us to liability from our tenants, employees of our tenants or others if property damage or personal injury occurs. We are not presently aware of any material adverse indoor air quality issues at our properties.

Insurance

We carry comprehensive liability, fire, extended coverage, business interruption and rental loss insurance covering all of the properties in our portfolio under a blanket insurance policy. We believe the policy specifications and insured limits are appropriate and adequate for our properties given the relative risk of loss, the cost of the coverage and industry practice; however, our insurance coverage may not be sufficient to fully cover our losses. We do not carry insurance for certain losses, including, but not limited to, losses caused by riots or war. Some of our policies, like those covering losses due to terrorism and earthquakes, are insured subject to limitations involving large deductibles or co-payments and policy limits that may not be sufficient to cover losses, for such events. In addition, all but one of our properties are located in California and Hawaii, which are areas subject to an increased risk of earthquakes. While we will carry earthquake insurance on certain of our properties in Hawaii, the amount of our earthquake insurance coverage may not be sufficient to fully cover losses from earthquakes. We may reduce or discontinue earthquake, terrorism or other insurance on some or all of our properties in the future if the cost of premiums for any of these policies exceeds, in our judgment, the value of the coverage discounted for the risk of loss. Also, if destroyed, we may not be able to rebuild certain of our properties due to current zoning and land use regulations. In addition, our title insurance policies may not insure for the current aggregate market value of our portfolio, and we do not intend to increase our title insurance coverage as the market value of our portfolio increases. See "Risk Factors—Risks Related to Our Business and Operations—Potential losses, including from adverse weather conditions, natural disaster and title claims, may not be covered by insurance."

Competition

We compete with a number of developers, owners and operators of retail, office, mixed-use and multifamily real estate, many of which own properties similar to ours in the same markets in which our properties are located and some of which have greater financial resources than we do. In operating and managing our portfolio, we compete for tenants based on a number of factors, including location, rental rates, security, flexibility and expertise to design space to meet prospective tenants' needs and the manner in which the property is operated, maintained and marketed. As leases at our properties expire, we may encounter significant competition to renew or re-let space in light of the large number of competing properties within the markets in which we operate. As a result, we may be required to provide rent concessions or abatements, incur charges for tenant improvements and other inducements, including early termination rights or below-market renewal options, or we may not be able to timely lease vacant space. In that case, our financial condition, results of operations, cash flow, per share trading price of our common stock and ability to satisfy our debt service obligations and to pay dividends to you may be adversely affected.

We also face competition when pursuing acquisition and disposition opportunities. Our competitors may be able to pay higher property acquisition prices, may have private access to opportunities not available to us and otherwise be in a better position to acquire a property. Competition may also have the effect of reducing the number of suitable acquisition opportunities available to us, increase the price required to consummate an acquisition opportunity and generally reduce the demand for retail, office, mixed-use and multifamily space in our markets. Likewise, competition with sellers of similar properties to locate suitable purchasers may result in us receiving lower proceeds from a sale or in us not being able to dispose of a property at a time of our choosing due to the lack of an acceptable return.

Employees

Upon the completion of this offering and the formation transactions, we expect to have approximately 100 employees.

Principal Executive Offices

Our headquarters is located at 11455 El Camino Real, Suite 200, San Diego, California 92130. We believe that our current facilities are adequate for our present and future operations, although we may add regional offices or relocate our headquarters, depending upon our future operational needs.

Legal Proceedings

Following the consummation of this offering and the formation transactions, we may be subject to on-going litigation, including existing claims relating to American Assets, Inc., the current direct and indirect owners of our portfolio and the properties comprising our portfolio and we expect to otherwise be party from time to time to various lawsuits, claims and other legal proceedings that arise in the ordinary course of our business. American Assets, Inc., the Rady Trust and Mr. Rady are subject to on-going litigation, alleging, among other things that Mr. Rady breached his fiduciary duties to the plaintiffs in his capacity as an officer, director and controlling shareholder of American Assets, Inc. The claims brought by the various plaintiffs include direct and derivative claims for an accounting, injunctive and declaratory relief, and involuntary dissolution of American Assets, Inc., in addition to claims for an unspecified amount of damages. To the extent these plaintiffs were prior investors, they have consented to the formation transactions. We believe that there are currently no other claims that would have a material adverse effect on our business, financial condition or results of operation if determined adversely to us.

MANAGEMENT

Our Directors, Director Nominees and Executive Officers

Upon completion of this offering, our board of directors will consist of seven members, including a majority of directors who are independent within the meaning of the listing standards of the NYSE. Pursuant to our charter, each of our directors will be elected by our stockholders to serve until the next annual meeting of our stockholders and until his or her successor is duly elected and qualifies. See "Material Provisions of Maryland Law and of Our Charter and Bylaws—Our Board of Directors." The first annual meeting of our stockholders after this offering will be held in 2011. Subject to rights pursuant to any employment agreements, officers serve at the pleasure of our board of directors.

The following table sets forth certain information concerning our directors, executive officers and certain other officers upon completion of this offering:

Name	Age	Position
Ernest S. Rady*	73	Executive Chairman of the Board of Directors
John W. Chamberlain*	49	Chief Executive Officer and Director
Robert F. Barton*	53	Executive Vice President and Chief Financial Officer
Adam Wyll*	35	Senior Vice President, General Counsel and Secretary
Patrick Kinney*	47	Senior Vice President of Real Estate Operations
Christopher E. Sullivan	48	Vice President of Retail Leasing
James R. Durfey	60	Vice President of Office Leasing
Jerry Gammieri	45	Vice President of Construction
†		Director Nominee
†		Director Nominee
†		Director Nominee
†		Director Nominee
†		Director Nominee

* Denotes our named executive officers.

† Independent within the meaning of the NYSE listing standards. It is expected that this individual will become a director immediately upon completion of this offering.

Biographical Summaries of Directors and Executive Officers

The following are biographical summaries of the experience of our directors, executive officers and certain other officers.

Ernest S. Rady. Mr. Rady will serve as Executive Chairman of our board of directors. Mr. Rady has over 40 years of experience in real estate management and development. Mr. Rady founded American Assets, Inc. in 1967 and currently serves as president and chairman of the board of directors of American Assets, Inc. In 1971, he also founded Insurance Company of the West and Westcorp, a financial services holding company. From 1973 until 2006, Mr. Rady served as chairman and chief executive officer of Westcorp. He served as chairman of Western Financial Bank from 1982 until 2006 and chief executive officer of Western Financial from 1994 until 2006. He also served as a director of WFS Financial Inc., an automobile finance company, from 1988 until 2006 and as chairman from 1995 until 2006. From 2006 until 2007, Mr. Rady served as chairman of dealer finance business and California banking business for Wachovia Corporation, and also served as a director from 2006 until 2008. Mr. Rady currently serves as chairman of the board of directors of Insurance Company of the West, chairman of the Dean's Advisory Council of the Rady School of Management at the University of California, San Diego and trustee of the Salk Institute for Biological Sciences as well as Scripps Health. Mr. Rady received

his degrees in commerce and law from the University of Manitoba. Our board of directors determined that Mr. Rady should serve as a director based on his extensive knowledge of American Assets, Inc. and his wealth of experience in the real estate industry.

John W. Chamberlain. Mr. Chamberlain will serve as our Chief Executive Officer and a director. Mr. Chamberlain brings more than 25 years of experience in commercial real estate to this position. From 1989 until the formation of the company, Mr. Chamberlain served in executive roles within American Assets, Inc., most recently as chief executive officer. Prior to joining American Assets, Inc., Mr. Chamberlain was vice president of Coldwell Banker Real Estate Corporation, where he brokered various commercial real estate acquisitions. Mr. Chamberlain started his career as a sales associate at CW Clark, Inc., a commercial real estate development firm. In addition to serving as a director of American Assets, Inc. since 1997, Mr. Chamberlain also currently serves as a director of the Solana Beach Community Foundation. Mr. Chamberlain received his Bachelor of Arts degree in economics from the University of California, San Diego. Our board of directors determined that Mr. Chamberlain should serve as a director based on his extensive knowledge of American Assets, Inc. and his wealth of experience in the commercial real estate industry.

Robert F. Barton. Mr. Barton will serve as our Executive Vice President and Chief Financial Officer. Mr. Barton brings to his role more than 30 years of experience in commercial real estate, accounting, tax, mergers and acquisitions and structured finance. From 1998 until the formation of the company, Mr. Barton served as executive vice president and chief financial officer of American Assets, Inc. Additionally, from 2002 until the formation of our company, Mr. Barton served as chief financial officer and chief compliance officer of American Assets Investment Management, LLC, an investment advisor affiliated with American Assets, Inc. that is registered with the SEC. From 1996 until 1998, Mr. Barton served as executive director of real estate and finance for Flour Daniel, a Fortune 500 engineering and construction company. From 1986 until 1996, Mr. Barton served as senior vice president and chief financial officer of RCI Asset Management Group, a privately held real estate developer, whose capital partners included Melvin Simon & Associates, the predecessor entity to Simon Property Group. Prior to joining RCI, Mr. Barton was a senior audit manager at Kenneth Leventhal & Company, where he served private and publicly traded companies, including commercial and residential real estate developers. He began his professional career in 1980 with Arthur Young & Co. as an auditor. Mr. Barton received his Bachelor of Science degree in business administration with a major in accounting from California State University, Pomona. Mr. Barton is licensed as a Certified Public Accountant in California.

Adam Wyll. Adam Wyll will serve as our Senior Vice President, General Counsel and Secretary. From 2004 until the formation of our company, Mr. Wyll served in two officer positions at American Assets, Inc., initially as vice president of private equity and most recently as vice president of legal and business affairs. His responsibilities included structuring and managing complex corporate transactions, including real estate acquisitions, dispositions and financings, as well as private equity investments. Additionally, from 2007 until the formation of our company, Mr. Wyll served as vice president, director of client services of American Assets Investment Management, LLC, an investment advisor affiliated with American Assets, Inc. that is registered with the SEC. Prior to joining American Assets, Inc., Mr. Wyll was an attorney with Jenkens & Gilchrist, a professional corporation, where he specialized in representing institutional lenders in structured financial transactions and real estate investment trusts in securities and debt issuances. Mr. Wyll is a graduate of the University of Texas School of Law. He obtained his finance degree from the McCombs School of Business (University of Texas, Austin).

Patrick Kinney. Mr. Kinney will serve as our Senior Vice President of Real Estate Operations. From 2004 until the formation of our company, Mr. Kinney served as vice president of real estate for American Assets, Inc., where he was responsible for all aspects of asset management for retail, office, multifamily and hospitality properties. From 1993 until 2003, Mr. Kinney served in senior management positions, including as vice president of operations and vice president of accounting at Caruso Affiliated Holdings, a real estate development company headquartered in Los Angeles, California. His responsibilities at Caruso included supervising corporate tax and

accounting functions as well as overseeing management and lease administration of retail, office, residential and industrial properties, including The Grove in Los Angeles, California. Mr. Kinney obtained his Bachelor of Science degree in business administration and a minor in accounting and finance from California Polytechnic State University, San Luis Obispo.

Christopher E. Sullivan. Mr. Sullivan will serve as our Vice President of Retail Leasing. Mr. Sullivan brings to his role more than 25 years of experience in commercial real estate leasing and management. From 2004 until the formation of our company, Mr. Sullivan served as vice president of retail leasing for American Assets, Inc., where he oversaw all aspects of retail leasing for regional, community and neighborhood shopping centers in California, Texas and Hawaii. From 2000 until 2004, Mr. Sullivan served as the director of leasing for National Retail Partners, LLC, a commercial real estate advisor to CALPERS, where he managed the retail leasing for a national portfolio of over twenty retail centers. From 1995 until 2000, Mr. Sullivan served as director of leasing for Burnham Pacific Properties, where he managed the retail leasing of over twenty southern California retail centers. From 1990 until 1995, Mr. Sullivan served as vice president and general manager of Seaport Village, a large waterfront shopping center in San Diego, California. From 1984 to 1990, Mr. Sullivan was a senior leasing representative for the Hahn Company, a national owner and developer of regional shopping centers. Mr. Sullivan received his Bachelor of Arts in economics from the University of California, Santa Barbara. Mr. Sullivan is a licensed real estate broker in California and an active member of the International Council of Shopping Centers.

James R. Durfey. Mr. Durfey will serve as our Vice President of Office Leasing. Mr. Durfey brings to his role more than 28 years of experience in commercial real estate leasing, management and development. From 2004 until the formation of our company, Mr. Durfey served as vice president of office leasing for American Assets, Inc., where he oversaw all aspects of leasing for office properties. From 1996 until 2004, Mr. Durfey served as general manager of Century Plaza Towers and ABC Entertainment Center in Los Angeles, California for Trammell Crow Company, a real estate development and investment firm. From 1980 until 1995, Mr. Durfey served in several executive positions, most recently as senior development director, at Homart Development Co., a shopping center development company, where he managed Homart's west coast portfolio. Mr. Durfey obtained his Bachelor of Science degree in business management from Indiana University. Mr. Durfey is a licensed real estate broker in California.

Jerry Gammieri. Mr. Gammieri will serve as our Vice President of Construction. From 2000 until the formation of our company, Mr. Gammieri served as vice president of construction for American Assets, Inc., where he oversaw all of American Assets, Inc.'s and its affiliate's construction activities. From 1989 until 2000, Mr. Gammieri served as vice president of operations of Peterbilt Construction Company, where he was responsible for all aspects of operations. Mr. Gammieri obtained his Associate of Arts and Sciences degree in construction from the State University of New York at Canton.

Corporate Governance Profile

We have structured our corporate governance in a manner we believe closely aligns our interests with those of our stockholders. Notable features of our corporate governance structure include the following:

- our board of directors is not staggered, with each of our directors subject to re-election annually;
- of the seven persons who will serve on our board of directors immediately after the completion of this offering, we expect our board of directors to determine that , or %, of our directors satisfy the listing standards for independence of the NYSE and Rule 10A-3 under the Exchange Act;
- we anticipate that at least one of our directors will qualify as an "audit committee financial expert" as defined by the SEC;

- we have opted out of the business combination and control share acquisition statutes in the MGCL; and
- we do not have a stockholder rights plan.

Our directors will stay informed about our business by attending meetings of our board of directors and its committees and through supplemental reports and communications. Our independent directors will meet regularly in executive sessions without the presence of our corporate officers or non-independent directors.

Role of the Board in Risk Oversight

One of the key functions of our board of directors is informed oversight of our risk management process. Our board of directors administers this oversight function directly, with support from its three standing committees, the audit committee, the nominating and corporate governance committee and the compensation committee, each of which addresses risks specific to their respective areas of oversight. In particular, our audit committee has the responsibility to consider and discuss our major financial risk exposures and the steps our management has taken to monitor and control these exposures, including guidelines and policies to govern the process by which risk assessment and management is undertaken. The audit committee also monitors compliance with legal and regulatory requirements, in addition to oversight of the performance of our internal audit function. Our nominating and corporate governance committee monitors the effectiveness of our corporate governance guidelines, including whether they are successful in preventing illegal or improper liability-creating conduct. Our compensation committee assesses and monitors whether any of our compensation policies and programs has the potential to encourage excessive risk-taking.

Board Committees

Upon completion of this offering, our board of directors will establish three standing committees: an audit committee, a compensation committee and a nominating and corporate governance committee. The principal functions of each committee are briefly described below. We intend to comply with the listing requirements and other rules and regulations of the NYSE, as amended or modified from time to time, and each of these committees will be comprised exclusively of independent directors. Additionally, our board of directors may from time to time establish certain other committees to facilitate the management of our company.

Audit Committee

Upon completion of this offering, our audit committee will consist of three of our independent directors. We expect that the chairman of our audit committee will qualify as an “audit committee financial expert” as that term is defined by the applicable SEC regulations and NYSE corporate governance listing standards. We expect that our board of directors will determine that each of the audit committee members is “financially literate” as that term is defined by the NYSE corporate governance listing standards. Prior to the completion of this offering, we expect to adopt an audit committee charter, which will detail the principal functions of the audit committee, including oversight related to:

- our accounting and financial reporting processes;
- the integrity of our consolidated financial statements and financial reporting process;
- our systems of disclosure controls and procedures and internal control over financial reporting;
- our compliance with financial, legal and regulatory requirements;
- the evaluation of the qualifications, independence and performance of our independent registered public accounting firm;

- the performance of our internal audit function; and
- our overall risk profile.

The audit committee will also be responsible for engaging an independent registered public accounting firm, reviewing with the independent registered public accounting firm the plans and results of the audit engagement, approving professional services provided by the independent registered public accounting firm, including all audit and non-audit services, reviewing the independence of the independent registered public accounting firm, considering the range of audit and non-audit fees and reviewing the adequacy of our internal accounting controls. The audit committee also will prepare the audit committee report required by SEC regulations to be included in our annual proxy statement. Mr. has been designated as chair and Messrs. and have been appointed as members of the audit committee.

Compensation Committee

Upon completion of this offering, our compensation committee will consist of three of our independent directors. Prior to the completion of this offering, we expect to adopt a compensation committee charter, which will detail the principal functions of the compensation committee, including:

- reviewing and approving on an annual basis the corporate goals and objectives relevant to our chief executive officer's compensation, evaluating our chief executive officer's performance in light of such goals and objectives and determining and approving the remuneration of our chief executive officer based on such evaluation;
- reviewing and approving the compensation, if any, of all of our other officers;
- reviewing our executive compensation policies and plans;
- implementing and administering our incentive compensation equity-based remuneration plans;
- assisting management in complying with our proxy statement and annual report disclosure requirements;
- producing a report on executive compensation to be included in our annual proxy statement; and
- reviewing, evaluating and recommending changes, if appropriate, to the remuneration for directors.

Mr. has been designated as chair and Messrs. and have been appointed as members of the compensation committee.

Nominating and Corporate Governance Committee

Upon completion of this offering, our nominating and corporate governance committee will consist of three of our independent directors. Prior to the completion of this offering, we expect to adopt a nominating and corporate governance committee charter, which will detail the principal functions of the nominating and corporate governance committee, including:

- identifying and recommending to the full board of directors qualified candidates for election as directors and recommending nominees for election as directors at the annual meeting of stockholders;
- developing and recommending to the board of directors corporate governance guidelines and implementing and monitoring such guidelines;

- reviewing and making recommendations on matters involving the general operation of the board of directors, including board size and composition, and committee composition and structure;
- recommending to the board of directors nominees for each committee of the board of directors;
- annually facilitating the assessment of the board of directors' performance as a whole and of the individual directors, as required by applicable law, regulations and the NYSE corporate governance listing standards; and
- overseeing the board of directors' evaluation of management.

In identifying and recommending nominees for directors, the nominating and corporate governance committee may consider diversity of relevant experience, expertise and background. Mr. has been designated as chair and Messrs. and have been appointed as members of the nominating and corporate governance committee.

Code of Business Conduct and Ethics

Upon completion of this offering, our board of directors will establish a code of business conduct and ethics that applies to our officers, directors and employees. Among other matters, our code of business conduct and ethics will be designed to deter wrongdoing and to promote:

- honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- full, fair, accurate, timely and understandable disclosure in our SEC reports and other public communications;
- compliance with laws, rules and regulations;
- prompt internal reporting of violations of the code to appropriate persons identified in the code; and
- accountability for adherence to the code of business conduct and ethics.

Any waiver of the code of business conduct and ethics for our executive officers or directors must be approved by a majority of our independent directors, and any such waiver shall be promptly disclosed as required by law or NYSE regulations.

Limitation of Liability and Indemnification

We intend to enter into indemnification agreements with each of our directors and executive officers that will obligate us, if a director or executive officer is or is threatened to be made a party to any proceeding by reason of such director's or executive officer's status as a present or former director, officer, employee or agent of our company or as a director, trustee, officer, partner, manager, managing member, fiduciary, employee or agent of another enterprise that the director or executive officer served in such capacity at our request, to indemnify such director or executive officer, and advance expenses actually and reasonably incurred by him or her, or on his or her behalf, unless it has been established that:

- the act or omission of the director or executive officer was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty;
- the director or executive officer actually received an improper personal benefit in money, property or services; or

- with respect to any criminal action or proceeding, the director or executive officer had reasonable cause to believe his or her conduct was unlawful.

In addition, except as described below, our directors and executive officers will not be entitled to indemnification pursuant to the indemnification agreement:

- if the proceeding was one brought by us or in our right and the director or executive officer is adjudged to be liable to us;
- if the director or executive officer is adjudged to be liable on the basis that personal benefit was improperly received in a proceeding charging improper personal benefit to the director or executive officer; or
- in any proceeding brought by the director or executive officer other than to enforce his or her rights under the indemnification agreement, and then only to the extent provided by the agreement, and except as may be expressly provided in our charter, our bylaws, a resolution of our board of directors or of our stockholders entitled to vote generally in the election of directors or an agreement approved by our board of directors.

Notwithstanding the limitations on indemnification described above, on application by a director or executive officer of our company to a court of appropriate jurisdiction, the court may order indemnification of such director or executive officer if the court determines that such director or executive officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director or executive officer (1) has met the standards of conduct set forth above or (2) has been adjudged liable for receipt of an “improper personal benefit”; however, our indemnification obligations to such director or executive officer will be limited to the expenses actually and reasonably incurred by him or her, or on his or her behalf, in connection with any proceeding by or in the right of our company or in which the officer or director shall have been adjudged liable for receipt of an improper personal benefit. If the court determines the director or executive officer is so entitled to indemnification, the director or executive officer will also be entitled to recover from us the expenses of securing such indemnification.

Notwithstanding, and without limiting, any other provisions of the indemnification agreements, if a director or executive officer is or is threatened to be made a party to any proceeding by reason of such director’s or executive officer’s status as a director, officer, employee or agent of our company or as a director, trustee, officer, partner, manager, managing member, fiduciary, employee or agent of another entity that the director or executive officer served in such capacity at our request, and such director or executive officer is successful, on the merits or otherwise, as to one or more (even if less than all) claims, issues or matters in such proceeding, we must indemnify such director or executive officer for all expenses actually and reasonably incurred by him or her, or on his or her behalf, in connection with each successfully resolved claim, issue or matter, including any claim, issue or matter in such a proceeding that is terminated by dismissal, with or without prejudice.

In addition, the indemnification agreements will require us to advance reasonable expenses incurred by the indemnitee within ten days of the receipt by us of a statement from the indemnitee requesting the advance, provided the statement evidences the expenses and is accompanied by:

- a written affirmation of the indemnitee’s good faith belief that he or she has met the standard of conduct necessary for indemnification; and
- a written undertaking to reimburse us if a court of competent jurisdiction determines that the director or executive officer is not entitled to indemnification.

The indemnification agreements will also provide for procedures for the determination of entitlement to indemnification, including a requirement that such determination be made by independent counsel after a change of control of us.

Our charter permits us and our bylaws obligate us, to the maximum extent permitted by Maryland law, to indemnify and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (1) any of our present or former directors or officers who is made or threatened to be made a party to the proceeding by reason of his service in that capacity or (2) any individual who, while serving as our director or officer and at our request, serves or has served as a director, officer, partner, trustee, member or manager of another corporation, real estate investment trust, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise, and who is made or threatened to be made a party to the proceeding by reason of his service in that capacity.

Generally, Maryland law permits a Maryland corporation to indemnify its present and former directors and officers except in instances where the person seeking indemnification acted in bad faith or with active and deliberate dishonesty, actually received an improper personal benefit in money, property or services or, in the case of a criminal proceeding, had reasonable cause to believe that his or her actions were unlawful. Under Maryland law, a Maryland corporation also may not indemnify a director or officer in a suit by or in the right of the corporation in which the director or officer was adjudged liable to the corporation or for a judgment of liability on the basis that a personal benefit was improperly received. A court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the prescribed standard of conduct; however, indemnification for an adverse judgment in a suit by us or in our right, or for a judgment of liability on the basis that personal benefit was improperly received, is limited to expenses.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling our company pursuant to the foregoing provisions, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

In addition, our directors and officers may be entitled to indemnification pursuant to the terms of the partnership agreement. See “Description of the Partnership Agreement of American Assets Trust, L.P.”

Rule 10b5-1 Sales Plans

Our directors and executive officers may adopt written plans, known as Rule 10b5-1 plans, in which they will contract with a broker to buy or sell shares of our common stock on a periodic basis. Under a Rule 10b5-1 plan, a broker executes trades pursuant to parameters established by the director or officer when entering into the plan, without further direction from them. The director or officer may amend a Rule 10b5-1 plan in some circumstances and may terminate a plan at any time. Our directors and executive officers also may buy or sell additional shares outside of a Rule 10b5-1 plan when they are not in possession of material nonpublic information subject to compliance with the terms of our insider trading policy. Prior to the 365-day period after the completion of this offering (subject to potential extension or early termination), the sale of any shares under such plan would be subject to the lock-up agreement that the director or officer has entered into with the underwriters.

EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

During 2009, because we did not conduct business, no compensation was paid to any of our named executive officers, and, accordingly, no compensation policies or objectives governed our named executive officer compensation. At this time, our board of directors and our compensation committee have not yet adopted compensation policies applicable to our named executive officers, but intend to do so in the near future. We anticipate that our compensation policies will be established by our compensation committee based on factors such as the desire to retain our named executive officers' services over the long term, aligning their interests with those of our stockholders, incentivizing them over the near, medium and long term, rewarding them for exceptional performance and such other factors as our compensation committee may consider in shaping its compensation philosophy. We will pay base salaries and annual bonuses and expect to make grants of awards under our 2010 Equity Incentive Award Plan to certain of our executive officers and certain other employees effective upon completion of this offering. These awards under our 2010 Equity Incentive Award Plan will be granted to recognize such individuals' efforts on our behalf in connection with our formation and this offering. Our "named executive officers" during 2010 are expected to be Ernest S. Rady, Executive Chairman; John W. Chamberlain, Chief Executive Officer and Director; Robert F. Barton, Executive Vice President and Chief Financial Officer; Adam Wyll, Senior Vice President, General Counsel and Secretary; and Patrick Kinney, Senior Vice President of Real Estate Operations.

We expect that our compensation strategy will focus on providing a total compensation package that will not only attract and retain high-caliber executive officers and employees, but will also be utilized as a tool to align employee contributions with our corporate objectives and stockholder interests. We intend to provide a competitive total compensation package and will share our success with our named executive officers, as well as our other employees, when our objectives are met.

The following is a non-exhaustive list of items that we expect our compensation committee will consider in formulating our compensation philosophy and applying that philosophy to the implementation of our overall compensation program for named executive officers and other employees:

- goals of the compensation program;
- role of our compensation committee;
- engagement and role(s) of an external compensation consultant and other advisors;
- involvement of management in compensation decisions;
- components of compensation, including equity, cash, incentive, fixed, short-, medium- and long-term compensation, and the interaction of these various components with one another;
- equity grant guidelines with regard to timing, type, vesting and other terms and conditions of equity grants;
- stock ownership guidelines and their role in aligning the interests of named executive officers with our stockholders;
- severance and change of control protections;
- perquisites, enhanced benefits and insurance;

- deferred compensation and other tax-efficient compensation programs;
- retirement and other savings programs;
- peer compensation, benchmarking and survey data; and
- risk mitigation and related protective and remedial measures.

Elements of Executive Officer Compensation

Set forth below is an overview of the expected initial components of our named executive officer compensation program, including annual cash compensation, equity awards and health and retirement benefits to be provided following completion of this offering. Because we were only recently formed, meaningful individual compensation information is not available for prior periods. In addition, no compensation will be paid by us in 2010 to our named executive officers until the consummation of this offering.

Base Salaries

As of the completion of the offering, our named executive officers will earn annualized base salaries that are commensurate with their positions and are expected to provide a steady source of income sufficient to permit these officers to focus their time and attention on their work duties and responsibilities. The expected amounts of 2010 annual base salaries for our named executive officers are set forth in the Summary Compensation Table below, but may be adjusted by our compensation committee.

Cash Bonuses

Following the completion of the offering, our named executive officers will be eligible to earn discretionary annual cash bonuses for 2010 based on the attainment of specified performance objectives established by our compensation committee. Eligibility to receive these cash bonuses is expected to incentivize our named executive officers to strive to attain company and/or individual performance goals that further our interests and the interests of our stockholders. The applicable terms and conditions of the annual cash bonuses will be determined by our compensation committee.

Equity Awards

We expect to make grants of restricted common stock to certain of our employees, including our named executive officers, upon completion of this offering. These awards under our 2010 Equity Incentive Award Plan will be granted to recognize such individuals' efforts on our behalf in connection with our formation and this offering. We expect that the aggregated denominated dollar value of all such awards will be approximately $ million. These restricted stock awards will vest , subject to the employee's continued employment with us.

The amounts and types of future equity awards, which may include restricted common stock, option awards, stock appreciation rights and other forms of equity awards, among others, will be determined by our compensation committee in its discretion. In addition to attracting, motivating and retaining the talent for which we compete, equity award grants are expected to incentivize and reward increases in long-term stockholder value, align the interests of our employees, including our named executive officers, with the interests of our stockholders and promote the retention of our employees, including our named executive officers.

Retirement Savings

We expect to establish and maintain a retirement savings plan under section 401(k) of the Code to cover our eligible employees. The Code allows eligible employees to defer a portion of their compensation, within prescribed limits, which may be on a pre-tax basis through contributions to the 401(k) plan. We may match a portion of our employees' annual contributions, within prescribed limits.

Employee Benefits

We expect that our full-time employees, including our named executive officers, will be eligible to participate in health and welfare benefit plans, which will provide medical, dental, prescription and other health and related benefits.

Additional Compensation Components

In the future, as we formulate and implement our compensation program, we may provide different and/or additional compensation components, benefits and/or perquisites to our employees, including our named executive officers, to ensure that we provide a balanced and comprehensive compensation structure. We believe that it is important to maintain flexibility to adapt our compensation structure at this time to properly attract, motivate and retain the top executive talent for which we compete.

Employment Agreements

We may enter into employment agreements with certain of our named executive officers that would take effect upon completion of the offering. We would expect that these employment agreements would provide for compensation and benefits consistent with our compensation philosophy described above. These agreements may also provide for various severance and change in control benefits. The terms of these employment agreements have not yet been determined, but we expect that the protections that would be contained in these employment agreements would help to ensure the day-to-day stability necessary to our executives to enable them to properly focus their attention on their duties and responsibilities with the company and will provide security with regard to some of the most uncertain events relating to continued employment, thereby limiting concern and uncertainty and promoting productivity.

Equity Incentive Award Plan

We intend to adopt our 2010 Equity Incentive Award Plan, which we sometimes refer to as the 2010 Plan, subject to approval by a majority of our stockholders, under which we expect to grant cash and equity incentive awards to eligible service providers in order to attract, motivate and retain the talent for which we compete. The material terms of the 2010 Plan, as it is currently contemplated, are summarized below. We are still in the process of implementing the 2010 Plan and, accordingly, this summary is subject to change prior to the effectiveness of the registration statement of which this prospectus is a part.

Eligibility and Administration

Our directors, officers, employees and consultants and the directors, officers, employees and consultants of our operating partnership and our respective subsidiaries will be eligible to receive awards under the 2010 Plan. The 2010 Plan will be administered by our compensation committee, which may delegate its duties and responsibilities to subcommittees of our directors and/or officers, subject to certain limitations that may be imposed under Code Section 162(m), Section 16 of the Exchange Act and/or stock exchange rules, as applicable. Our board of directors will administer the 2010 Plan with respect to awards to non-employee directors. The plan administrator will have the authority to make all determinations and interpretations under, prescribe all forms for use with, and adopt rules for the administration of, the 2010 Plan, subject to its express terms and conditions. The plan administrator will also set the terms and conditions of all awards under the 2010 Plan, including any vesting and vesting acceleration conditions.

Limitation on Awards and Shares Available

An aggregate number of shares of our common stock equal to approximately % of our pro forma shares outstanding as of the closing of this offering will be available for issuance under awards granted pursuant to the 2010 Plan, which shares may be authorized but unissued shares or shares purchased in the open market.

If an award under the 2010 Plan is forfeited, expires or is settled for cash, then any shares subject to such award may, to the extent of such forfeiture, expiration or cash settlement, be used again for new grants under the 2010 Plan. However, the following shares may not be used again for grant under the 2010 Plan: (1) shares tendered or withheld to satisfy grant or exercise price or tax withholding obligations associated with an award, (2) shares subject to a stock appreciation right, or SAR, that are not issued in connection with the stock settlement of the SAR on its exercise, and (3) shares purchased on the open market with the cash proceeds from the exercise of options.

Under the 2010 Plan, each LTIP unit issued pursuant to an award shall be counted against the share reserve under the 2010 Plan as one share of common stock, but only to the extent that such LTIP unit is exchangeable into shares of common stock, and on the same basis as the exchange ratio applicable to the LTIP unit.

Awards granted under the 2010 Plan upon the assumption of, or in substitution for, awards authorized or outstanding under a qualifying equity plan maintained by an entity with which we enter into a merger or similar corporate transaction will not reduce the shares authorized for grant under the 2010 Plan. After a transition period that may apply following the effective date of the offering, the maximum number of shares of our common stock that may be subject to one or more awards granted to any one participant pursuant to the 2010 Plan during any calendar year is and the maximum amount that may be paid in cash pursuant to the 2010 Plan to any one participant during any calendar year period is $.

Awards

The 2010 Plan provides for the grant of stock options, including incentive stock options, or ISOs, and nonqualified stock options, or NSOs, restricted stock, dividend equivalents, stock payments, restricted stock units, or RSUs, performance shares, other incentive awards, LTIP units, SARs and cash awards. Except as described above with respect to the named executive officers, no determination has been made as to the types or amounts of awards that will be granted to specific individuals pursuant to the 2010 Plan. Certain awards under the 2010 Plan may constitute or provide for a deferral of compensation, subject to Code Section 409A, which may impose additional requirements on the terms and conditions of such awards. All awards will be set forth in award agreements, which will detail all terms and conditions of the awards, including any applicable vesting and payment terms. Awards other than cash awards will generally be settled in shares of our common stock, but the plan administrator may provide for cash settlement of any award. A brief description of each award type follows:

- *Stock Options*. Stock options provide for the purchase of shares of our common stock in the future at an exercise price set on the grant date. ISOs, by contrast to NSOs, may provide tax deferral beyond exercise and favorable capital gains tax treatment to their holders if certain holding period and other tax Code requirements are satisfied. The exercise price of a stock option may not be less than 100% of the fair market value of the underlying share on the date of grant (or 110% in the case of ISOs granted to certain significant shareholders), except with respect to certain substitute options granted in connection with a corporate transaction. The term of a stock option may not be longer than ten years (or five years in the case of ISOs granted to certain significant shareholders). Vesting conditions determined by the plan administrator may apply to stock options and may include continued service, performance and/or other conditions.

- *Stock Appreciation Rights.* SARs entitle their holder, upon exercise, to receive from us an amount equal to the appreciation of the shares subject to the award between the grant date and the exercise date. The exercise price of a SAR may not be less than 100% of the fair market value of the underlying share on the date of grant (except with respect to certain substitute SARs granted in connection with a corporate transaction) and the term of a SAR may not be longer than ten years. Vesting conditions determined by the plan administrator may apply to SARs and may include continued service, performance and/or other conditions.

- *Restricted Stock, RSUs and Performance Shares*. Restricted stock is an award of nontransferable shares of our common stock that remain forfeitable unless and until specified conditions are met, and which may be subject to a purchase price. RSUs are contractual promises to deliver shares of our common stock in the future, which may also remain forfeitable unless and until specified conditions are met. Delivery of the shares underlying these awards may be deferred under the terms of the award or at the election of the participant, if the plan administrator permits such a deferral. Performance shares are contractual rights to receive a range of shares of our common stock in the future based on the attainment of specified performance goals, in addition to other conditions which may apply to these awards. Conditions applicable to restricted stock, RSUs and performance shares may be based on continuing service with us or our affiliates, the attainment of performance goals and/or such other conditions as the plan administrator may determine.

- *Stock Payments, Other Incentive Awards, LTIP Units and Cash Awards*. Stock payments are awards of fully vested shares of our common stock that may, but need not, be made in lieu of base salary, bonus, fees or other cash compensation otherwise payable to any individual who is eligible to receive awards. Other incentive awards are awards other than those enumerated in this summary that are denominated in, linked to or derived from shares of our common stock or value metrics related to our shares, and may remain forfeitable unless and until specified conditions are met. LTIP units are awards of units of our operating partnership intended to constitute "profits interests" within the meaning of the relevant Revenue Procedure guidance, which may be exchangeable into shares of our common stock. Cash awards are cash incentive bonuses subject to performance goals.

- *Dividend Equivalents*. Dividend equivalents represent the right to receive the equivalent value of dividends paid on shares of our common stock and may be granted alone or in tandem with awards other than stock options or SARs. Dividend equivalents are credited as of dividend payments dates during the period between the date an award is granted and the date such award vests, is exercised, is distributed or expires, as determined by the plan administrator.

Performance Awards

Performance awards include any of the awards that are granted subject to vesting and/or payment based on the attainment of specified performance goals. The plan administrator will determine whether performance awards are intended to constitute "qualified performance-based compensation," or QPBC, within the meaning of Code Section 162(m), in which case the applicable performance criteria will be selected from the list below in accordance with the requirements of Code Section 162(m).

Code Section 162(m) imposes a $1.0 million cap on the compensation deduction that we may take in respect of compensation paid to our "covered employees" (which should include our chief executive officer and our next three most highly compensated employees other than our chief financial officer), but excludes from the calculation of amounts subject to this limitation any amounts that constitute QPBC. We do not expect Code Section 162(m) to apply to awards under the 2010 Plan until the earliest to occur of our annual shareholders' meeting in 2014, a material modification of the 2010 Plan or exhaustion of the share supply under the 2010 Plan. However, QPBC performance criteria may be used with respect to performance awards that are not intended to constitute QPBC.

In order to constitute QPBC under Code Section 162(m), in addition to certain other requirements, the relevant amounts must be payable only upon the attainment of pre-established, objective performance goals set by our compensation committee and linked to stockholder-approved performance criteria. For purposes of the 2010 Plan, one or more of the following performance criteria will be used in setting performance goals applicable to QPBC, and may be used in setting performance goals applicable to other performance awards: (1) net earnings (either before or after one or more of the following: (a) interest, (b) taxes, (c) depreciation and (d) amortization); (2) gross or net sales or revenue; (3) net income (either before or after taxes); (4) adjusted net income; (5) operating earnings or profit; (6) cash flow or NOI (including, but not limited to, operating cash flow and free

cash flow); (7) return on assets; (8) return on capital; (9) return on stockholders' equity; (10) total stockholder return; (11) return on sales; (12) gross or net profit or operating margin; (13) costs; (14) funds from operations; (15) expenses; (16) working capital; (17) earnings per share; (18) adjusted earnings per share; (19) price per share of common stock; (20) implementation or completion of critical projects; (21) market share; and (22) economic value, any of which may be measured either in absolute terms or as compared to any incremental increase or decrease or as compared to results of a peer group or to market performance indicators or indices.

The 2010 Plan also will permit the plan administrator to provide for objectively determinable adjustments to the applicable performance criteria in setting performance goals for QPBC awards. Such adjustments may include one or more of the following: (1) items related to a change in accounting principle; (2) items relating to financing activities; (3) expenses for restructuring or productivity initiatives; (4) other non-operating items; (5) items related to acquisitions; (6) items attributable to the business operations of any entity acquired by us during the performance period; (7) items related to the disposal of a business or segment of a business; (8) items related to discontinued operations that do not qualify as a segment of a business under GAAP; (9) items attributable to any stock dividend, stock split, combination or exchange of shares occurring during the performance period; (10) any other items of significant income or expense which are determined to be appropriate adjustments; (11) items relating to unusual or extraordinary corporate transactions, events or developments; (12) items related to amortization of acquired intangible assets; (13) items that are outside the scope of our core, on-going business activities; or (14) items relating to any other unusual or nonrecurring events or changes in applicable laws, accounting principles or business conditions.

Certain Transactions

The plan administrator will have broad discretion to equitably adjust the provisions of the 2010 Plan, as well as the terms and conditions of existing and future awards, to prevent the dilution or enlargement of intended benefits and facilitate necessary or desirable changes in the event of certain transactions and events affecting our common stock, such as stock dividends, stock splits, mergers, acquisitions, consolidations and other corporate transactions. In addition, in the event of certain non-reciprocal transactions with our shareholders known as "equity restructurings," the plan administrator will make equitable adjustments to the 2010 Plan and outstanding awards. In the event of a change in control of our company (as defined in the 2010 Plan), the surviving entity must assume outstanding awards or substitute economically equivalent awards for such outstanding awards; however, if the surviving entity refuses to assume or substitute for all or some outstanding awards, then all such awards will vest in full and be deemed exercised (as applicable) upon the transaction. Individual award agreements may provide for additional accelerated vesting and payment provisions.

Foreign Participants, Transferability and Participant Payments

The plan administrator may modify award terms, establish subplans and/or adjust other terms and conditions of awards, subject to the share limits described above, in order to facilitate grants of awards subject to the laws and/or stock exchange rules of countries outside of the United States. With limited exceptions for estate planning, domestic relations orders, certain beneficiary designations and the laws of descent and distribution, awards under the 2010 Plan are generally non-transferable prior to vesting and are exercisable only by the participant. With regard to tax withholding, exercise price and purchase price obligations arising in connection with awards under the 2010 Plan, the plan administrator may, in its discretion, accept cash or check, shares of our common stock that meet specified conditions, a "market sell order" or such other consideration as it deems suitable.

Plan Amendment and Termination

Our board of directors may amend or terminate the 2010 Plan at any time; however, except in connection with certain changes in our capital structure, stockholder approval will be required for any amendment that increases the number of shares available under the 2010 Plan, "reprices" any stock option or

SAR or cancels any stock option or SAR in exchange for cash or another award when the option or SAR price per share exceeds the fair market value of the underlying shares or as otherwise required by applicable law or stock exchange rule. No award may be granted pursuant to the 2010 Plan after the tenth anniversary of the date on which we adopt the 2010 Plan.

Additional REIT Restrictions

The 2010 Plan will provide that no participant will be granted, become vested in the right to receive or acquire or be permitted to acquire, or will have any right to acquire, shares under an award if such acquisition would be prohibited by the restrictions on ownership and transfer of our stock contained in our charter or would impair our status as a REIT.

Tax Considerations

Section 162(m) of the Internal Revenue Code

Section 162(m) of the Code disallows a tax deduction for any publicly held corporation for individual compensation exceeding $1.0 million in any taxable year for our chief executive officer and each of our other named executive officers (other than our chief financial officer), unless compensation is performance based. We expect that our compensation committee will, following this offering, adhere to the principle that, where reasonably practicable, we will seek to qualify the variable compensation paid to our named executive officers for an exemption from the deductibility limitations of Section 162(m). As such, in approving the amount and form of compensation for our named executive officers in the future, our compensation committee will consider all elements of the cost to our company of providing such compensation, including the potential impact of Section 162(m). However, our compensation committee may, in its judgment, authorize compensation payments that do not comply with the exemptions in Section 162(m) when it believes that such payments are appropriate to attract and retain executive talent.

Section 409A of the Internal Revenue Code

Section 409A of the Code requires that “nonqualified deferred compensation” be deferred and paid under plans or arrangements that satisfy the requirements of the statute with respect to the timing of deferral elections, timing of payments and certain other matters. Failure to satisfy these requirements can expose employees and other service providers to accelerated income tax liabilities, penalty taxes and interest on their vested compensation under such plans. Accordingly, as a general matter, it is our intention to design and administer our compensation and benefits plans and arrangements for all of our employees and other service providers, including our named executive officers, so that they are either exempt from, or satisfy the requirements of, Section 409A.

Section 280G of the Internal Revenue Code

Section 280G of the Code disallows a tax deduction with respect to excess parachute payments to certain executives of companies which undergo a change in control. In addition, Section 4999 of the Internal Revenue Code imposes a 20% penalty on the individual receiving the excess payment.

Parachute payments are compensation that is linked to or triggered by a change in control and may include, but are not limited to, bonus payments, severance payments, certain fringe benefits, and payments and acceleration of vesting from long-term incentive plans, including stock options and other equity-based compensation. Excess parachute payments are parachute payments that exceed a threshold determined under Section 280G based on the executive’s prior compensation. In approving the compensation arrangements for our named executive officers in the future, our compensation committee will consider all elements of the cost to our company of providing such compensation, including the potential impact of Section 280G. However, our

compensation committee may, in its judgment, authorize compensation arrangements that could give rise to loss of deductibility under Section 280G and the imposition of excise taxes under Section 4999 when it believes that such arrangements are appropriate to attract and retain executive talent.

Accounting Standards

ASC Topic 718, *Compensation—Stock Compensation* (referred to as ASC Topic 718 and formerly known as FASB 123R), requires us to recognize an expense for the fair value of equity-based compensation awards. Grants of stock options, restricted stock, restricted stock units and performance units under our 2010 Equity Incentive Award Plan will be accounted for under ASC Topic 718. Our compensation committee will regularly consider the accounting implications of significant compensation decisions, especially in connection with decisions that relate to our equity plans and programs. As accounting standards change, we may revise certain programs to appropriately align accounting expenses of our equity awards with our overall executive compensation philosophy and objectives.

Compensation Committee Interlocks and Insider Participation

Upon completion of this offering and the formation transactions, we do not anticipate that any of our executive officers will serve as a member of a board of directors or compensation committee, or other committee serving an equivalent function, of any other entity that has one or more of its executive officers serving as a member of our board of directors or compensation committee.

Compensation Tables

Summary Compensation Table

We did not conduct business in 2009 and, accordingly, we did not pay any compensation to our named executive officers during or in respect of that year. Because we have no 2009 compensation to report, we are including below a Summary Compensation Table setting forth certain compensation that we expect to pay to our named executive officers during 2010 in order to provide some understanding of our expected compensation levels. While the table below accurately reflects our current expectations with respect to 2010 named executive officer compensation, actual 2010 compensation for these officers may be increased or decreased, including through the use of compensation components not currently contemplated or described herein. We expect to disclose actual 2010 compensation for our named executive officers in 2011, to the extent required by applicable SEC disclosure rules.

Name and Principal Position	Fiscal Year	Salary ($)[1]	Bonus ($)	Stock Awards ($)	Option Awards ($)	Non-Equity Incentive Plan Compensation ($)	All Other Compensation ($)	Total ($)[4]
Ernest S. Rady Executive Chairman	2010		[2]	[3]	—	—	—	
John W. Chamberlain Chief Executive Officer and Director	2010		[2]	[3]	—	—	—	
Robert F. Barton Executive Vice President and Chief Financial Officer	2010		[2]	[3]	—	—	—	
Adam Wyll Senior Vice President, General Counsel and Secretary	2010		[2]	[3]	—	—	—	
Patrick Kinney Senior Vice President of Real Estate Operations	2010		[2]	[3]	—	—	—	

(1) Salary amounts are annualized for the year ending December 31, 2010 based on the expected base salary levels to be effective upon the completion of this offering. Each of our named executive officers will receive a pro-rata portion of his 2010 base salary for the period from the completion of this offering through December 31, 2010.
(2) Any bonus awards to our named executive officers will be determined after the end of the 2010 fiscal year in the sole discretion of our compensation committee contingent upon such factors as the compensation committee may deem appropriate.
(3) Stock awards have not yet been granted to our named executive officers but are expected to be made on or about the date of this offering.
(4) Amounts shown in this column do not include the value of restricted stock awards (described in Note 3 above) that are expected to be granted to our named executive officers in connection with the offering, but which have not yet been granted.

Director Compensation

We intend to approve and implement a compensation program for our non-employee directors that consists of annual retainer fees and long-term equity awards. We will also reimburse each of our directors for his or her travel expenses incurred in connection with his or her attendance at full board of directors and committee meetings. We have not made any payments to any of our non-employee directors or director nominees to date.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Formation Transactions

Each property that will be owned by us through our operating partnership upon the completion of this offering and the formation transactions is currently owned directly or indirectly by partnerships, limited liability companies or corporations in which Ernest S. Rady and his affiliates, including the Rady Trust, our other directors and executive officers and their affiliates and/or other third parties own a direct or indirect interest. We refer to these partnerships, limited liability companies and corporations collectively as the "ownership entities." With the exception of our joint venture partner in Fireman's Fund Headquarters, the current owners of the ownership entities, whom we refer to as the "prior investors," have (1) entered into contribution agreements with us or our operating partnership, pursuant to which they will contribute their interests in the ownership entities to us or our operating partnership or its subsidiaries, or (2) caused the ownership entities to enter into merger agreements pursuant to which the ownership entities will merge with and into us, our operating partnership or certain of our or our operating partnership's subsidiaries (or, in the case of reverse mergers, certain subsidiaries of our operating partnership will merge with and into such entities), in each case substantially concurrently with the completion of this offering. To the extent that we are party directly to certain mergers in the formation transactions, we will contribute the assets received in such merger transactions to our operating partnership in exchange for common units. In addition, in connection with such transactions, American Assets, Inc. will contribute its property management business, which we refer to as the "property management business," to our operating partnership in exchange for common units pursuant to a contribution agreement. The prior investors will receive cash, shares of our common stock and/or common units in exchange for their interests in the ownership entities. See "Structure and Formation of Our Company—Formation Transactions."

The value of the consideration to be paid to each of the prior investors in the formation transactions, in each case, will be based upon the terms of the applicable merger or contribution agreement among us and/or our operating partnership, on the one hand, and the prior investor or prior investors, on the other hand. In all cases, the aggregate value of consideration to be paid to each investor will be determined by applying his or her allocated share of ownership in each applicable property to the equity value of such property. The equity value of each property will be determined by applying the results of a relative equity valuation analysis of the properties and the property management business, which valuation analysis was conducted by an independent third-party valuation specialist, to the total value of our portfolio and the property management business, as determined upon pricing of this offering. This calculation is subject to adjustment to account for the existence of certain unsecured indebtedness related to the applicable properties and for changes in indebtedness related to the applicable properties. As part of the formation transactions, intercompany indebtedness obligations between or among ownership entities and the prior investors will be settled as an adjustment to the formation transaction consideration otherwise recievable by or payable to prior investors who were debtors or lenders or who held interests in ownership entities that were debtors or lenders, with respect to such debt obligations. The number of units or shares to be issued to each prior investor will be equal to (1) the value of the consideration to be received by him or her, divided by (2) the initial public offering price of our common stock.

In the event that the formation transactions are completed, we and our operating partnership will be solely responsible for all transaction costs incurred by the ownership entities in connection with the formation transactions and this offering. Moreover, while the merger agreements contain certain representations and warranties regarding the ownership entities and the contribution agreements contain certain representations warranties by the prior investors who are parties to such agreements, the majority of these representations and warranties will not survive the closing of the formation transactions. The prior investors will provide us with no indemnification for breaches of the surviving representations and warranties and our sole remedy against the prior investors will be for breach of contract.

The following table sets forth the consideration to be received by our directors, officers and affiliates in connection with the formation transactions, assuming a price per share of our common stock equal to the mid-point of the range set forth on the cover of this prospectus:

Prior Investors	Relationship with Us	Number of Shares Received in Formation Transactions	Number of Units Received in Formation Transactions	Total Value of Formation Transaction Consideration
American Assets, Inc.	Owner of 5% or more of our outstanding common stock			
Ernest Rady Trust U/D/T March 10, 1983(1)	Owner of 5% or more of our outstanding common stock			
Ernest S. Rady(2)	Director and Executive Officer			
John W. Chamberlain(3)	Director and Executive Officer			
Robert F. Barton(4)	Executive Officer			
Adam Wyll	Executive Officer			
Patrick Kinney	Executive Officer			

(1) Includes shares and common units held by American Assets, Inc., which is controlled by the Rady Trust. The Rady Trust disclaims beneficial ownership of such shares and common units, except to the extent of his pecuniary interest therein.

(2) Includes (a) shares and common units held by the Rady Trust, for which Mr. Rady is the trustee and beneficiary; (b) shares and common units held by the Donald R. Rady Trust, for which Mr. Rady is the trustee; (c) shares and common units held by the Harry M. Rady Trust, for which Mr. Rady is the trustee; (d) shares and common units held by the Margo S. Rady Trust, for which Mr. Rady is the trustee; (e) shares and common units held by DHM Trust dated as of 29th May 1959, for which Mr. Rady is the trustee; and (f) shares and common units held by American Assets, Inc., which is indirectly controlled by Mr. Rady. Mr. Rady disclaims beneficial ownership of such shares and common units, except to the extent of his pecuniary interest therein.

(3) Includes (a) shares and common units held by Trust A of the W.E. & B.M. Chamberlain Trust, for which Mr. Chamberlain is the trustee; (b) shares and common units held by Trust C of the W.E. & B.M. Chamberlain Trust, for which Mr. Chamberlain is the trustee; and (c) shares and common units held by The John W. and Rebecca S. Chamberlain Trust dated July 14, 1994, as amended, for which Mr. Chamberlain and his wife are the trustees and beneficiaries. Mr. Chamberlain disclaims beneficial ownership of such shares and common units, except to the extent of his pecuniary interest therein.

(4) Includes shares and common units held by the Robert and Katherine Barton Living Trust, for which Mr. Barton is a trustee and beneficiary, and as such is the beneficial owner of the shares and common units held by such trust.

We have not obtained independent third-party appraisals of the properties in our portfolio. Accordingly, there can be no assurance that the fair market value of the cash and equity securities that we pay or issue to the prior investors will not exceed the fair market value of the properties and other assets acquired by us in the formation transactions. See “Risk Factors—Risks Related to Our Properties and Our Business—The value of the common units and shares of our common stock to be issued as consideration for the properties and assets to be acquired by us in the formation transactions may exceed their aggregate fair market value and exceed their aggregate historical combined, net tangible book value of approximately $126.6 million as of June 30, 2010.”

Upon completion of this offering and the formation transactions, Mr. Rady and his affiliates, including the Rady Trust, and our other directors and executive officers will own % of our outstanding common stock, or % on a fully diluted basis (% of our outstanding common stock, or % on a fully diluted basis, if the underwriters' overallotment option is exercised in full) based upon the mid-point of the range of prices shown on the cover of this prospectus.

In addition, in connection with the formation transactions, the Rady Trust has entered into a representation, warranty and indemnity agreement with us, pursuant to which it made certain representations and warranties to us regarding the entities and assets being acquired in the formation transactions and agreed to indemnify us and our operating partnership for breaches of such representations and warranties for one year after the completion of this offering and the formation transactions. For purposes of satisfying any indemnification claims, the Rady Trust will deposit into escrow shares of our common stock and common units with an aggregate value equal to ten percent of the consideration payable to the Rady Trust and its affiliates in the formation transactions. The Rady Trust has no obligation to increase the amount of common stock and/or common units in the escrow in the event the trading price of our common stock declines below the initial public offering price. Any and all amounts remaining in the escrow one year from the closing of the formation transactions will be distributed to the Rady Trust to the extent that indemnity claims have not been made against such amounts. This indemnification is subject to a one-time aggregate deductible equal to one percent of the consideration payable to the Rady Trust and its affiliates in the formation transactions and a cap equal to the value of the consideration deposited in the escrow. Other than the Rady Trust, none of the prior investors or the entities that we are acquiring in the formation transactions will provide us with any indemnification.

Excluded Assets

To the extent that an ownership entity has an excess of net working capital over "target net working capital" (as set forth below) as determined by us within 45 days prior to the date of the preliminary prospectus in connection with this offering, the amount of such excess shall be due to the prior owners of such ownership entity following the completion of the offering, including Ernest S. Rady and his affiliates and our other directors and executive officers who are prior investors. To the extent not distributed or paid by such ownership entity prior to the completion of this offering, our operating partnership shall pay such amounts on behalf of each such ownership entity promptly after the completion of this offering. For purposes of this calculation, the target net working capital of each ownership entity will be zero, other than with respect to certain ownership entities holding interests in Waikiki Beach Walk—Retail and the Waikiki Beach Walk—Hotel. With respect to Waikiki Beach Walk—Retail, ABW Lewers LLC will have a target net working capital of $5,000,000 and with respect to the Waikiki Beach Walk—Hotel, each of EBW Hotel, LLC, Broadway 225 Sorrento Holdings, LLC, Broadway 225 Stonecrest Holdings, LLC, and Waikele Venture Holdings, LLC, will have a target net working capital of $2,050,000, $766,500, $470,000 and $1,713,500, respectively. Therefore, any such amounts will not be included in the assets that we acquire in the formation transactions.

We estimate that the aggregate amount of such excess of net working capital will be $, of which $ will be payable to Ernest S. Rady and his affiliates, $ will be payable to John W. Chamberlain and his affiliates and $ will be payable to Robert F. Barton and his affiliates.

Release of Guarantees

The Rady Trust and certain other affiliates of Mr. Rady are guarantors of approximately $75.4 million of indebtedness, in the aggregate, with respect to Waikele Center, Waikiki Beach Walk—Hotel, 160 King Street, The Landmark at One Market and Valencia Corporate Center. All of the indebtedness underlying the foregoing guaranteed amounts will be repaid with proceeds from this offering and, as a result, the Rady Trust and these other affiliates of Mr. Rady will be released from these guarantee obligations.

In addition, the Rady Trust and certain other affiliates of Mr. Rady are guarantors of approximately $879.9 million of indebtedness, in the aggregate, that will be assumed by us upon completion of this offering.

The guarantees with respect to substantially all of this indebtedness are limited to losses incurred by the applicable lender arising from a borrower's fraud, intentional misrepresentation or other "bad acts," a borrower's bankruptcy, a prohibited transfer under the loan documents or losses arising from a borrower's breach of certain environmental covenants. In connection with this assumption, we will seek to have the Rady Trust and such other affiliates of Mr. Rady released from such guarantees and to have our operating partnership assume any such guarantee obligations as replacement guarantor. To the extent lenders do not consent to the release of the Rady Trust and or such other affiliates of Mr. Rady, and the Rady Trust and such other affiliates remain guarantors on assumed indebtedness following the IPO, our operating partnership will enter into a reimbursement agreement with the Rady Trust and such affiliates, pursuant to which our operating partnership will be obligated to reimburse the Rady Trust and such other affiliates of Mr. Rady for any amounts paid by them under guarantees with respect to the assumed indebtedness.

Partnership Agreement

In connection with the completion of this offering, we will enter into an amended and restated partnership agreement with the various persons receiving common units in the formation transactions, including Mr. Rady, his affiliates and certain other executive officers of our company. As a result, these persons will become limited partners of our operating partnership. See "Description of the Partnership Agreement of American Assets Trust, L.P." Upon completion of this offering and the formation transactions, Mr. Rady and his affiliates and our other directors and executive officers will own % of the outstanding common units (% of our outstanding common stock, or % on a fully diluted basis, if the underwriters' overallotment option is exercised in full).

Pursuant to the partnership agreement, limited partners of our operating partnership and some assignees of limited partners will have the right, beginning 14 months after the completion of this offering, to require our operating partnership to redeem part or all of their common units for cash equal to the then-current market value of an equal number of shares of our common stock (determined in accordance with and subject to adjustment under the partnership agreement), or, at our election, to exchange their common units for shares of our common stock on a one-for-one basis, subject to certain adjustments and the restrictions on ownership and transfer of our stock set forth in our charter and described under the section entitled "Description of Securities—Restrictions on Ownership and Transfer."

In addition, we may not, without prior limited partner approval, directly or indirectly transfer all or any portion of our interest in the operating partnership before the later of the death of Mr. Rady and the death of his wife, in connection with a merger, consolidation or other combination of our assets with another entity, a sale of all or substantially all of our assets, a reclassification, recapitalization or change in any outstanding shares of our stock or other outstanding equity interests or an issuance of shares of our stock, in any case that requires approval by our common stockholders. See "Description of the Partnership Agreement of American Assets Trust, L.P.—Restrictions on Transfers by the General Partner."

Registration Rights

In connection with the completion of this offering, we will enter into a registration rights agreement with the various persons receiving shares of our common stock and/or common units in the formation transactions, including Mr. Rady, his affiliates, immediate family members and related trusts and certain of our executive officers. Under the registration rights agreement, subject to certain limitations, commencing not later than 14 months after the date of this offering, we will file one or more registration statements covering the resale of the shares of our common stock issued in the formation transactions and the resale of the shares of our common stock issued or issuable, at our option, in exchange for common units issued in the formation transactions. We may, at our option, satisfy our obligation to prepare and file a resale registration statement by filing a registration statement registering the issuance by us of shares of our common stock registered under the Securities Act in lieu of our operating partnership's obligation to pay cash for such units.

Commencing one year after the date of this offering (but prior to the date upon which the registration statement described above is effective) or 16 months after the date of this offering if a shelf registration statement is not then effective, Mr. Rady and his affiliates, immediate family members and related trusts will have demand rights to require us to undertake an underwritten offering under a resale registration statement (so long as a majority-in-interest of such group makes such a demand). In addition, if we file a registration statement with respect to an underwritten offering for our own account, any of Mr. Rady and his affiliates, immediate family members and related trusts will have the right, subject to certain limitations, to register such number of shares of our common stock issued to him or her pursuant to the formation transactions as each such person requests.

Commencing upon our filing of a resale registration statement not later than 14 months after the date of this offering, under certain circumstances, we will also be required to undertake an underwritten offering upon the written request of holders of at least 10% in the aggregate of the securities originally issued in the formation transactions, provided the securities to be registered in such offering shall (1) have a market value of at least $25 million or (2) shall represent all of the remaining securities acquired in the formation transactions by Mr. Rady and his affiliates, immediate family members and related trusts and such securities shall have a market value of at least $10 million, and provided further that we are not obligated to effect more than three such underwritten offerings. We will agree to pay all of the expenses relating to the securities registrations described above. See “Shares Eligible for Future Sale—Registration Rights.”

Tax Protection Agreement

In connection with the formation transactions and this offering, we will enter into a tax protection agreement with certain limited partners of our operating partnership, or the protected partners, including Mr. Rady and his affiliates and an affiliate of Mr. Chamberlain. Under this agreement, our operating partnership will indemnify the protected partners for their tax liabilities (plus an additional amount equal to the taxes incurred as a result of such indemnity payment) attributable to their share of the built-in gain, as of the closing of the formation transactions, with respect to their interest in Carmel Country Plaza, Carmel Mountain Plaza, Del Monte Center, Loma Palisades, Lomas Santa Fe Plaza, Waikele Center or the ICW Plaza, portion of Torrey Reserve Campus, which we collectively refer to as the tax protected properties, if the operating partnership, without the consent of Mr. Rady, disposes of any interest with respect to such properties in a taxable transaction during the shorter of the seven-year period after the closing of the formation transactions and the date on which 50% or more of the common units originally received by any such protected partner in the formation transactions have been sold, exchanged or otherwise disposed of by the protected partner, subject to certain exceptions and limitations. In addition, if during this period we fail to offer certain of the protected partners an opportunity to guarantee, in the aggregate, up to $ million of our outstanding indebtedness, or if we fail to make commercially reasonable efforts to provide such partners who continue to own more than 50% of the common units originally received by such partners in the formation transactions with an opportunity to guarantee debt after this period, we will be required to indemnify such partners against their resulting tax liabilities (plus an additional amount equal to the taxes they incur as a result of such indemnity payment). Notwithstanding the foregoing, the operating partnership’s indemnification obligations under the tax protection agreement will terminate upon the later of the death of Mr. Rady and the death of his wife. Mr. Rady and his affiliates and an affiliate of Mr. Chamberlain will have the opportunity to guarantee up to $ million and $ million, respectively, of our outstanding indebtedness. Among other things, this opportunity to guarantee debt is intended to allow the protected partners to defer the recognition of gain in connection with the formation transactions. The sole and exclusive rights and remedies of any protected partner under the tax protection agreement shall be a claim against our operating partnership for such protected partner’s tax liabilities as calculated in the tax protection agreement, and no protected partner shall be entitled to pursue a claim for specific performance or bring a claim against any person that acquires a protected party from our operating partnership in violation of the tax protection agreement.

Reimbursement of Pre-closing Transaction Costs

From time to time prior to this offering, American Assets, Inc., which is indirectly controlled by Mr. Rady, has advanced or incurred an aggregate of approximately $ million in organizational, legal, accounting and other similar expenses in connection with this offering and the formation transactions. These funds were advanced or incurred with the understanding that they would be repaid out of the proceeds of a completed public offering. Accordingly, upon consummation of this offering, we will reimburse American Assets, Inc. for the approximately $ million of such advances.

Repayment of Related Party Debt

In connection with the formation transactions, we will repay in cash from the proceeds of this offering approximately $4.9 million in notes payable to certain of the prior investors in Del Monte Center. Mr. Rady and his affiliates will receive approximately $3.8 million of this amount in their capacity as direct or indirect owners of the entities that own Del Monte Center. In addition, in connection with the formation transactions, we will repay in cash from the proceeds of this offering approximately $350,000 in notes payable to certain prior investors in Torrey Reserve Campus. Mr. Rady and his affiliates will receive approximately $30,000 of this amount in their capacity as direct or indirect owners of the entities that own Torrey Reserve Campus.

Lease Agreements

Insurance Company of the West, which was founded by Mr. Rady and is indirectly controlled by him, is a major tenant at Torrey Reserve Campus and Valencia Corporate Center. American Assets, Inc., which was also founded by Mr. Rady and is indirectly controlled by him, is a tenant at Torrey Reserve Campus. Mr. Rady currently serves as the chairman of the board of directors of both Insurance Company of the West and American Assets, Inc. Pursuant to the lease agreements with Insurance Company of the West, we will receive approximately $360,000 per month ($4,320,000 per year) in rent from Insurance Company of the West, and pursuant to the lease agreement with American Assets, Inc., we will receive approximately $57,000 per month ($684,000 per year) in rent from American Assets, Inc.

Assets Recently Acquired by Our Founders

In June 2010, the Rady Trust purchased a 99% indirect ownership interest in Landmark Venture JV, LLC, which indirectly owns an approximately 66.2% interest in The Landmark at One Market, for approximately $22.2 million. In connection with the formation transactions, we will acquire all of the indirect interests in Landmark Venture JV, LLC acquired by the Rady Trust in June 2010 for shares of common stock and/or common units with an aggregate value equal to $ million (based on the mid-point of the range set forth on the cover of this prospectus). In addition, in August 2010, a family trust established by Mr. Barton acquired an approximately 2.1% interest in Landmark Assets, Inc., which owns the remaining 1% interest in Landmark Venture JV, LLC, for $3,500. In connection with the formation transactions, we will acquire all of the interests in Landmark Assets, Inc. acquired by this Barton family trust in August 2010 for shares of common stock and/or common units with an aggregate value equal to $ (based on the mid-point of the range set forth on the cover of this prospectus). The value of the consideration that we will pay for these interests will be determined according to the applicable merger agreements and/or contribution agreements in the manner described above under "—Formation Transactions." In addition to the foregoing, we also have an option to purchase an approximately 80,000 rentable square foot building vacated by Mervyn's, which is located at our Carmel Mountain Plaza property. We intend to exercise this option, which will require a cash payment of approximately $13.2 million.

Outrigger Agreements

Under our management agreement with Outrigger, we pay Outrigger a monthly management fee of 6.0% of gross operating profit of our mixed-use property, provided that the aggregate management fee for any

year shall not exceed 3.5% of gross revenues for such fiscal year. This 6.0% fee includes the fee payable to the franchisor of the brand under which this hotel operates. Pursuant to the terms of the management agreement, if the management agreement is terminated in certain instances, including upon a transfer by us of the hotel or upon a default by us under the management agreement, we will be required to pay a cancellation fee calculated by multiplying (1) the management fees for the previous 12 months by (2) (A) eight, if the agreement is terminated in the first 11 years, or (B) four, three, two or one, if the agreement is terminated in the twelfth, thirteenth, fourteenth or fifteenth year, respectively, of the term of the agreement. We may not terminate the management agreement without cause.

Pursuant to a letter agreement dated September 6, 2010, we have agreed, provided that this offering is consummated, to: (1) use our best efforts to obtain the release of Outrigger from its guarantee with respect to a $130.3 million mortgage loan related to Waikiki Beach Walk—Retail that will remain outstanding after this offering, provided that, if the lender of such loan does not agree to such a release, we will use our best efforts to cause the lender to agree to look to us or the operating partnership for primary recourse under such guarantee prior to looking to Outrigger for any recourse under such guarantee and we or the operating partnership, will indemnify, defend and hold harmless Outrigger for any losses, costs and expenses it incurs as a secondary guarantor of such loan, provided further that, if neither of the foregoing proposals are accepted by such lender, then we and the operating partnership, will indemnify, defend and hold harmless Outrigger for any losses, costs and expenses it incurs under such guarantee; (2) assume the indemnification obligation which American Assets, Inc. had with respect to Outrigger with regarding any adverse tax consequences arising from the formation of the Waikiki Beach Walk–Hotel tenancy in common; and (3) along with the operating partnership, waive and relinquish all rights and benefits afforded to us or the operating partnership, other than pursuant to documents entered into pursuant to the formation transactions to which certain affiliates of Outrigger are a party, for claims against Outrigger and/or its affiliates, for actions or omissions by Outrigger and/or its affiliates taken prior to the completion of the formation transactions.

Employment Agreements

We may enter into employment agreements with certain of our executive officers that would take effect upon completion of this offering, which would be expected to provide for salary, bonus and other benefits, including accelerated equity vesting upon a change in control and severance upon a termination of employment under certain circumstances. The terms of these employment agreements have not yet been determined.

Sublease Agreement

In connection with the formation transactions, American Assets, Inc., which is indirectly controlled by Mr. Rady, will sublease to us an interest in approximately square feet of its square foot lease at Torrey Reserve—ICW Plaza, which is where we will maintain our principal executive offices. Pursuant to this sublease agreement, we will pay rent to American Assets, Inc. at a rate that is expected to be equal to or less than prevailing rents within this submarket. The sublease will be for a -year term, with -year extension options exercisable by us. The rent payable under this sublease is expected to be approximately $ per year for the initial term of the sublease.

Management Business Contribution Agreement

We will succeed to the property management business of American Assets, Inc. as a result of the contribution by American Assets, Inc., which is indirectly controlled by Mr. Rady, of the assets and liabilities associated with the property management business to its wholly owned subsidiary, American Assets Trust Management, LLC, and the subsequent contribution of its interest in that entity to our operating partnership in exchange for common units. Upon the consummation of the formation transactions, substantially all employees of American Assets, Inc. will be terminated by American Assets, Inc. and hired by our operating partnership, American Assets Trust Management, LLC or another affiliate of our operating partnership. These employees will receive offers of employment on substantially the same terms and conditions of their employment

as were in effect immediately prior to this transition and will be eligible to participate in any employee benefit plans maintained following the consummation of this offering by our operating partnership, American Assets Trust Management, LLC, or such affiliate. The new employer will provide service credit to each transferred employee for all service with American Assets, Inc. under its employee benefit plans and programs. The transferred employees will roll over their accrued paid time off, flexible spending account balances and deferred compensation plan balances, subject to the requirements of applicable law and any restrictions on transfer set forth in the Code. Except as described above, American Assets, Inc. will retain all liabilities related to the transferred employees to the extent those liabilities arose prior to the closing of the foregoing transactions.

Transition Services Agreement

Our operating partnership has entered into a transition services agreement with American Assets, Inc., which is indirectly controlled by Mr. Rady, pursuant to which it and American Assets, Inc. have each agreed to provide the other with such services as the other shall reasonably request. Any party receiving services under this agreement shall reimburse the party providing such services for the fully loaded cost of providing such services and for any other actual and reasonable out of pocket expenses incurred in connection with providing such services. Either party may terminate this agreement upon 30-days' written notice.

Equity Incentive Award Plan

In connection with the formation transactions, we expect to adopt a cash and equity-based incentive award plan for our directors, officers, employees and consultants. We expect that an aggregate of shares of our common stock and common units will be available for issuance under awards granted pursuant to our 2010 Equity Incentive Award Plan. See "Executive Compensation—Equity Incentive Award Plan."

Indemnification of Officers and Directors

Effective upon completion of this offering, our charter and bylaws will provide for certain indemnification rights for our directors and officers and we will enter into an indemnification agreement with each of our executive officers and directors, providing for procedures for indemnification and advancements by us of certain expenses and costs relating to claims, suits or proceedings arising from their service to us or, at our request, service to other entities, as officers or directors to the maximum extent permitted by Maryland law. See "Management—Limitation of Liability and Indemnification."

POLICIES WITH RESPECT TO CERTAIN ACTIVITIES

The following is a discussion of certain of our investment, financing and other policies. These policies have been determined by our board of directors and, in general, may be amended or revised from time to time by our board of directors without a vote of our stockholders.

Investment Policies

Investments in Real Estate or Interests in Real Estate

We will conduct all of our investment activities through our operating partnership and its subsidiaries. Our investment objectives are to maximize the cash flow of our properties, acquire properties with cash flow growth potential, provide quarterly cash distributions and achieve long-term capital appreciation for our stockholders through increases in the value of our company. Consistent with our policy to acquire assets for both income and capital gain, our operating partnership intends to hold its properties for investment with a view to long-term appreciation, to engage in the business of acquiring, developing and owning its properties and to make occasional sales of the properties as are consistent with our investment objectives. We have not established a specific policy regarding the relative priority of these investment objectives. For a discussion of our properties and our acquisition and other strategic objectives, see “Business and Properties.”

We expect to pursue our investment objectives primarily through the ownership by our operating partnership of our portfolio of properties and other acquired properties and assets. We currently intend to invest primarily in retail, office, mixed-use and multifamily properties. Future investment or development activities will not be limited to any geographic area, property type or to a specified percentage of our assets. While we may diversify in terms of property locations, size and market, we do not have any limit on the amount or percentage of our assets that may be invested in any one property or any one geographic area. We intend to engage in such future investment activities in a manner that is consistent with the maintenance of our status as a REIT for U.S. federal income tax purposes. In addition, we may purchase or lease income-producing office or other types of properties for long-term investment, expand and improve the properties we presently own or other acquired properties, or sell such properties, in whole or in part, when circumstances warrant.

We may also participate with third parties in property ownership, through joint ventures or other types of co-ownership. We also may acquire real estate or interests in real estate in exchange for the issuance of common stock, units, preferred stock or options to purchase stock. These types of investments may permit us to own interests in larger assets without unduly restricting our diversification and, therefore, provide us with flexibility in structuring our portfolio. We will not, however, enter into a joint venture or other partnership arrangement to make an investment that would not otherwise meet our investment policies.

Equity investments in acquired properties may be subject to existing mortgage financing and other indebtedness or to new indebtedness which may be incurred in connection with acquiring or refinancing these properties. Debt service on such financing or indebtedness will have a priority over any dividends with respect to our common stock. Investments are also subject to our policy not to fall within the definition of an “investment company” under the Investment Company Act of 1940, as amended, or the 1940 Act.

Investments in Real Estate Mortgages

While our portfolio consists of, and our business objectives emphasize, equity investments in retail, office, mixed-use and multifamily properties, we may, at the discretion of our board of directors and without a vote of our stockholders, invest in mortgages and other types of real estate interests in a manner that is consistent with our qualification as a REIT. We do not presently intend to invest in mortgages or deeds of trust, but may invest in participating or convertible mortgages if we conclude that we may benefit from the gross revenues or any appreciation in value of the property. If we choose to invest in mortgages, we would expect to invest in mortgages secured by retail, office, mixed-use or multifamily properties. However, there is no restriction on the

proportion of our assets that may be invested in a type of mortgage or any single mortgage or type of mortgage loan. Investments in real estate mortgages run the risk that one or more borrowers may default under the mortgages and that the collateral securing those mortgages may not be sufficient to enable us to recoup our full investment.

Securities of or Interests in Persons Primarily Engaged in Real Estate Activities and Other Issuers

Subject to the percentage of ownership limitations and the income and asset tests necessary for REIT qualification, we may in the future invest in securities of other REITs, other entities engaged in real estate activities or securities of other issuers where such investment would be consistent with our investment objectives. We may invest in the debt or equity securities of such entities, including for the purpose of exercising control over such entities. We have no current plans to invest in entities that are not engaged in real estate activities. While we may attempt to diversify our investments with respect to the retail, office, mixed-use and multifamily owned by such entities, in terms of property locations, size and market, we do not have any limit on the amount or percentage of our assets that may be invested in any one entity, property or geographic area. Our investment objectives are to maximize cash flow of our investments, acquire investments with growth potential and provide cash distributions and long-term capital appreciation to our stockholders through increases in the value of our company. We have not established a specific policy regarding the relative priority of these investment objectives. We will limit our investment in such securities so that we will not fall within the definition of an "investment company" under the 1940 Act.

Investments in Other Securities

Other than as described above, we do not intend to invest in any additional securities such as bonds, preferred stocks or common stock.

Dispositions

We do not currently intend to dispose of any of our properties, although we reserve the right to do so if, based upon management's periodic review of our portfolio, our board of directors determines that such action would be in our best interests. The tax consequences to our directors and executive officers who hold units resulting from a proposed disposition of a property may influence their decision as to the desirability of such proposed disposition. See "Risk Factors—Risks Related to Our Organizational Structure—Conflicts of interest may exist or could arise in the future between the interests of our stockholders and the interests of holders of units in our operating partnership, which may impede business decisions that could benefit our stockholders."

Financings and Leverage Policy

Upon completion of this offering, we will use significant amounts of cash to repay mortgage indebtedness on certain of the properties in our portfolio. Other uses of proceeds from this offering are described in greater detail under "Use of Proceeds" elsewhere in this prospectus. In the future, however, we anticipate using a number of different sources to finance our acquisitions and operations, including cash flows from operations, asset sales, seller financing, issuance of debt securities, private financings (such as additional bank credit facilities, which may or may not be secured by our assets), property-level mortgage debt, common or preferred equity issuances or any combination of these sources, to the extent available to us, or other sources that may become available from time to time. Any debt that we incur may be recourse or non-recourse and may be secured or unsecured. We also may take advantage of joint venture or other partnering opportunities as such opportunities arise in order to acquire properties that would otherwise be unavailable to us. We may use the proceeds of our borrowings to acquire assets, to refinance existing debt or for general corporate purposes.

Although we are not required to maintain any particular leverage ratio, we intend, when appropriate, to employ prudent amounts of leverage and to use debt as a means of providing additional funds for the acquisition

of assets, to refinance existing debt or for general corporate purposes. We expect to use leverage conservatively, assessing the appropriateness of new equity or debt capital based on market conditions, including prudent assumptions regarding future cash flow, the creditworthiness of tenants and future rental rates. Our charter and bylaws do not limit the amount of debt that we may incur. Our board of directors has not adopted a policy limiting the total amount of debt that we may incur.

Our board of directors will consider a number of factors in evaluating the amount of debt that we may incur. If we adopt a debt policy, our board of directors may from time to time modify such policy in light of then-current economic conditions, relative costs of debt and equity capital, market values of our properties, general conditions in the market for debt and equity securities, fluctuations in the market price of our common stock, growth and acquisition opportunities and other factors. Our decision to use leverage in the future to finance our assets will be at our discretion and will not be subject to the approval of our stockholders, and we are not restricted by our governing documents or otherwise in the amount of leverage that we may use.

Lending Policies

We have not made any loans to third parties, although we do not have a policy limiting our ability to make loans to other persons. We may consider offering purchase money financing in connection with the sale of properties where the provision of that financing will increase the value to be received by us for the property sold. We also may make loans to joint ventures in which we participate. However, we do not intend to engage in significant lending activities. Any loan we make will be consistent with maintaining our status as a REIT.

Equity Capital Policies

To the extent that our board of directors determines to obtain additional capital, we may issue debt or equity securities, including additional units or senior securities of our operating partnership, retain earnings (subject to provisions in the Code requiring distributions of income to maintain REIT qualification) or pursue a combination of these methods. As long as our operating partnership is in existence, we will generally contribute the proceeds of all equity capital raised by us to our operating partnership in exchange for additional interests in our operating partnership, which will dilute the ownership interests of the limited partners in our operating partnership.

Existing stockholders will have no preemptive rights to common or preferred stock or units issued in any securities offering by us, and any such offering might cause a dilution of a stockholder’s investment in us. Although we have no current plans to do so, we may in the future issue shares of common stock or units in connection with acquisitions of property.

We may, under certain circumstances, purchase shares of our common stock or other securities in the open market or in private transactions with our stockholders, provided that those purchases are approved by our board of directors. Our board of directors has no present intention of causing us to repurchase any shares of our common stock or other securities, and any such action would only be taken in conformity with applicable federal and state laws and the applicable requirements for qualification as a REIT.

Conflict of Interest Policies

Overview. Conflicts of interest could arise in the future as a result of the relationships between us and our affiliates, on the one hand, and our operating partnership or any partner thereof, on the other. Our directors and officers have duties to our company under applicable Maryland law in connection with their management of our company. At the same time, we, as the general partner of our operating partnership, have fiduciary duties and obligations to our operating partnership and its other partners under Maryland law and the partnership agreement in connection with the management of our operating partnership. Our fiduciary duties and obligations, as the general partner of our operating partnership, may come into conflict with the duties of our directors and officers to our company.

Under Maryland law, a general partner of a Maryland limited partnership has fiduciary duties of loyalty and care to the partnership and its partners and must discharge its duties and exercise its rights as general partner under the partnership agreement or Maryland law consistently with the obligation of good faith and fair dealing. The duty of loyalty requires a general partner of a Maryland general partnership to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct of the partnership business or derived from a use by the general partner of partnership property, including the appropriation of a partnership opportunity, to refrain from dealing with the partnership in the conduct of the partnership's business as or on behalf of a party having an interest adverse to the partnership and to refrain from competing with the partnership in the conduct of the partnership business, although the partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty. The partnership agreement provides that, in the event of a conflict between the interests of our operating partnership or any partner, on the one hand, and the separate interests of our company or our stockholders, on the other hand, we, in our capacity as the general partner of our operating partnership, are under no obligation not to give priority to the separate interests of our company or our stockholders, and that any action or failure to act on our part or on the part of our directors that gives priority to the separate interests of our company or our stockholders that does not result in a violation of the contract rights of the limited partners of the operating partnership under its partnership agreement does not violate the duty of loyalty that we, in our capacity as the general partner of our operating partnership, owe to the operating partnership and its partners. The duty of care requires a general partner to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law, and this duty may not be unreasonably reduced by the partnership agreement.

The partnership agreement provides that we are not be liable to our operating partnership or any partner for monetary damages for losses sustained, liabilities incurred or benefits not derived by our operating partnership or any limited partner, except for liability for our intentional harm or gross negligence. The partnership agreement also provides that any obligation or liability in our capacity as the general partner of our operating partnership that may arise at any time under the partnership agreement or any other instrument, transaction or undertaking contemplated by the partnership agreement will be satisfied, if at all, out of our assets or the assets of our operating partnership only, and no obligation or liability of the general partner will be personally binding upon any of our directors, stockholders, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise, and none of our directors or officers will be liable or accountable in damages or otherwise to the partnership, any partner or any assignee of a partner for losses sustained, liabilities incurred or benefits not derived as a result of errors in judgment or mistakes of fact or law or any act or omission. Our operating partnership must indemnify us, our directors and officers, officers of our operating partnership and any other person designated by us against any and all losses, claims, damages, liabilities (whether joint or several), expenses (including, without limitation, attorneys' fees and other legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, that relate to the operations of the operating partnership, unless (1) an act or omission of the person was material to the matter giving rise to the action and either was committed in bad faith or was the result of active and deliberate dishonesty, (2) for any transaction for which such person actually received an improper personal benefit in violation or breach of any provision of the partnership agreement, or (3) in the case of a criminal proceeding, the person had reasonable cause to believe the act or omission was unlawful.

Our operating partnership must also pay or reimburse the reasonable expenses of any such person upon its receipt of a written affirmation of the person's good faith belief that the standard of conduct necessary for indemnification has been met and a written undertaking to repay any amounts paid or advanced if it is ultimately determined that the person did not meet the standard of conduct for indemnification. Our operating partnership will not indemnify or advance funds to any person with respect to any action initiated by the person seeking indemnification without our approval (except for any proceeding brought to enforce such person's right to indemnification under the partnership agreement) or if the person is found to be liable to our operating partnership on any portion of any claim in the action.

No reported decision of a Maryland appellate court has interpreted provisions similar to the provisions of the partnership agreement of our operating partnership that modify or reduce the fiduciary duties and obligations of a general partner or reduce or eliminate our liability for money damages to the operating partnership and its partners, and we have not obtained an opinion of counsel as to the enforceability of the provisions set forth in the partnership agreement that purport to modify or reduce our fiduciary duties that would be in effect were it not for the partnership agreement.

Sale or Refinancing of Properties. Upon the sale of certain of the properties to be owned by us at the completion of the formation transactions, certain unitholders could incur adverse tax consequences which are different from the tax consequences to us and to holders of our common stock. Consequently, unitholders may have differing objectives regarding the appropriate pricing and timing of any such sale or repayment of indebtedness.

While we will have the exclusive authority under the partnership agreement to determine whether, when, and on what terms to sell a property or when to refinance or repay indebtedness, any such decision would require the approval of our board of directors. In addition, our operating partnership has agreed to indemnify certain limited partners for their tax liabilities (plus an additional amount equal to the taxes incurred as a result of such indemnity payment) attributable to their share of the built-in gain, as of the closing of the formation transactions, with respect to their interest in the tax protected properties, if the operating partnership, without the consent of Mr. Rady, disposes of any interest with respect to such properties in a taxable transaction during the shorter of the seven-year period after the closing of the formation transactions and the date on which 50% or more of the common units originally received by any such protected partner in the formation transactions have been sold, exchanged or otherwise disposed of by the protected partner, subject to certain exceptions and limitations.

Policies Applicable to All Directors and Officers. Our charter and bylaws do not restrict any of our directors, officers, stockholders or affiliates from having a pecuniary interest in an investment or transaction that we have an interest in or from conducting, for their own account, business activities of the type we conduct. We intend, however, to adopt policies that are designed to eliminate or minimize potential conflicts of interest, including a policy for the review, approval or ratification of any related party transactions. This policy will provide that the audit committee of our board of directors will review the relevant facts and circumstances of each related party transaction, including if the transaction is on terms comparable to those that could be obtained in arm's length dealings with an unrelated third party before approving such transaction. We will also adopt a code of business conduct and ethics, which will provide that all of our directors, officers and employees are prohibited from taking for themselves opportunities that are discovered through the use of corporate property, information or position without our consent. See "Management—Code of Business Conduct and Ethics." However, we cannot assure you that these policies or provisions of law will always be successful in eliminating the influence of such conflicts, and if they are not successful, decisions could be made that might fail to reflect fully the interests of all stockholders.

Interested Director and Officer Transactions

Pursuant to the MGCL, a contract or other transaction between us and a director or between us and any other corporation or other entity in which any of our directors is a director or has a material financial interest is not void or voidable solely on the grounds of such common directorship or interest, the presence of such director at the meeting at which the contract or transaction is authorized, approved or ratified or the counting of the director's vote in favor thereof, provided that:

- the fact of the common directorship or interest is disclosed or known to our board of directors or a committee of our board, and our board or such committee authorizes, approves or ratifies the transaction or contract by the affirmative vote of a majority of disinterested directors, even if the disinterested directors constitute less than a quorum;

- the fact of the common directorship or interest is disclosed or known to our stockholders entitled to vote thereon, and the transaction or contract is authorized, approved or ratified by a majority of the votes cast by the stockholders entitled to vote other than the votes of shares owned of record or beneficially by the interested director or corporation, firm or other entity; or

- the transaction or contract is fair and reasonable to us at the time it is authorized, ratified or approved.

Furthermore, under Maryland law (where our operating partnership is formed), we, as general partner, have a fiduciary duty of loyalty to our operating partnership and its partners and, consequently, such transactions also are subject to the duties that we, as general partner, owe to the operating partnership and its limited partners (as such duty has been modified by the partnership agreement). We will also adopt a policy that requires that all contracts and transactions between us, our operating partnership or any of our subsidiaries, on the one hand, and any of our directors or executive officers or any entity in which such director or executive officer is a director or has a material financial interest, on the other hand, must be approved by the affirmative vote of a majority of our disinterested directors even if less than a quorum. Where appropriate, in the judgment of the disinterested directors, our board of directors may obtain a fairness opinion or engage independent counsel to represent the interests of non-affiliated security holders, although our board of directors will have no obligation to do so.

Policies With Respect To Other Activities

We will have authority to offer common stock, preferred stock or options to purchase stock in exchange for property and to repurchase or otherwise acquire our common stock or other securities in the open market or otherwise, and we may engage in such activities in the future. As described in “Description of the Partnership Agreement of American Assets Trust, L.P.,” we expect, but are not obligated, to issue common stock to holders of common units upon exercise of their redemption rights. Except in connection with the initial capitalization of our company and our operating partnership, the formation transactions or employment agreements, we have not issued common stock, units or any other securities in exchange for property or any other purpose, and our board of directors has no present intention of causing us to repurchase any common stock. Our board of directors has the authority, without further stockholder approval, to amend our charter to increase or decrease the number of authorized shares of common stock or preferred stock and authorize us to issue additional shares of common stock or preferred stock, in one or more series, including senior securities, in any manner, and on the terms and for the consideration, it deems appropriate. See “Description of Securities.” We have not engaged in trading, underwriting or agency distribution or sale of securities of other issuers other than our operating partnership and do not intend to do so. At all times, we intend to make investments in such a manner as to qualify as a REIT, unless because of circumstances or changes in the Code, or the Treasury regulations, our board of directors determines that it is no longer in our best interest to qualify as a REIT. In addition, we intend to make investments in such a way that we will not be treated as an investment company under the 1940 Act.

Reporting Policies

We intend to make available to our stockholders our annual reports, including our audited financial statements. After this offering, we will become subject to the information reporting requirements of the Exchange Act. Pursuant to those requirements, we will be required to file annual and periodic reports, proxy statements and other information, including audited financial statements, with the SEC.

STRUCTURE AND FORMATION OF OUR COMPANY

Our Operating Entities

Our Operating Partnership

Following the completion of this offering and the formation transactions, substantially all of our assets will be held by, and our operations will be conducted through, our operating partnership. We will contribute the net proceeds from this offering to our operating partnership in exchange for common units therein. Our interest in our operating partnership will generally entitle us to share in cash distributions from, and in the profits and losses of, our operating partnership in proportion to our percentage ownership. As the sole general partner of our operating partnership, we will generally have the exclusive power under the partnership agreement to manage and conduct its business and affairs, subject to certain limited approval and voting rights of the limited partners, which are described more fully below in "Description of the Partnership Agreement of American Assets Trust, L.P." Our board of directors will manage our business and affairs.

Beginning on or after the date which is 14 months after the completion of this offering, each limited partner of our operating partnership will have the right to require our operating partnership to redeem part or all of its common units for cash, based upon the value of an equivalent number of shares of our common stock at the time of the redemption, or, at our election, shares of our common stock on a one-for-one basis, subject to certain adjustments and the restrictions on ownership and transfer of our stock set forth in our charter and described under the section entitled "Description of Securities—Restrictions on Ownership and Transfer." With each redemption of common units, our percentage ownership interest in our operating partnership and our share of our operating partnership's cash distributions and profits and losses will increase. See "Description of the Partnership Agreement of American Assets Trust, L.P."

Our Services Company

As part of our formation transactions, we formed American Assets Trust Services, Inc., or our services company, a Delaware corporation that is wholly owned by our operating partnership. We will elect with our services company to treat it as a taxable REIT subsidiary for federal income tax purposes. A taxable REIT subsidiary generally may provide non-customary and other services to our tenants and engage in activities that we may not engage in directly without adversely affecting our qualification as a REIT, provided a taxable REIT subsidiary may not operate or manage a lodging facility or provide rights to any brand name under which any lodging facility is operated. See "Federal Income Tax Considerations—Taxation of Our Company—Ownership of Interests in Taxable REIT Subsidiaries." We may form additional taxable REIT subsidiaries in the future, and our operating partnership may contribute some or all of its interests in certain wholly owned subsidiaries or their assets to our services company. Any income earned by our taxable REIT subsidiaries will not be included in our taxable income for purposes of the 75% or 95% gross income tests, except to the extent such income is distributed to us as a dividend, in which case such dividend income will qualify under the 95%, but not the 75%, gross income test. See "Federal Income Tax Considerations—Taxation of Our Company—Income Tests." Because a taxable REIT subsidiary is subject to federal income tax, and state and local income tax (where applicable) as a corporation, the income earned by our taxable REIT subsidiaries generally will be subject to an additional level of tax as compared to the income earned by our other subsidiaries.

Formation Transactions

Each property that will be owned by us through our operating partnership upon the completion of this offering and the formation transactions is currently owned directly or indirectly by partnerships, limited liability companies or corporations in which Ernest S. Rady and his affiliates, including the Ernest Rady Trust U/D/T March 10, 1983, or the Rady Trust, our other directors and executive officers and their affiliates and/or other third parties own a direct or indirect interest. We refer to these partnerships, limited liability companies and

corporations collectively as the "ownership entities." With the exception of our joint venture partner in Fireman's Fund Headquarters, the current owners of the ownership entities, whom we refer to as the "prior investors," have (1) entered into contribution agreements with us or our operating partnership, pursuant to which they will contribute their interests in the ownership entities to us or our operating partnership or its subsidiaries, or (2) caused the ownership entities to enter into merger agreements pursuant to which the ownership entities will merge with and into us, our operating partnership or certain of our or our operating partnership's subsidiaries (or, in the case of reverse mergers, certain subsidiaries of our operating partnership will merge with and into such entities), in each case substantially concurrently with the completion of this offering. To the extent that we are party directly to certain mergers in the formation transactions, we will contribute the assets received in such merger transactions to our operating partnership in exchange for common units. In addition, in connection with such transactions, American Assets, Inc. will contribute its property management business, which we refer to as the "property management business," to our operating partnership in exchange for common units pursuant to a contribution agreement. The prior investors will receive cash, shares of our common stock and/or common units in exchange for their interests in the ownership entities. See "Certain Relationships and Related Transactions." These formation transactions are designed to:

- consolidate the ownership of our portfolio under our company and our operating partnership;
- cause us to succeed to the property management business of American Assets, Inc.;
- facilitate this offering;
- enable us to raise necessary capital to repay existing indebtedness related to certain properties in our portfolio;
- enable us to qualify as a REIT for federal income tax purposes commencing with the taxable year ending December 31, 2010;
- defer the recognition of taxable gain by certain prior investors; and
- enable prior investors to obtain liquidity for their investments.

Pursuant to the formation transactions, the following have occurred or will occur substantially concurrently with the completion of this offering.

- We were formed as a Maryland corporation on July 16, 2010.
- American Assets Trust, L.P., our operating partnership, was formed as a Maryland limited partnership on July 16, 2010.
- We will sell shares of our common stock in this offering and an additional shares if the underwriters exercise their overallotment option in full, and we will contribute the net proceeds from this offering to our operating partnership in exchange for common units (or common units if the underwriters exercise their overallotment option in full).
- We will succeed to the property management business as a result of the contribution by American Assets, Inc., which is indirectly controlled by Mr. Rady, of the assets and liabilities associated with the property management business to its wholly owned subsidiary, American Assets Trust Management, LLC, and the subsequent contribution of its interest in that entity to our operating partnership in exchange for common units.
- We and our operating partnership will consolidate the ownership of our portfolio of properties by acquiring the entities that directly or indirectly own such properties or by acquiring interests in such

entities through a series of forward and reverse merger transactions and contributions pursuant to merger agreements and contribution agreements each dated September 13, 2010, with such entities or the owners thereof. The value of the consideration to be paid to each of the owners of such entities in the formation transactions will be determined according to a formula set forth in such merger agreements and contribution agreements.

- Prior investors in the merged and contributed entities will receive as consideration for such mergers and contributions shares of our common stock, common units, or in the case of non-accredited investors in such entities, $ in cash in accordance with the terms of the relevant merger and/or contribution agreements. The aggregate value of common stock and common units to be paid to prior investors in such entities at the mid-point of the range of prices shown on the cover of this prospectus is $. This value will increase or decrease if our common stock is priced above or below the mid-point of the range of prices shown on the cover of this prospectus.

- The Ernest Rady Trust U/D/T March 10, 1983, or the Rady Trust, has entered into a representation, warranty and indemnity agreement, pursuant to which it has made certain representations and warranties to us regarding the entities and assets being acquired in the formation transactions and agreed to indemnify us and our operating partnership for breaches of such representations and warranties for one year after the completion of this offering and the formation transactions. For purposes of satisfying any indemnification claims, the Rady Trust will deposit into escrow shares of our common stock and/or common units with an aggregate value equal to ten percent of the consideration payable to the Rady Trust and its affiliates in the formation transactions. The Rady Trust has no obligation to increase the amount of common stock and/or common units in the escrow in the event the trading price of our common stock declines below the initial public offering price. Any and all amounts remaining in the escrow one year from the closing of the formation transactions will be distributed to the Rady Trust to the extent that indemnity claims have not been made against such amounts. This indemnification is subject to a one-time aggregate deductible equal to one percent of the consideration payable to the Rady Trust and its affiliates in the formation transactions and a cap equal to the value of the consideration deposited in the escrow. Other than the Rady Trust, none of the prior investors or the entities that we are acquiring in the formation transactions will provide us with any indemnification.

- The current management team of American Assets, Inc. will become our senior management team, and the current real estate professionals employed by American Assets, Inc. will become our employees.

- Our operating partnership intends to use a portion of the net proceeds of this offering to repay approximately $341.4 million of outstanding indebtedness, including applicable prepayment costs, exit fees and defeasance costs of $24.3 million. As a result of the foregoing use of proceeds, we expect to have approximately $879.9 million ($924.1 million including our pro rata share of joint venture debt) of total debt outstanding upon completion of this offering and the formation transactions.

- In conjunction with this offering, we anticipate entering into an agreement for a $ million revolving credit facility. We expect to use this facility to fund future capital expenditures related to lease-up, acquisitions and for general corporate purposes.

- In connection with the foregoing transactions, we expect to adopt a cash and equity-based incentive award plan and other incentive plans for our directors, officers, employees and consultants. We expect that an aggregate of shares of our common stock will be available for issuance under awards granted pursuant to the 2010 Plan. See “Executive Compensation—Equity Incentive Award Plan.”

Consequences of this Offering and the Formation Transactions

The completion of this offering and the formation transactions will have the following consequences. All amounts are based on the mid-point of the range set forth on the cover of this prospectus:

- Through our interest in our operating partnership and its wholly owned subsidiaries, we will indirectly own a 100% fee simple interest in all of the properties in our portfolio other than Fireman's Fund Headquarters, in which we will own a 25% joint venture interest, and will operate all of the properties in our portfolio other than Waikiki Beach Walk, which will be operated by Outrigger.

- We will indirectly own our services company through our operating partnership, which will own 100% of its common stock.

- Purchasers of shares of our common stock in this offering will own % of our outstanding common stock, or % on a fully diluted basis (% of our outstanding common stock, or % on a fully diluted basis, if the underwriters' overallotment option is exercised in full).

- The prior investors in the entities that own the properties in our portfolio, including Mr. Rady and his affiliates and our executive officers, will own % of our outstanding common stock, or % on a fully diluted basis (% of our outstanding common stock, or % on a fully diluted basis, if the underwriters' overallotment option is exercised in full).

- We will be the sole general partner of our operating partnership. We will own % of the outstanding common units of partnership interest in our operating partnership, and the prior investors in the entities that own the properties in our portfolio, including Mr. Rady and his affiliates and our executive officers, will own % of the outstanding common units. If the underwriters' overallotment option is exercised in full, we will own % of the outstanding common units and the prior investors in the entities that own the properties in our portfolio, including Mr. Rady and his affiliates and our executive officers, will own %.

- We expect to have total consolidated indebtedness of approximately $879.9 million ($924.1 million including our pro rata share of joint venture debt).

Benefits of the Formation Transactions to Related Parties

In connection with this offering and the formation transactions, Mr. Rady, our Executive Chairman, and certain of our other directors and executive officers will receive material benefits described in "Certain Relationships and Related Transactions," including the following. All amounts are based on the mid-point of the range set forth on the cover page of this prospectus:

- Mr. Rady, our Executive Chairman, and his affiliates, including the Rady Trust, will receive shares of our common stock and common units in connection with the formation transactions, with an aggregate value of approximately $ million. As a result, Mr. Rady and his affiliates will own approximately % of our company on a fully diluted basis, or % if the underwriters' overallotment option is exercised in full.

- Mr. Chamberlain, our Chief Executive Officer and director, and his affiliates will receive shares of our common stock and common units in connection with the formation transactions, with an aggregate value of approximately $ million. As a result, Mr. Chamberlain and his affiliates will own approximately % of our company on a fully diluted basis, or % if the underwriters' overallotment option is exercised in full.

- Mr. Barton, our Chief Financial Officer, and his affiliates will receive shares of our common stock and common units in connection with the formation transactions, with an aggregate value of approximately $ million. As a result, Mr. Barton and his affiliates will own approximately % of our company on a fully diluted basis, or % if the underwriters' overallotment option is exercised in full.

- In connection with the formation transactions, we will repay in cash from the proceeds of this offering approximately $4.9 million in notes payable to certain of the prior investors in Del Monte Center. Mr. Rady and his affiliates will receive approximately $3.8 million of this amount in their capacity as direct or indirect owners of the entities that own Del Monte Center.

- In connection with the formation transactions, we will repay in cash from the proceeds of this offering approximately $350,000 in notes payable to certain prior investors in Torrey Reserve Campus. Mr. Rady and his affiliates will receive approximately $30,000 of this amount in their capacity as direct or indirect owners of the entities that own Torrey Reserve Campus.

- To the extent that an ownership entity has an excess of net working capital over target net working capital (as set forth below) as determined by us within 45 days prior to the date of the preliminary prospectus in connection with this offering, the amount of such excess shall be due to the prior owners of such ownership entity following the completion of the offering, including Ernest S. Rady and his affiliates and our other directors and executive officers and their affiliates who are prior investors. To the extent not distributed or paid by such ownership entity prior to the completion of this offering, our operating partnership shall pay such amounts on behalf of each such ownership entity promptly after the completion of this offering. For purposes of this calculation the target net working capital of each ownership entity will be zero, other than with respect to certain ownership entities holding interests in Waikiki Beach Walk—Retail and the Waikiki Beach Walk—Hotel. With respect to Waikiki Beach Walk—Retail, ABW Lewers LLC will have a target net working capital of $5,000,000, and with respect to the Waikiki Beach Walk—Hotel, each of EBW Hotel, LLC, Broadway 225 Sorrento Holdings, LLC, Broadway 225 Stonecrest Holdings, LLC and Waikele Venture Holdings, LLC will have a target net working capital of $2,050,000, $766,500, $470,000 and $1,713,500, respectively. We estimate that the aggregate amount of such excess of net working capital will be $, of which $ will be payable to Ernest S. Rady and his affiliates, $ will be payable to John W. Chamberlain and his affiliates and $ will be payable to Robert F. Barton and his affiliates.

- The Rady Trust and certain other affiliates of Mr. Rady are guarantors of approximately $75.4 million of indebtedness, in the aggregate, with respect to Waikele Center, Waikiki Beach Walk—Hotel, 160 King Street, The Landmark at One Market and Valencia Corporate Center. All of the indebtedness underlying the foregoing guaranteed amounts will be repaid with proceeds from this offering and, as a result, the Rady Trust and these other affiliates of Mr. Rady will be released from these guarantee obligations. In addition, the Rady Trust and certain other affiliates of Mr. Rady are guarantors of approximately $879.9 million of indebtedness, in the aggregate, that will be assumed by us upon completion of this offering. The guarantees with respect to substantially all of this indebtedness are limited to losses incurred by the applicable lender arising from a borrower's fraud, intentional misrepresentation or other "bad acts," a borrower's bankruptcy, a prohibited transfer under the loan documents or losses arising from a borrower's breach of certain environmental covenants. In connection with this assumption, we will seek to have the Rady Trust and such other affiliates of Mr. Rady released from such guarantees and to have our operating partnership assume any such guarantee obligations as replacement guarantor. To the extent lenders do not consent to the release of the Rady Trust and or such other affiliates of Mr. Rady, and the Rady Trust and such other affiliates remain guarantors on assumed indebtedness following the IPO, our operating partnership will enter into a reimbursement agreement with the Rady Trust and such affiliates,

pursuant to which our operating partnership will be obligated to reimburse the Rady Trust and such other affiliates of Mr. Rady for any amounts paid by them under guarantees with respect to the assumed indebtedness.

- We will enter into a tax protection agreement with certain limited partners of our operating partnership, including Mr. Rady and his affiliates and an affiliate of Mr. Chamberlain, pursuant to which we agree to indemnify such limited partners against adverse tax consequences in connection with: (1) our sale of Carmel Country Plaza, Carmel Mountain Plaza, Del Monte Center, Loma Palisades, Lomas Santa Fe Plaza, Waikele Center or the ICW Plaza portion of Torrey Reserve in a taxable transaction until the seventh anniversary of the closing of the formation transactions; and (2) our failure to provide certain limited partners the opportunity to guarantee certain debt of our operating partnership during such period, or following such period, our failure to use commercially reasonable efforts to provide such opportunities; provided that, subject to certain exceptions and limitations, such indemnification rights will terminate for any such protected partner that sells, exchanges or otherwise disposes of more than 50% of his or her common units. Notwithstanding the foregoing, the operating partnership's indemnification obligations under the tax protection agreement will terminate upon the later of the death of Mr. Rady and the death of his wife. Mr. Rady and his affiliates and an affiliate of Mr. Chamberlain will have the opportunity to guarantee up to $ million, and $ million, respectively, of our outstanding indebtedness, pursuant to the tax protection agreement.

- In connection with the completion of this offering, we will enter into a registration rights agreement with the various persons receiving shares of our common stock and/or common units in the formation transactions, including Mr. Rady his affiliates, immediate family members and related trusts and certain of our other directors and executive officers and their affiliates. Under the registration rights agreement, subject to certain limitations, commencing not later than 14 months after the date of this offering, we will file one or more registration statements covering the resale of the shares of our common stock issued in the formation transactions and the resale of the shares of our common stock issued or issuable, at our option, in exchange for common units issued in the formation transactions. We may, at our option, satisfy our obligation to prepare and file a resale registration statement by filing a registration statement registering the issuance by us of shares of our common stock registered under the Securities Act in lieu of our operating partnership's obligation to pay cash for such units. Commencing one year after the date of this offering (but prior to the date upon which the registration statement described above is effective) or 16 months after the date of this offering if the shelf registration statement described above is not then effective, Mr. Rady and his affiliates, immediate family members and related trusts will have demand rights to require us to undertake an underwritten offering under a resale registration statement (so long as a majority-in-interest of such group makes such a demand). In addition, if we file a registration statement with respect to an underwritten offering for our own account, any of Mr. Rady and his affiliates, immediate family members and related trusts will have the right, subject to certain limitations, to register such number of shares of our common stock issued to him or her pursuant to the formation transactions as each such person requests. Commencing upon our filing of a resale registration statement not later than 14 months after the date of this offering, under certain circumstances, we will also be required to undertake an underwritten offering upon the written request of holders of at least 10% in the aggregate of the securities originally issued in the formation transactions, provided the securities to be registered in such offering shall (1) have a market value of at least $25 million or (2) shall represent all of the remaining securities acquired in the formation transactions by Mr. Rady and his affiliates, immediate family members and related trusts and such securities shall have a market value of at least $10 million, and provided further that we are not obligated to effect more than three such underwritten offerings. We will agree to pay all of the expenses relating to the securities registrations described above. See "Shares Eligible for Future Sale—Registration Rights."

- We may enter into employment agreements with certain of our executive officers that would become effective as of the closing of this offering, which would be expected to provide for salary, bonus and other benefits, including accelerated equity vesting upon a change in control and severance upon a termination of employment under certain circumstances. The material terms of the agreements with our named executive officers are described under "Executive Compensation—Employment Agreements" and "Executive Compensation—Compensation Tables—Narrative Disclosure to Summary Compensation Table."

- We intend to enter into indemnification agreements with directors and executive officers at the closing of this offering, providing for procedures for indemnification by us to the fullest extent permitted by law and advancements by us of certain expenses and costs relating to claims, suits or proceedings arising from their service to us or, at our request, service to other entities, as officers or directors.

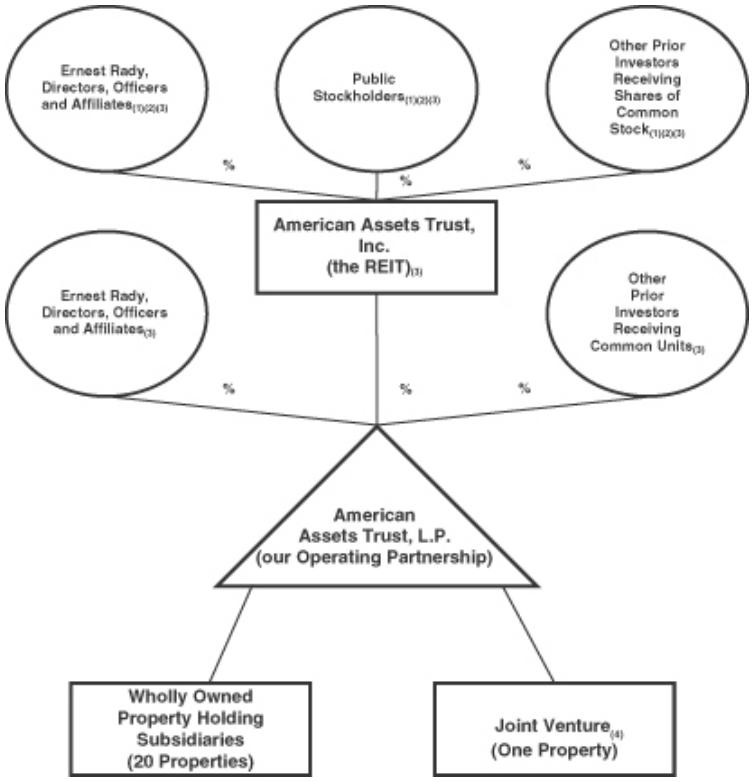
- We intend to adopt our 2010 Equity Incentive Award Plan, under which we may grant cash or equity incentive awards to our directors, officers, employees and consultants. See "Executive Compensation—Equity Incentive Award Plan."

Cost of Recent Acquisitions

In June 2010, the Rady Trust purchased a 99% indirect ownership interest in Landmark Venture JV, LLC, which indirectly owns an approximately 66.2% interest in The Landmark at One Market, for approximately $23.0 million. In connection with the formation transactions, we will acquire all of the indirect interests in Landmark Venture JV, LLC acquired by the Rady Trust in June 2010 for shares of common stock and/or common units with an aggregate value equal to $ million (based on the mid-point of the range set forth on the cover of this prospectus). In addition, in August 2010, a family trust established by Mr. Barton acquired an approximately 2.1% interest in Landmark Assets, Inc., which owns the remaining 1% interest in Landmark Venture JV, LLC, for $3,500. In connection with the formation transactions, we will acquire all of the interests in Landmark Assets, Inc. acquired by this Barton family trust in August 2010 for shares of common stock and/or common units with an aggregate value equal to $ (based on the mid-point of the range set forth on the cover of this prospectus). The value of the consideration that we will pay for these interests will be determined according to the applicable merger agreements and/or contribution agreements in the manner described above under "—Formation Transactions." In addition to the foregoing, we also have an option to purchase an approximately 80,000 rentable square foot building vacated by Mervyn's, which is located at Carmel Mountain Plaza. We intend to exercise this option, which will require a cash payment of approximately $13.2 million.

Our Structure

The following diagram depicts our expected ownership structure upon completion of this offering and the formation transactions. Our operating partnership will own the various properties in our portfolio directly or indirectly, and in some cases through special purpose entities that were created in connection with various financings.



(1) On a fully diluted basis, our public stockholders will own % of our outstanding common stock, Mr. Rady and his affiliates, our other executive officers and directors and their affiliates will own % of our outstanding common stock and the other prior investors in the entities that own the properties in our portfolio as a group will own % of our outstanding common stock.

(2) If the underwriters exercise their overallotment option in full, on a fully diluted basis, our public stockholders will own % of our outstanding common stock, Mr. Rady and his affiliates, our other executive officers and directors and their affiliates will own % of our outstanding common stock and the other prior investors in the entities that own properties in our portfolio as a group will own % of our outstanding common stock.

(3) If the underwriters exercise their overallotment option in full, our public stockholders, Mr. Rady and his affiliates, our other executive officers and directors and their affiliates and the other prior investors in the entities that own the properties in our portfolio will own %, % and %, respectively, of our outstanding common stock, and we, Mr. Rady and his affiliates, our other executive officers and directors and their affiliates and other prior investors in the entities that own the properties in our portfolio will own %, %, and %, respectively, of the outstanding common units.

(4) Fireman's Fund Headquarters is held through a joint venture in which we are a 25% owner. The remaining 75% interest in the joint venture is held, indirectly, by General Electric Pension Trust.

Determination of Consideration Payable for Our Properties

We will acquire the direct or indirect ownership of each of the properties in our portfolio in connection with the formation transactions. The value of the consideration to be paid to each of the prior investors in the formation transactions, in each case, will be based upon the terms of the applicable merger or contribution agreement among us and/or our operating partnership, on the one hand, and the prior investor or prior investors, on the other hand. In all cases, the aggregate value of consideration to be paid to each investor will be determined by applying his or her allocated share of ownership in each applicable property to the equity value of such property. The equity value of each property will be determined by applying the results of a relative equity valuation analysis of the properties and the property management business, which valuation analysis was conducted by an independent third-party valuation specialist, to the total value of our portfolio and the property management business, as determined upon pricing of this offering. This calculation is subject to adjustment to account for the existence of certain unsecured indebtedness related to the applicable properties and for changes in indebtedness related to the applicable properties. As part of the formation transactions, intercompany indebtedness obligations between or among ownership entities and the prior investors will be settled as an adjustment to the formation transaction consideration otherwise recievable by or payable to prior investors who were debtors or lenders or who held interests in ownership entities that were debtors or lenders, with respect to such debt obligations. The number of units or shares to be issued to each prior investor will be equal to (1) the value of the consideration to be received by him or her, divided by (2) the initial public offering price of our common stock.

We have not obtained independent third-party appraisals of the properties in our portfolio. Accordingly, there can be no assurance that the fair market value of the cash and equity securities that we pay or issue to the prior investors will not exceed the fair market value of the properties and other assets acquired by us in the formation transactions. See “Risk Factors—Risks Related to Our Properties and Our Business—The value of the common units and shares of our common stock to be issued as consideration for the properties and assets to be acquired by us in the formation transactions may exceed their aggregate fair market value and exceed their aggregate historical combined, net tangible book value of approximately $126.6 million as of June 30, 2010.”

Determination of Offering Price

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be negotiated between the representatives of the underwriters and us. In determining the initial public offering price of our common stock, the representatives of the underwriters will consider, among other things, our record of operations, our management, our estimated net income, our estimated funds from operations, our estimated cash available for distribution, our anticipated dividend yield, our growth prospects, the current market valuations, financial performance and dividend yields of publicly traded companies considered by us and the underwriters to be comparable to us and the current state of the commercial real estate industry and the economy as a whole. The initial public offering price does not necessarily bear any relationship to the book value of the properties and assets to be acquired in the formation transactions, our financial condition or any other established criteria of value and may not be indicative of the market price for our common stock after this offering.

DESCRIPTION OF THE PARTNERSHIP AGREEMENT OF AMERICAN ASSETS TRUST, L.P.

A summary of the material terms and provisions of the Amended and Restated Agreement of Limited Partnership of American Assets Trust, L.P., which we refer to as the "partnership agreement," is set forth below. This summary is not complete and is subject to and qualified in its entirety by reference to the applicable provisions of Maryland law and the partnership agreement. For more detail, please refer to the partnership agreement itself, a copy of which is filed as an exhibit to the registration statement of which this prospectus is part. For purposes of this section, references to "we," "our," "us" and "our company" refer to American Assets Trust, Inc.

General

Upon completion of the formation transactions, substantially all of our assets will be held by, and substantially all of our operations will be conducted through, our operating partnership, either directly or through its subsidiaries. We are the sole general partner of our operating partnership and, upon completion of this offering, the formation transactions and the other transactions described in this prospectus, common units will be outstanding and we will own % of the outstanding common units. In connection with the formation transactions, we will enter into the partnership agreement and prior investors in our portfolio who elect to receive common units in the formation transactions will be admitted as limited partners of our operating partnership. Our operating partnership is also authorized to issue a class of units of partnership interest designated as LTIP units, which have the terms described below. The provisions of the partnership agreement described below and elsewhere in the prospectus will be in effect after the completion of the formation transactions and this offering. We do not intend to list the common units on any exchange or any national market system.

Provisions in the partnership agreement may delay or make more difficult unsolicited acquisitions of us or changes in our control. These provisions could discourage third parties from making proposals involving an unsolicited acquisition of us or change of our control, although some stockholders might consider such proposals, if made, desirable. These provisions also make it more difficult for third parties to alter the management structure of our operating partnership without the concurrence of our board of directors. These provisions include, among others:

- redemption rights of limited partners and certain assignees of common units;
- transfer restrictions on units and other partnership interests;
- a requirement that we may not be removed as the general partner of our operating partnership without our consent;
- our ability in some cases to amend the partnership agreement and to cause our operating partnership to issue preferred partnership interests in our operating partnership with terms that we may determine, in either case, without the approval or consent of any limited partner; and
- the rights of the limited partners to consent to certain direct or indirect transfers of our interest in our operating partnership, including in connection with certain mergers, consolidations and other business combinations involving us, recapitalizations and reclassifications of our outstanding stock and issuances of our stock that require approval of our stockholders.

Purpose, Business and Management

Our operating partnership is formed for the purpose of conducting any business, enterprise or activity permitted by or under the Maryland Revised Uniform Limited Partnership Act. Our operating partnership may enter into any partnership, joint venture, business trust arrangement, limited liability company or other similar

arrangement and may own interests in any other entity engaged in any business permitted by or under the Maryland Revised Uniform Limited Partnership Act. However, our operating partnership may not, without our specific consent, which we may give or withhold in our sole and absolute discretion, take, or refrain from taking, any action that, in our judgment, in our sole and absolute discretion:

- could adversely affect our ability to continue to qualify as a REIT;
- could subject us to any taxes under Code Section 857 or Code Section 4981 or any other related or successor provision under the Code; or
- could violate any law or regulation of any governmental body or agency having jurisdiction over us, our securities or our operating partnership.

In general, our board of directors will manage the business and affairs of our operating partnership by directing our business and affairs, in our capacity as the sole general partner of our operating partnership. Except as otherwise expressly provided in the partnership agreement and subject to the rights of holders of any class or series of partnership interest, all management powers over the business and affairs of our operating partnership are exclusively vested in us, in our capacity as the sole general partner of our operating partnership. No limited partner, in its capacity as a limited partner, has any right to participate in or exercise management power over our operating partnership's business, transact any business in our operating partnership's name or sign documents for or otherwise bind our operating partnership. We may not be removed as the general partner of our operating partnership, with or without cause, without our consent, which we may give or withhold in our sole and absolute discretion. In addition to the powers granted to us under applicable law or any provision of the partnership agreement, but subject to certain rights of holders of any class or series of partnership interest, we, in our capacity as the general partner of our operating partnership, have the full and exclusive power and authority to do all things that we deem necessary or desirable to conduct the business and affairs of our operating partnership, to exercise or direct the exercise of all of the powers of our operating partnership and to effectuate the purposes of our operating partnership without the approval or consent of any limited partner. We may authorize our operating partnership to incur debt and enter into credit, guarantee, financing or refinancing arrangements for any purpose, including, without limitation, in connection with any acquisition of properties, on such terms as we determine to be appropriate, and to acquire or dispose of any, all or substantially all of its assets (including goodwill), dissolve, merge, consolidate, reorganize or otherwise combine with another entity, without the approval or consent of any limited partner. With limited exceptions, we may execute, deliver and perform agreements and transactions on behalf of our operating partnership without the approval or consent of any limited partner.

Restrictions on General Partner's Authority

The partnership agreement prohibits us, in our capacity as general partner, from taking any action that would make it impossible to carry out the ordinary business of our operating partnership or performing any act that would subject a limited partner to liability as a general partner in any jurisdiction or any other liability except as provided under the partnership agreement. We may not, without the prior consent of the partners of our operating partnership (including us), amend, modify or terminate the partnership agreement, except for certain amendments that we may approve without the approval or consent of any limited partner, described in "—Amendment of the Partnership Agreement," and certain amendments described below that require the approval of each affected partner. We may not, in our capacity as the general partner of our operating partnership, without the consent of a majority in interest of the limited partners (excluding us and any limited partner 50% or more of whose equity is owned, directly or indirectly, by us):

- take any action in contravention of an express provision or limitation of the partnership agreement;
- transfer of all or any portion of our general partnership interest in our operating partnership or admit any person as a successor general partner, subject to the exceptions described in "—Transfers and Withdrawals—Restrictions on Transfers by the General Partner"; or

- voluntarily withdraw as the general partner.

Without the consent of each affected limited partner, we may not enter into any contract, mortgage, loan or other agreement that expressly prohibits or restricts us or our operating partnership from performing our or its specific obligations in connection with a redemption of units or expressly prohibits or restricts a limited partner from exercising its redemption rights in full. For the avoidance of doubt, because we have the right to elect to acquire common units tendered for redemption in exchange for shares of common stock, the approval of the limited partners generally should not be required in order for us or our operating partnership to enter into loan agreements which conditionally restrict our operating partnership from redeeming common units for cash. In addition to any approval or consent required by any other provision of the partnership agreement, we may not, without the consent of each affected partner, amend the partnership agreement or take any other action that would:

- convert a limited partner into a general partner;
- modify the limited liability of a limited partner;
- alter the rights of any partner to receive the distributions to which such partner is entitled, or alter the allocations specified in the partnership agreement, except to the extent permitted by the partnership agreement in connection with the creation or issuance of any new class or series of partnership interest;
- alter or modify the redemption rights of holders of common units or the related definitions specified in the partnership agreement;
- remove, alter or amend certain provisions of the partnership agreement relating to the requirements for us to qualify as a REIT or permitting us to avoid paying tax under Sections 857 or 4981 of the Code; or
- amend the provisions of the partnership agreement requiring the consent of each affected partner before taking any of the actions described above.

Additional Limited Partners

We may cause our operating partnership to issue additional units or other partnership interests and to admit additional limited partners to our operating partnership from time to time, on such terms and conditions and for such capital contributions as we may establish in our sole and absolute discretion, without the approval or consent of any limited partner, including:

- upon the conversion, redemption or exchange of any debt, units or other partnership interests or securities issued by our operating partnership;
- for less than fair market value; or
- in connection with any merger of any other entity into our operating partnership.

The net capital contribution need not be equal for all limited partners. We may cause our operating partnership to issue LTIP units for no consideration. Each person admitted as an additional limited partner must make certain representations to each other partner relating to, among other matters, such person’s ownership of any tenant of us or our operating partnership and the number of persons that may, as a result of such person’s admission as a limited partner, be treated as directly or indirectly owning an interest in our operating partnership. No person may be admitted as an additional limited partner without our consent, which we may give or withhold in our sole and absolute discretion, and no approval or consent of any limited partner is required in connection with the admission of any additional limited partner.

The partnership agreement authorizes our operating partnership to issue common units and LTIP units, and our operating partnership may issue additional partnership interests in one or more additional classes, or one or more series of any of such classes, with such designations, preferences, conversion or other rights, voting powers or rights, restrictions, limitations as to distributions, qualifications or terms or conditions of redemption (including, without limitation, terms that may be senior or otherwise entitled to preference over the units) as we may determine, in our sole and absolute discretion, without the approval of any limited partner or any other person. Without limiting the generality of the foregoing, we may specify, as to any such class or series of partnership interest:

- the allocations of items of partnership income, gain, loss, deduction and credit to each such class or series of partnership interest;
- the right of each such class or series of partnership interest to share, on a junior, senior or pari passu basis, in distributions;
- the rights of each such class or series of partnership interest upon dissolution and liquidation of our operating partnership;
- the voting rights, if any, of each such class or series of partnership interest; and
- the conversion, redemption or exchange rights applicable to each such class or series of partnership interest.

Ability to Engage in Other Businesses; Conflicts of Interest

We may not conduct any business other than in connection with the ownership, acquisition and disposition of partnership interests, the management of the business and affairs of our operating partnership, our operation as a reporting company with a class (or classes) of securities registered under the Exchange Act, our operations as a REIT, the offering, sale, syndication, private placement or public offering of stock, bonds, securities or other interests, financing or refinancing of any type related to our operating partnership or its assets or activities and such activities as are incidental to those activities discussed above. In general, we must contribute any assets or funds that we acquire to our operating partnership in exchange for additional partnership interests. We may, however, in our sole and absolute discretion, from time to time hold or acquire assets in our own name or otherwise other than through our operating partnership so long as we take commercially reasonable measures to ensure that the economic benefits and burdens of such property are otherwise vested in our operating partnership.

Distributions

Our operating partnership will make distributions at such times and in such amounts, as we may in our sole and absolute discretion determine:

- first, with respect to any partnership interests that are entitled to any preference in distribution, in accordance with the rights of the holders of such class(es) or series of partnership interest, and, within each such class, among the holders of such class pro rata in proportion to their respective percentage interests of such class; and
- second, with respect to any partnership interests that are not entitled to any preference in distribution, including the common units and, except as described below under “—Special Allocations and Liquidating Distributions on LTIP Units” with respect to liquidating distributions and as may be provided in the 2010 Plan or any other incentive award plan, or any applicable award agreement, the LTIP units, in accordance with the rights of the holders of such class(es) or series of partnership interest, and, within each such class, among the holders of each such class, pro rata in proportion to their respective percentage interests of such class.

Distributions payable with respect to any units that were not outstanding during the entire quarterly period in respect of which a distribution is made, other than units issued to us in connection with the issuance of shares of our common stock, will be prorated based on the portion of the period that such units were outstanding.

Allocations

Except for the special allocations to holders of LTIP units described below under "Special Allocations and Liquidating Distributions on LTIP Units," and subject to the rights of the holders of any other class or series of partnership interest, net income or net loss of our operating partnership will generally be allocated to us, as the general partner, and to the limited partners in accordance with the partners' respective percentage ownership of the aggregate outstanding common units and LTIP units. Allocations to holders of a class or series of partnership interest will generally be made proportionately to all such holders in respect of such class or series. However, in some cases gain or loss may be disproportionately allocated to partners who have contributed appreciated property or guaranteed debt of our operating partnership. The allocations described above are subject to special rules relating to depreciation deductions and to compliance with the provisions of Sections 704(b) and 704(c) of the Code and the associated Treasury Regulations. See "Federal Income Tax Considerations—Taxation of our Company—Tax Aspects of Our Operating partnership, the Subsidiary Partnerships and the Limited Liability Companies."

Special Allocations and Liquidating Distributions on LTIP Units

A partner who receives units from the partnership has an initial capital account balance that is equal to the amount the partner paid (or contributed to our operating partnership) for its units and is subject to subsequent adjustments, including as the result of allocations of the partner's share of income or loss of our operating partnership. Because a holder of LTIP units generally will not pay for the LTIP units, the initial capital account balance attributable to such LTIP units will be zero. However, the partnership agreement provides that holders of LTIP units will receive special allocations of income in the event of a sale or "hypothetical sale" of the assets of our operating partnership, prior to the allocation of income to us or other holders of common units with respect to our or their common units. Such income will be allocated to holders of LTIP units to the extent necessary to cause the capital account of a holder of LTIP units to be economically equivalent to our capital account with respect to an equal number of common units. The term "hypothetical sale" does not refer to an actual sale of our operating partnership's assets, but refers to certain adjustments to the value of our operating partnership's assets and the partners' capital account balances, determined as if there had been a sale of such assets at their fair market value, as required by applicable Treasury Regulations. Further, we may delay or accelerate allocations to holders of LTIP units, or adjust the allocation of income or loss among the holders of LTIP units, so that, for the year during which each LTIP unit's distribution participation date falls, the ratio of the income and loss allocated to the LTIP unit to the total amounts distributed with respect to each such LTIP unit is more nearly equal to the ratio of the income and loss allocated to our common units to the amounts distributed to us with respect to our common units.

Because distributions upon liquidation of our operating partnership will be made in accordance with the partners' respective capital account balances, not numbers of units, LTIP units will not have full parity with common units with respect to liquidating distributions until the special allocations of income to the holders of LTIP units in the event of a sale or "hypothetical sale" of our operating partnership's assets causes the capital account of a holder of LTIP units to be economically equivalent to our capital account with respect to an equal number of common units. To the extent that there is not sufficient income to allocate to an LTIP unitholder's capital account to cause such capital account to become economically equivalent to our capital account with respect to an equal number of common units, or if such a sale or "hypothetical sale" does not occur, the holder's LTIP units will not achieve parity with common units with respect to liquidating distributions.

Borrowing by the Operating Partnership

We may cause our operating partnership to borrow money and to issue and guarantee debt as we deem necessary for the conduct of the activities of our operating partnership. Such debt may be secured, among other things, by mortgages, deeds of trust, liens or encumbrances on the properties of our operating partnership.

Reimbursements of Expenses; Transactions with General Partner and its Affiliates

We will not receive any compensation for our services as the general partner of our operating partnership. We have the same right to distributions as other holders of common units. In addition, our operating partnership must reimburse us for all amounts expended by us in connection with our operating partnership's business, including expenses relating to the ownership of interests in and management and operation of our operating partnership, compensation of officers and employees, including payments under future compensation plans that may provide for stock units, or phantom stock, pursuant to which our employees or employees of our operating partnership will receive payments based upon dividends on or the value of our common stock, director fees and expenses, any expenses (other than the purchase price) incurred by us in connection with the redemption or repurchase of shares of our preferred stock and our costs and expenses of being a public company, including costs of filings with the SEC, reports and other distributions to our stockholders. Our operating partnership must reimburse us for all expenses incurred by us relating to any offering of our stock, including any underwriting discounts or commissions, based on the percentage of the net proceeds from such issuance that we contribute or otherwise make available to our operating partnership. Any reimbursement will be reduced by the amount of any interest we earn on funds we hold on behalf of our operating partnership.

We and our affiliates may engage in any transactions with our operating partnership on such terms as we may determine in our sole and absolute discretion.

Exculpation and Indemnification of General Partner

The partnership agreement provides that we are not liable to our operating partnership or any partner for monetary damages for losses sustained, liabilities incurred or benefits not derived by our operating partnership or any limited partner, except for liability for our intentional harm or gross negligence. The partnership agreement also provides that any obligation or liability in our capacity as the general partner of our operating partnership that may arise at any time under the partnership agreement or any other instrument, transaction or undertaking contemplated by the partnership agreement will be satisfied, if at all, out of our assets or the assets of our operating partnership only, and no such obligation or liability will be personally binding upon any of our directors, stockholders, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise, and none of our directors or officers will be liable or accountable in damages or otherwise to the partnership, any partner or any assignee of a partner for losses sustained, liabilities incurred or benefits not derived as a result of errors in judgment or mistakes of fact or law or of any act or omission. We, as the general partner of our operating partnership, are not responsible for any misconduct or negligence on the part of our employees or agents, provided that we appoint such employees or agents in good faith. We, as the general partner of our operating partnership, may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisors, and any action that we take or omit to take in reliance upon the opinion of such persons, as to matters which we reasonably believe to be within their professional or expert competence, will be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.

In addition, the partnership agreement requires our operating partnership to indemnify us, our directors and officers, officers of our operating partnership and any other person designated by us against any and all losses, claims, damages, liabilities (whether joint or several), expenses (including, without limitation, attorneys' fees and other legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, that relate to the operations of our operating partnership, unless (1) an act or omission of the person was material to the matter giving rise to the action and either was committed in bad faith or was the result of active and deliberate dishonesty, (2) such person actually received an improper personal benefit in violation or breach of any provision of the partnership agreement or (3) in the case of a criminal proceeding, the person had reasonable cause to believe the act or omission was unlawful. Our operating partnership must also pay or reimburse the reasonable expenses of any such person upon its receipt of a written affirmation of the person's good faith belief that the standard of conduct necessary for indemnification has been met and a written undertaking to repay any amounts

paid or advanced if it is ultimately determined that the person did not meet the standard of conduct for indemnification. Our operating partnership will not indemnify or advance funds to any person with respect to any action initiated by the person seeking indemnification without our approval (except for any proceeding brought to enforce such person's right to indemnification under the partnership agreement) or if the person is found to be liable to our operating partnership on any portion of any claim in the action.

Business Combinations of Our Operating Partnership

Subject to the limitations on the transfer of our interest in our operating partnership described in "—Transfers and Withdrawals—Restrictions on Transfers by the General Partner," we generally have the exclusive power to cause our operating partnership to merge, reorganize, consolidate, sell all or substantially all of its assets or otherwise combine its assets with another entity. However, in connection with the acquisition of properties from persons to whom our operating partnership issues units or other partnership interests as part of the purchase price, in order to preserve such persons' tax deferral, our operating partnership may contractually agree, in general, not to sell or otherwise transfer the properties for a specified period of time, or in some instances, not to sell or otherwise transfer the properties without compensating the sellers of the properties for their loss of the tax deferral.

Redemption Rights of Qualifying Parties

Beginning 14 months after first becoming a holder of common units, each limited partner and some assignees of limited partners will have the right, subject to the terms and conditions set forth in the partnership agreement, to require our operating partnership to redeem all or a portion of the common units held by such limited partner or assignee in exchange for a cash amount per common unit equal to the value of one share of our common stock, determined in accordance with and subject to adjustment under the partnership agreement. Our operating partnership's obligation to redeem common units does not arise and is not binding against our operating partnership until the sixth business day after we receive the holder's notice of redemption or, if earlier, the day we notify the holder seeking redemption that we have declined to acquire some or all of the common units tendered for redemption. If we do not elect to acquire the common units tendered for redemption in exchange for shares of our common stock (as described below), our operating partnership must deliver the cash redemption amount on or before the tenth business day after we receive the holder's notice of redemption.

On or before the close of business on the fifth business day after a holder of common units gives notice of redemption to us, we may, in our sole and absolute discretion but subject to the restrictions on the ownership and transfer of our stock set forth in our charter and described in "Description of Securities—Restrictions on Ownership and Transfer," elect to acquire some or all of the common units tendered for redemption from the tendering party in exchange for shares of our common stock, based on an exchange ratio of one share of common stock for each common unit, subject to adjustment as provided in the partnership agreement. The holder of the common units tendered for redemption must provide certain information, certifications, representations, opinions and other instruments to ensure compliance with the restrictions on ownership and transfer of our stock set forth in our charter and the Securities Act. The partnership agreement does not require us to register, qualify or list any shares of common stock issued in exchange for common units with the SEC, with any state securities commissioner, department or agency, under the Securities Act or the Exchange Act or with any stock exchange. Shares of our common stock issued in exchange for common units pursuant to the partnership agreement may contain legends regarding restrictions under the Securities Act and applicable state securities laws.

Transfers and Withdrawals

Restrictions on Transfers by Limited Partners

Until the expiration of 14 months after the date on which a limited partner first acquires a partnership interest, the limited partner generally may not directly or indirectly transfer all or any portion of its partnership

interest without our consent, which we may give or withhold in our sole and absolute discretion, except for certain permitted transfers to certain affiliates, family members and charities, and certain pledges of partnership interests to lending institutions in connection with bona fide loans.

After the expiration of 14 months after the date on which a limited partner first acquires a partnership interest, the limited partner will have the right to transfer all or any portion of its partnership interest without our consent to any person that is an "accredited investor," within meaning set forth in Rule 501 promulgated under the Securities Act, upon ten business days prior notice to us, subject to the satisfaction of conditions specified in the partnership agreement, including minimum transfer requirements and our right of first refusal. Unless waived by us in our sole and absolute discretion, a transferring limited partner must also deliver an opinion of counsel reasonably satisfactory to us that the proposed transfer may be effected without registration under the Securities Act, and will not otherwise violate any state securities laws or regulations applicable to our operating partnership or the partnership interest proposed to be transferred. We may exercise our right of first refusal in connection with a proposed transfer by a limited partner within ten business days of our receipt of notice of the proposed transfer, which must include the identity and address of the proposed transferee and the amount and type of consideration proposed to be paid for the partnership interest. We may deliver all or any portion of any cash consideration proposed to be paid for a partnership interest that we acquire pursuant to our right of first refusal in the form of a note payable to the transferring limited partner not more than 180 days after our purchase of such partnership interest.

Any transferee of a limited partner's partnership interest must assume by operation of law or express agreement all of the obligations of the transferring limited partner under the partnership agreement with respect to the transferred interest, and no transfer (other than a transfer pursuant to a statutory merger or consolidation in which the obligations and liabilities of the transferring limited partner are assumed by a successor corporation by operation of law) will relieve the transferring limited partner of its obligations under the partnership agreement without our consent, which we may give or withhold in our sole and absolute discretion.

We may take any action we determine is necessary or appropriate in our sole and absolute discretion to prevent our operating partnership from being taxable as a corporation for U.S. federal income tax purposes. No transfer by a limited partner of its partnership interest, including any redemption or any acquisition of partnership interests by us or by our operating partnership or conversion of LTIP units into common units, may be made to or by any person without our consent, which we may give or withhold in our sole and absolute discretion, if the transfer could:

- result in our operating partnership being treated as an association taxable as a corporation for U.S. federal income tax purposes;
- result in a termination of our operating partnership under Section 708 of the Code;
- be treated as effectuated through an "established securities market" or a "secondary market (or the substantial equivalent thereof)" within the meaning of Section 7704 of the Code and the Treasury Regulations promulgated thereunder;
- result in our operating partnership being unable to qualify for one or more of the "safe harbors" set forth in Section 7704 of the Code and the Treasury Regulations thereunder; or
- based on the advice of counsel to us or our operating partnership, adversely affect our ability to continue to qualify as a REIT or subject us to any additional taxes under Sections 857 or 4981 of the Code.

Admission of Substituted Limited Partners

No limited partner has the right to substitute a transferee as a limited partner in its place. A transferee of a partnership interest of a limited partner may be admitted as a substituted limited partner only with our consent,

which we may give or withhold in our sole and absolute discretion, and only if the transferee accepts all of the obligations of a limited partner under the partnership and executes such instruments as we may require to evidence such acceptance and to effect the assignee's admission as a limited partner. Any assignee of a partnership interest that is not admitted as a limited partner will be entitled to all the rights of an assignee of a limited partner interest under the partnership agreement and the Maryland Revised Uniform Limited Partnership Act, including the right to receive distributions from our operating partnership and the share of net income, net losses and other items of income, gain, loss, deduction and credit of our operating partnership attributable to the partnership interest held by the assignee and the rights to transfer and redemption of the partnership interest provided in the partnership agreement, but will not be deemed to be a limited partner or holder of a partnership interest for any other purpose under the partnership agreement or the Maryland Revised Uniform Limited Partnership Act, and will not be entitled to consent to or vote on any matter presented to the limited partners for approval. The right to consent or vote, to the extent provided in the partnership agreement or under the Maryland Revised Uniform Limited Partnership Act, will remain with the transferring limited partner.

Restrictions on Transfers by the General Partner

Except as described below, any transfer of all or any portion of our interest in our operating partnership, whether by sale, disposition, statutory merger or consolidation, liquidation or otherwise, must be approved by the consent of a majority in interest of the limited partners (excluding us and any limited partner 50% or more of whose equity is owned, directly or indirectly, by us). Subject to the rights of our stockholders and the limited partners of our operating partnership to approve certain direct or indirect transfers of our interests in our operating partnership described below and the rights of holders of any class or series of partnership interest, we may transfer all (but not less than all) of our general partnership interest without the consent of the limited partners, voting as a separate class, in connection with a merger, consolidation or other combination of our assets with another entity, a sale of all or substantially all of our assets or a reclassification, recapitalization or change in any outstanding shares of our stock if:

- in connection with such event, all of the limited partners will receive or have the right to elect to receive, for each common unit, the greatest amount of cash, securities or other property paid to a holder of one share of our common stock (subject to adjustment in accordance with the partnership agreement) in the transaction and, if a purchase, tender or exchange offer is made and accepted by holders of our common stock in connection with the event, each holder of common units receives, or has the right to elect to receive, the greatest amount of cash, securities or other property that the holder would have received if it had exercised its redemption right and received shares of our common stock in exchange for its common units immediately before the expiration of the purchase, tender or exchange offer and had accepted the purchase, tender or exchange offer; or

- substantially all of the assets of our operating partnership will be owned by a surviving entity (which may be our operating partnership) in which the limited partners of our operating partnership holding common units immediately before the event will hold a percentage interest based on the relative fair market value of the net assets of our operating partnership and the other net assets of the surviving entity immediately before the event, which interest will be on terms that are at least as favorable as the terms of the common units in effect immediately before the event and as those applicable to any other limited partners or non-managing members of the surviving entity and will include a right to redeem interests in the surviving entity for the consideration described in the preceding bullet or cash on similar terms as those in effect with respect to the common units immediately before the event, or, if common equity securities of the person controlling the surviving entity are publicly traded, such common equity securities.

We may also transfer all (but not less than all) of our interest in our operating partnership to a controlled affiliate of ours without the consent of any limited partner, subject to the rights of holders of any class or series of partnership interest.

We may not, without prior "partnership approval," directly or indirectly transfer all or any portion of our interest in our operating partnership, before the later of the death of Mr. Rady and the death of his wife, in connection with a merger, consolidation or other combination of our assets with another entity, a sale of all or substantially all of our assets, a reclassification, recapitalization or change in any outstanding shares of our stock or other outstanding equity interests or an issuance of shares of our stock, in any case that requires approval by our common stockholders. The "partnership approval" requirement is satisfied, with respect to such a transfer, when the sum of the (1) the percentage interest of limited partners consenting to the transfer of our interest, plus (2) the product of (a) the percentage of the outstanding common units held by us multiplied by (b) the percentage of the votes that were cast in favor of the event by our common stockholders equals or exceeds the percentage required for our common stockholders to approve the event resulting in the transfer. Limited partners will be entitled to cast one vote for each common unit or LTIP unit, subject to adjustment under the partnership agreement.

In addition, any transferee of our interest in our operating partnership must be admitted as a general partner of our operating partnership, assume, by operation of law or express agreement, all of our obligations as general partner under the partnership agreement, accept all of the terms and conditions of the partnership agreement and execute such instruments as may be necessary to effectuate the transferee's admission as a general partner.

Restrictions on Transfers by Any Partner

Any transfer or purported transfer of a partnership interest other than in accordance with the partnership agreement will be void. Partnership interests may be transferred only on the first day of a fiscal quarter, and no partnership interest may be transferred to any lender under certain nonrecourse loans to us or our operating partnership, in either case, unless we otherwise consent, which we may give or withhold in our sole and absolute discretion. No transfer of any partnership interest, including in connection with any redemption or acquisition of units by us or by our operating partnership or any conversion of LTIP units into common units, may be made:

- to a person or entity that lacks the legal right, power or capacity to own the partnership interest;
- in violation of applicable law;
- without our consent, which we may give or withhold in our sole and absolute discretion, of any component portion of a partnership interest, such as a partner's capital account or rights to distributions, separate and apart from all other components of the partner's interest in our operating partnership;
- if the proposed transfer could cause us or any of our affiliates to fail to comply with the requirements under the Code for qualifying as a REIT or as a "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2));
- without our consent, which we may give or withhold in our sole and absolute discretion, if the proposed transfer could, based on the advice of our counsel or counsel to our operating partnership, cause a termination of our operating partnership for U.S. federal or state income tax purposes (other than as a result of the redemption or acquisition by us of all units held by limited partners);
- if the proposed transfer could, based on the advice of our legal counsel or legal counsel to our operating partnership, cause our operating partnership to cease to be classified as a partnership for U.S. federal income tax purposes (other than as a result of the redemption or acquisition by us of all units held by limited partners);
- if the proposed transfer would cause our operating partnership to become, with respect to any employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended, or ERISA, a "party-in-interest" for purposes of ERISA or a "disqualified person" as defined in Section 4975(c) of the Code;

- if the proposed transfer could, based on the advice of our counsel or counsel to our operating partnership, cause any portion of the assets of our operating partnership to constitute assets of any employee benefit plan pursuant to applicable regulations of the United States Department of Labor;

- if the proposed transfer requires the registration of the partnership interest under any applicable federal or state securities laws;

- without our consent, which we may give or withhold in our sole and absolute discretion, if the proposed transfer (1) could be treated as effectuated through an "established securities market" or a "secondary market" (or the substantial equivalent thereof) within the meaning of Section 7704 of the Code and the Treasury Regulations promulgated thereunder, (2) could cause our operating partnership to become a "publicly traded partnership," as that term is defined in Sections 469(k)(2) or 7704(b) of the Code, (3) could cause (i) our operating partnership to have more than 100 partners, including as partners certain persons who own their interests in our operating partnership indirectly or (ii) the partnership interest initially issued to such partner or its predecessors to be held by more than partners, including as partners certain persons who own their interests in our operating partnership indirectly, or (4) could cause our operating partnership to fail one or more of the "safe harbors" within the meaning of Section 7704 of the Code and the Treasury Regulations thereunder;

- if the proposed transfer would cause our operating partnership (as opposed to us) to become a reporting company under the Exchange Act; or

- if the proposed transfer subjects our operating partnership to regulation under the Investment Company Act of 1940, the Investment Advisors Act of 1940 or ERISA, each as amended.

Withdrawal of Partners

We may not voluntarily withdraw as the general partner of our operating partnership without the consent of a majority in interest of the limited partners (excluding us and any limited partner 50% or more of whose equity is owned, directly or indirectly, by us) other than upon the transfer of our entire interest in our operating partnership and the admission of our successor as a general partner of our operating partnership. A limited partner may withdraw from our operating partnership only as a result of a transfer of the limited partner's entire partnership interest in accordance with the partnership agreement and the admission of the limited partner's successor as a limited partner of our operating partnership or as a result of the redemption or acquisition by us of the limited partner's entire partnership interest.

Amendment of the Partnership Agreement

Except as described below and amendments requiring the consent of each affected partner described in "—Restrictions on General Partner's Authority," amendments to the partnership agreement must be approved by a majority in interest of the partners, including us and our subsidiaries. Amendments to the partnership agreement may be proposed only by us or by limited partners holding 25% or more of the partnership interests held by limited partners. Following such a proposal, we must submit any proposed amendment that requires the consent, approval or vote of any partners to the partners entitled to vote on the amendment for approval and seek the consent of such partners to the amendment.

We may, without the approval or consent of any limited partner but subject to the rights of holders of any additional class or series of partnership interest, amend the partnership agreement as may be required to facilitate or implement any of the following purposes:

- to add to our obligations as general partner or surrender any right or power granted to us or any of our affiliates for the benefit of the limited partners;

- to reflect the admission, substitution or withdrawal of partners, the transfer of any partnership interest, the termination of our operating partnership in accordance with the partnership agreement or the adjustment of the number of outstanding LTIP units, or a subdivision or combination of outstanding LTIP units, to maintain a one-for-one conversion and economic equivalence between LTIP units and common units;

- to reflect a change that is of an inconsequential nature or does not adversely affect the limited partners in any material respect, or to cure any ambiguity, correct or supplement any provision in the partnership agreement that is not inconsistent with law or with other provisions of the partnership agreement, or make other changes with respect to matters arising under the partnership agreement that will not be inconsistent with law or with the provisions of the partnership agreement;

- to set forth or amend the designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to distributions, qualifications or terms or conditions of redemption of the holders any additional classes or series of partnership interest;

- to satisfy any requirements, conditions or guidelines contained in any order, directive, opinion, ruling or regulation of a federal or state agency or contained in federal or state law;

- to reflect such changes as are reasonably necessary for us to maintain our status as a REIT or satisfy the requirements for us to qualify as a REIT or to reflect the transfer of all or any part of a partnership interest among us and any entity that is disregarded with respect to us for U.S. federal income tax purposes;

- to modify the manner in which items of net income or net loss are allocated or the manner in which capital accounts are adjusted, computed, or maintained (but in each case only to the extent provided by the partnership agreement and permitted by applicable law);

- to reflect the issuance of additional partnership interests; and

- to reflect any other modification to the partnership agreement as is reasonably necessary for our business or operations or those of our operating partnership and that does not require the consent of each affected partner as described in "—Restrictions on General Partner's Authority."

Amendments to the provisions of the partnership agreement relating to the restrictions on transfers of partnership interests by general or limited partners and the admission of transferees as limited partners must be approved by a majority in interest of the limited partners (excluding us and any limited partners 50% or more whose equity is owned, directly or indirectly, by us). Amendments to any other provision of the partnership agreement that requires the approval or consent of any partner or group of partners to any action may be amended only with the approval or consent of such partner or group of partners.

Procedures for Actions and Consents of Partners

Meetings of partners may be called only by us, to transact any business that we determine. Notice of any meeting must be given to all partners entitled to act at the meeting not less than seven days nor more than 60 days before the date of the meeting. Unless approval by a different number or proportion of the partners is required by the partnership agreement, the affirmative vote of the partners holding a majority of the outstanding partnership interests held by partners entitled to act on any proposal is sufficient to approve the proposal at a meeting of the partners. Partners may vote in person or by proxy. Each meeting of partners will be conducted by us or any other person we appoint, pursuant to rules for the conduct of the meeting determined by the person conducting the meeting. Whenever the vote, approval or consent of partners is permitted or required under the partnership agreement, such vote, approval or consent may be given at a meeting of partners, and any action requiring the

approval or consent of any partner or group of partners or that is otherwise required or permitted to be taken at a meeting of the partners may be taken without a meeting if a consent in writing or by electronic transmission setting forth the action so taken, approved or consented to is given by partners whose affirmative vote would be sufficient to approve such action or provide such approval or consent at a meeting of the partners. If we seek partner approval of or consent to any matter (other than "partnership approval" of direct or indirect transfers of our interests in our operating partnership) in writing or by electronic transmission, we may require a response within a reasonable specified time, but not less than fifteen days, and failure to respond in such time period will constitute a partner's consent consistent with our recommendation, if any, with respect to the matter. If we seek "partnership approval" of a direct or indirect transfer of our interests in our operating partnership, the record date for the determination of limited partners entitled to provide such approval shall be the same day as the record date for the approval by our stockholders of the event giving rise to such "partnership approval" rights. If "partnership approval" is not obtained with respect to any particular event within five business days from the date upon which our stockholders approved of such event, then "partnership approval" will be deemed not to exist with respect to such event.

Dissolution

Our operating partnership will dissolve, and its affairs will be wound up, upon the first to occur of any of the following:

- the removal or withdrawal of the last remaining general partner in accordance with the partnership agreement, the withdrawal of the last remaining general partner in violation of the partnership agreement or the involuntary withdrawal of the last remaining general partner as a result of such general partner's death, adjudication of incompetency, dissolution or other termination of legal existence or the occurrence of certain events relating to the bankruptcy or insolvency of such general partner unless, within ninety days after any such withdrawal, a majority in interest of the remaining partners agree in writing, in their sole and absolute discretion, to continue our operating partnership and to the appointment, effective as of the date of such withdrawal, of a successor general partner;

- an election to dissolve our operating partnership by us, in our sole and absolute discretion, with or without the consent of a majority in interest of the partners;

- the entry of a decree of judicial dissolution of our operating partnership pursuant to the Maryland Revised Uniform Limited Partnership Act;

- the sale or other disposition of all or substantially all of the assets of our operating partnership not in the ordinary course of our operating partnership's business or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of our operating partnership not in the ordinary course of our operating partnership's business; or

- the redemption or other acquisition by us or our operating partnership of all of the outstanding partnership interests other than partnership interests held by us.

Upon dissolution we or, if there is no remaining general partner, a liquidator will proceed to liquidate the assets of our operating partnership and apply the proceeds from such liquidation in the order of priority set forth in the partnership agreement and among holders of partnership interests in accordance with their capital account balances.

Tax Matters

Pursuant to the partnership agreement, we, as the general partner, are the tax matters partner of our operating partnership, and in such capacity, have the authority to handle tax audits on behalf of our operating

partnership. In addition, as the general partner, we have the authority to arrange for the preparation and filing of our operating partnership's tax returns and to make tax elections under the Code on behalf of our operating partnership.

LTIP Units

Our operating partnership is authorized to issue a class of units of partnership interest designated as "LTIP units." We may cause our operating partnership to issue LTIP units to persons who provide services to or for the benefit of our operating partnership, for such consideration or for no consideration as we may determine to be appropriate, and we may admit such persons as limited partners of our operating partnership, without the approval or consent of any limited partner. Further, we may cause our operating partnership to issue LTIP units in one or more classes or series, with such terms as we may determine, without the approval or consent of any limited partner. LTIP units may be subject to vesting, forfeiture and restrictions on transfer and receipt of distributions pursuant to the terms of any applicable equity-based plan and the terms of the 2010 Plan or any other award agreement relating to the issuance of the LTIP units.

Conversion Rights

Vested LTIP units are convertible at the option of each limited partner and some assignees of limited partners into common units, upon notice to us and our operating partnership, to the extent that the capital account balance of the LTIP unitholder with respect to all of his or her LTIP units is at least equal to our capital account balance with respect to an equal number of common units. We may cause our operating partnership to convert vested LTIP units eligible for conversion into an equal number of common units at any time, upon at least 10 and not more than 60 days' notice to the holder of the LTIP units.

If we or our operating partnership is party to a transaction, including a merger, consolidation, sale of all or substantially all of our assets or other business combination, as a result of which common units are exchanged for or converted into the right, or holders of common units are otherwise entitled, to receive cash, securities or other property (or any combination thereof), we must cause our operating partnership to convert any vested LTIP units then eligible for conversion into common units immediately before the transaction, taking into account any special allocations of income that would be made as a result of the transaction. If holders of common units have the opportunity to elect the form or type of consideration to be received in any such transaction, we must give prompt written notice to each limited partner holding LTIP units of such opportunity and use commercially reasonable efforts to allow limited partners holding LTIP units the opportunity to make such elections with respect to the common units that each such limited partner will receive upon conversion of his or her LTIP units. Our operating partnership must use commercially reasonable efforts to cause each limited partner (other than a party to such a transaction or an affiliate of such a party) holding LTIP units that will be converted into common units in such a transaction to be afforded the right to receive the same kind and amount of cash, securities and other property (or any combination thereof) for such common units that each holder of common units receives in the transaction. Our operating partnership must also use commercially reasonable efforts to enter into an agreement with the successor or purchasing entity in any such transaction for the benefit of the limited partners holding LTIP units, enabling the limited partners holding LTIP units that remain outstanding after such a transaction to convert their LTIP units into securities as comparable as reasonably possible under the circumstances to common units and preserving as far as reasonably possible under the circumstances the distribution, special allocation, conversion, and other rights set forth in the partnership agreement for the benefit of the LTIP unitholders.

Any conversion of LTIP units into common units will be effective as of the close of business on the effective date of the conversion.

Transfer

Unless the 2010 Plan, any other applicable equity-based plan or the terms of an award agreement specify additional restrictions on transfer of LTIP units, LTIP units are transferable to the same extent as common units, as described above in "—Transfers and Withdrawals."

Voting Rights

Limited partners holding LTIP units are entitled to vote together with limited partners holding common units on all matters on which limited partners holding common units are entitled to vote or consent, and may cast one vote for each LTIP unit so held.

Adjustment of LTIP Units

If our operating partnership takes certain actions, including making a distribution of units on all outstanding common units, combining or subdividing the outstanding common units into a different number of common units or reclassifying the outstanding common units, we must adjust the number of outstanding LTIP units or subdivide or combine outstanding LTIP units to maintain a one-for-one conversion ratio and economic equivalence between common units and LTIP units.

PRINCIPAL STOCKHOLDERS

The following table sets forth, as of , 2010, certain information regarding the beneficial ownership of shares of our common stock and shares of common stock into which common units are exchangeable immediately following the completion of this offering and the formation transactions for (1) each person who is expected to be the beneficial owner of 5% or more of our outstanding common stock immediately following the completion of this offering, (2) each of our directors, director nominees and named executive officers, and (3) all of our directors, director nominees and executive officers as a group. This table assumes that the formation transactions and this offering are completed, and gives effect to the expected issuance of common stock and common units in connection with this offering and the formation transactions. Each person named in the table has sole voting and investment power with respect to all of the shares of our common stock shown as beneficially owned by such person, except as otherwise set forth in the notes to the table. The extent to which a person will hold shares of common stock as opposed to units is set forth in the footnotes below.

The SEC has defined "beneficial ownership" of a security to mean the possession, directly or indirectly, of voting power and/or investment power over such security. A stockholder is also deemed to be, as of any date, the beneficial owner of all securities that such stockholder has the right to acquire within 60 days after that date through (1) the exercise of any option, warrant or right, (2) the conversion of a security, (3) the power to revoke a trust, discretionary account or similar arrangement or (4) the automatic termination of a trust, discretionary account or similar arrangement. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, common shares subject to options or other rights (as set forth above) held by that person that are exercisable as of , 2010 or will become exercisable within 60 days thereafter, are deemed outstanding, while such shares are not deemed outstanding for purposes of computing percentage ownership of any other person.

Unless otherwise indicated, the address of each named person is c/o American Assets Trust, Inc., 11455 El Camino Real, Suite 200, San Diego, California 92130. No shares beneficially owned by any executive officer, director or director nominee have been pledged as security, except with respect to shares pledged by the Rady Trust pursuant to an indemnity escrow agreement for the purposes of satisfying any of our indemnification claims in connection with the formation transactions.

Name of Beneficial Owner	Number of Shares and Units Beneficially Owned	Percentage of All Shares[1]	Percentage of All Shares and Units[2]
American Assets, Inc.			
Ernest Rady Trust U/D/T March 10, 1983[3]			
Ernest S. Rady[4]			
John W. Chamberlain[5]			
Robert F. Barton[6]			
Adam Wyll			
Patrick Kinney			
All directors, director nominees and executive officers as a group (persons)			

* Less than 1.0%

(1) Assumes shares of common stock are outstanding immediately following this offering. In addition, amounts for individuals assume that all common units held by the person are exchanged for shares of our common stock, and amounts for all directors, director

nominees and executive officers as a group assume all common units held by them are exchanged for shares of our common stock in each case, regardless of when such common units are currently exchangeable. The total number of shares of our common stock outstanding used in calculating this percentage assumes that none of the common units held by other persons are exchanged for shares of our common stock.

(2) Assumes a total of shares of our common stock and common units, which units may be redeemed for cash or, at our option, exchanged for shares of our common stock as described in "Description of the Partnership Agreement of American Assets Trust, L.P.," are outstanding immediately following this offering.

(3) Includes shares and common units held by American Assets, Inc., which is controlled by the Rady Trust. The Rady Trust disclaims beneficial ownership of such shares and common units, except to the extent of his pecuniary interest therein.

(4) Includes (a) shares and common units held by the Rady Trust; (b) shares and common units held by the Donald R. Rady Trust, for which Mr. Rady is the trustee; (c) shares and common units held by the Harry M. Rady Trust, for which Mr. Rady is the trustee; (d) shares and common units held by the Margo S. Rady Trust, for which Mr. Rady is the trustee; (e) shares and common units held by DHM Trust dated as of 29th May 1959, for which Mr. Rady is the trustee; and (f) shares and common units held by American Assets, Inc., which is indirectly controlled by Mr. Rady. Mr. Rady disclaims beneficial ownership of such shares and common units, except to the extent of his pecuniary interest therein.

(5) Includes (a) shares and common units held by Trust A of the W.E. & B.M. Chamberlain Trust, for which Mr. Chamberlain is the trustee; (b) shares and common units held by Trust C of the W.E. & B.M. Chamberlain Trust, for which Mr. Chamberlain is the trustee; and (c) shares and common units held by The John W. and Rebecca S. Chamberlain Trust dated July 14, 1994, as amended, for which Mr. Chamberlain and his wife are the trustees and beneficiaries. Mr. Chamberlain disclaims beneficial ownership of such shares and common units, except to the extent of his pecuniary interest therein.

(6) Includes shares and common units held by the Robert and Katherine Barton Living Trust, for which Mr. Barton is a trustee and beneficiary, and as such is the beneficial owner of the shares and common units held by such trust.

DESCRIPTION OF SECURITIES

The following summary of the material terms of the stock of our company does not purport to be complete and is subject to and qualified in its entirety by reference to applicable Maryland law and to our charter and bylaws, copies of which are filed as exhibits to the registration statement of which this prospectus is a part. See "Where You Can Find More Information."

General

Our charter provides that we may issue shares of common stock, $0.01 par value per share, or common stock, and shares of preferred stock, $0.01 par value per share, or preferred stock. Our charter authorizes our board of directors, with the approval of a majority of the entire board of directors and without any action by our stockholders, to amend our charter to increase or decrease the aggregate number of authorized shares of stock or the number of authorized shares of any class or series of our stock. Upon completion of this offering, the formation transactions and the other transactions described in this prospectus, shares of our common stock will be issued and outstanding, and no shares of preferred stock will be issued and outstanding.

Under Maryland law, stockholders generally are not personally liable for our debts or obligations solely as a result of their status as stockholders.

Common Stock

All of the shares of our common stock offered hereby will be duly authorized, validly issued, fully paid and nonassessable. Subject to the preferential rights of any other class or series of stock and to the provisions of our charter regarding the restrictions on ownership and transfer of our stock, holders of shares of our common stock are entitled to receive dividends and other distributions on such shares if, as and when authorized by our board of directors out of assets legally available therefor and declared by us and to share ratably in the assets of our company legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up after payment or establishment of reserves for all known debts and liabilities of our company.

Subject to the provisions of our charter regarding the restrictions on ownership and transfer of our stock and except as may otherwise be specified in the terms of any class or series of our common stock, each outstanding share of our common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors, and, except as provided with respect to any other class or series of stock, the holders of shares of common stock will possess the exclusive voting power. There is no cumulative voting in the election of our directors. Directors are elected by a plurality of all of the votes cast in the election of directors.

Holders of shares of our common stock have no preference, conversion, exchange, sinking fund or redemption rights and have no preemptive rights to subscribe for any securities of our company. Our charter provides that our stockholders generally have no appraisal rights unless our board of directors determines prospectively that appraisal rights will apply to one or more transactions in which holders of our common stock would otherwise be entitled to exercise appraisal rights. Subject to the provisions of our charter regarding the restrictions on ownership and transfer of our stock, holders of our common stock will have equal dividend, liquidation and other rights.

Under the MGCL, a Maryland corporation generally cannot dissolve, amend its charter, merge, consolidate, sell all or substantially all of its assets or engage in a statutory share exchange unless declared advisable by its board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of all of the votes entitled to be cast on the matter unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is set forth in the corporation's charter. Our charter provides for approval of any of these matters by the affirmative vote of stockholders entitled to cast a majority of the votes entitled to be cast on such matters, except that the affirmative vote of stockholders entitled to cast at

least two-thirds of the votes entitled to be cast generally in the election of directors is required to remove a director and the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on such matter is required to amend the provisions of our charter relating to the removal of directors or specifying that our stockholders may act without a meeting only by unanimous consent, or to amend the vote required to amend such provisions. Maryland law also permits a Maryland corporation to transfer all or substantially all of its assets without the approval of the stockholders of the corporation to an entity if all of the equity interests of the entity are owned, directly or indirectly, by the corporation. Because our operating assets may be held by our operating partnership or its subsidiaries, these subsidiaries may be able to merge or transfer all or substantially all of their assets without the approval of our stockholders.

Our charter authorizes our board of directors to reclassify any unissued shares of our common stock into other classes or series of stock, to establish the designation and number of shares of each class or series and to set, subject to the provisions of our charter relating to the restrictions on ownership and transfer of our stock, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of each such class or series.

Preferred Stock

Our charter authorizes our board of directors to classify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares into one or more classes or series of preferred stock. Prior to issuance of shares of each new class or series, our board of directors is required by the MGCL and our charter to set, subject to the provisions of our charter regarding the restrictions on ownership and transfer of our stock, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of each such class or series. As a result, our board of directors could authorize the issuance of shares of preferred stock that have priority over shares of our common stock with respect to dividends or other distributions or rights upon liquidation or with other terms and conditions that could have the effect of delaying, deferring or preventing a transaction or a change of control of our company that might involve a premium price for holders of our common stock or that our common stockholders otherwise believe to be in their best interests. As of the date hereof, no shares of preferred stock are outstanding and we have no present plans to issue any preferred stock.

Power to Increase or Decrease Authorized Shares of Common Stock and Issue Additional Shares of Common and Preferred Stock

We believe that the power of our board of directors to amend our charter to increase or decrease the aggregate number of authorized shares of stock, to authorize us to issue additional authorized but unissued shares of our common stock or preferred stock and to classify or reclassify unissued shares of our common stock or preferred stock and thereafter to authorize us to issue such classified or reclassified shares of stock will provide us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise. The additional classes or series, as well as the additional authorized shares of common stock, will be available for issuance without further action by our stockholders, unless such action is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although our board of directors does not currently intend to do so, it could authorize us to issue a class or series of stock that could, depending upon the terms of the particular class or series, delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for holders of our common stock or that our common stockholders otherwise believe to be in their best interests. See “Material Provisions of Maryland Law and of Our Charter and Bylaws—Anti-takeover Effect of Certain Provisions of Maryland Law and Our Charter and Bylaws.”

Restrictions on Ownership and Transfer

In order for us to qualify as a REIT under the Code, our stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (other than the first year for which an

election to be a REIT has been made) or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of the outstanding shares of stock (after taking into account options to acquire shares of stock) may be owned, directly, indirectly or through application of certain attribution rules by five or fewer individuals (as defined in the Code to include certain entities such as private foundations) at any time during the last half of a taxable year (other than the first year for which an election to be a REIT has been made).

Our charter contains restrictions on the ownership and transfer of our stock that are intended to assist us in complying with these requirements and continuing to qualify as a REIT. The relevant sections of our charter provide that, subject to the exceptions described below, no person or entity may actually or beneficially own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Code, more than % (in value or in number of shares, whichever is more restrictive) of the outstanding shares of our common stock, or % in value of the aggregate of the outstanding shares of all classes and series of our stock, in each case excluding any shares of our common stock that are not treated as outstanding for federal income tax purposes. We refer to each of these restrictions as an "ownership limit" and collectively as the "ownership limits." A person or entity that would have acquired actual, beneficial or constructive ownership of our stock but for the application of the ownership limits or any of the other restrictions on ownership and transfer of our stock discussed below is referred to as a "prohibited owner."

The constructive ownership rules under the Code are complex and may cause stock owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of less than % of our common stock (or the acquisition of an interest in an entity that owns, actually or constructively, our common stock) by an individual or entity, could, nevertheless cause that individual or entity, or another individual or entity, to own constructively in excess of % of our outstanding common stock and thereby violate the applicable ownership limit.

Our board of directors, in its sole and absolute discretion, prospectively or retroactively, may exempt a person from either or both of the ownership limits if doing so would not result in us being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise failing to qualify as a REIT and our board of directors determines that:

- such waiver will not cause any individual to actually or beneficially own more than % in value of the aggregate of the outstanding shares of all classes and series of our stock; and

- subject to certain exceptions, the person does not and will not own, actually or constructively, an interest in a tenant of ours (or a tenant of any entity owned in whole or in part by us) that would cause us to own, actually or constructively, more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant.

As a condition of the exception, our board of directors may require an opinion of counsel or IRS ruling, in either case in form and substance satisfactory to our board of directors, in its sole and absolute discretion, in order to determine or ensure our status as a REIT and such representations and undertakings as are reasonably necessary to make the determinations above. Our board of directors may impose such conditions or restrictions as it deems appropriate in connection with such an exception.

Our board of directors will grant to Ernest S. Rady and certain of his affiliates, or the Rady Group, an exemption from the ownership limits, subject to various conditions and limitations. During the time that such waiver is effective, the Rady Group will be subject to an increased ownership limit, or an excepted holder limit of %. As a condition to granting such excepted holder limit, the Rady Group will be required to make representations and warranties to us, including a representation that, as a result of granting the Rady Group a waiver from the ownership limits and providing the Rady Group with an excepted holder limit of %, no other person will actually, beneficially or constructively own shares of our stock in excess of the ownership limit. In addition, Mr. Rady generally will be required to represent that the Rady Group does not, and will not at any time

the Rady Group has an exception from the ownership limits, actually or constructively own in excess of 9.8% of the outstanding equity interests in any of our tenants, other than certain specifically identified tenants. These and certain other representations and undertakings are intended to ensure that, as a result of granting such waiver and providing the Rady Group with an excepted holder limit, we will continue to meet the REIT ownership requirements. Mr. Rady must inform us if any of these representations becomes untrue or is violated, in which case the Rady Group will lose its exemption from the ownership limit.

In connection with a waiver of an ownership limit or at any other time, our board of directors may, in its sole and absolute discretion, increase or decrease one or both of the ownership limits for one or more persons, except that a decreased ownership limit will not be effective for any person whose actual, beneficial or constructive ownership of our stock exceeds the decreased ownership limit at the time of the decrease until the person's actual, beneficial or constructive ownership of our stock equals or falls below the decreased ownership limit, although any further acquisition of our stock will violate the decreased ownership limit. Our board of directors may not increase or decrease any ownership limit if, among other limitations, the new ownership limit would allow five or fewer persons to actually or beneficially own more than 49% in value of our outstanding stock or could otherwise cause us to fail to qualify as a REIT.

Our charter further prohibits:

- any person from actually, beneficially or constructively owning shares of our stock that could result in us being "closely held" under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise cause us to fail to qualify as a REIT (including, but not limited to, actual, beneficial or constructive ownership of shares of our stock that could result in us owning (actually or constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income we derive from such tenant, taking into account our other income that would not qualify under the gross income requirements of Section 856(c) of the Code, would cause us to fail to satisfy any the gross income requirements imposed on REITs); and

- any person from transferring shares of our stock if such transfer would result in shares of our stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution).

Any person who acquires or attempts or intends to acquire actual, beneficial or constructive ownership of shares of our stock that will or may violate the ownership limits or any of the other restrictions on ownership and transfer of our stock described above must give written notice immediately to us or, in the case of a proposed or attempted transaction, provide us at least 15 days prior written notice, and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT.

The ownership limits and other restrictions on ownership and transfer of our stock described above will not apply until the closing of this offering and will not apply if our board of directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT or that compliance is no longer required in order for us to qualify as a REIT.

Pursuant to our charter, if any purported transfer of our stock or any other event would otherwise result in any person violating the ownership limits or such other limit established by our board of directors, or could result in us being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise failing to qualify as a REIT, then that number of shares causing the violation (rounded up to the nearest whole share) will be automatically transferred to, and held by, a trust for the exclusive benefit of one or more charitable organizations selected by us. The prohibited owner will have no rights in shares of our stock held by the trustee. The automatic transfer will be effective as of the close of business on the business day prior to the date of the violative transfer or other

event that results in the transfer to the trust. Any dividend or other distribution paid to the prohibited owner, prior to our discovery that the shares had been automatically transferred to a trust as described above, must be repaid to the trustee upon demand. If the transfer to the trust as described above is not automatically effective, for any reason, to prevent violation of the applicable restriction on ownership and transfer of our stock, then that transfer of the number of shares that otherwise would cause any person to violate the above restrictions will be void. If any transfer of our stock would result in shares of our stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution), then any such purported transfer will be void and of no force or effect and the intended transferee will acquire no rights in the shares.

Shares of our stock transferred to the trustee are deemed offered for sale to us, or our designee, at a price per share equal to the lesser of (1) the price per share in the transaction that resulted in the transfer of the shares to the trust (or, in the event of a gift, devise or other such transaction, the last reported sale price on the NYSE on the day of the transfer or other event that resulted in the transfer of such shares to the trust) and (2) the last reported sale price on the NYSE on the date we accept, or our designee accepts, such offer. We must reduce the amount payable to the prohibited owner by the amount of dividends and distributions paid to the prohibited owner and owed by the prohibited owner to the trustee and pay the amount of such reduction to the trustee for the benefit of the charitable beneficiary. We have the right to accept such offer until the trustee has sold the shares of our stock held in the trust. Upon a sale to us, the interest of the charitable beneficiary in the shares sold terminates and the trustee must distribute the net proceeds of the sale to the prohibited owner and any dividends or other distributions held by the trustee with respect to such stock will be paid to the charitable beneficiary.

If we do not buy the shares, the trustee must, within 20 days of receiving notice from us of the transfer of shares to the trust, sell the shares to a person or persons designated by the trustee who could own the shares without violating the ownership limits or other restrictions on ownership and transfer of our stock. Upon such sale, the trustee must distribute to the prohibited owner an amount equal to the lesser of (1) the price paid by the prohibited owner for the shares (or, if the prohibited owner did not give value in connection with the transfer or other event that resulted in the transfer to the trust (e.g., a gift, devise or other such transaction), the last reported sale price on the NYSE on the day of the transfer or other event that resulted in the transfer of such shares to the trust) and (2) the sales proceeds (net of commissions and other expenses of sale) received by the trustee for the shares. The trustee will reduce the amount payable to the prohibited owner by the amount of dividends and other distributions paid to the prohibited owner and owed by the prohibited owner to the trustee. Any net sales proceeds in excess of the amount payable to the prohibited owner will be immediately paid to the charitable beneficiary, together with any dividends or other distributions thereon. In addition, if prior to discovery by us that shares of our stock have been transferred to the trustee, such shares of stock are sold by a prohibited owner, then such shares shall be deemed to have been sold on behalf of the trust and, to the extent that the prohibited owner received an amount for or in respect of such shares that exceeds the amount that such prohibited owner was entitled to receive, such excess amount shall be paid to the trustee upon demand.

The trustee will be designated by us and will be unaffiliated with us and with any prohibited owner. Prior to the sale of any shares by the trust, the trustee will receive, in trust for the charitable beneficiary, all dividends and other distributions paid by us with respect to such shares, and may exercise all voting rights with respect to such shares for the exclusive benefit of the charitable beneficiary.

Subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee may, at the trustee’s sole discretion:

- rescind as void any vote cast by a prohibited owner prior to our discovery that the shares have been transferred to the trust; and
- recast the vote in accordance with the desires of the trustee acting for the benefit of the beneficiary of the trust.

However, if we have already taken irreversible corporate action, then the trustee may not rescind and recast the vote.

If our board of directors or a committee thereof determines in good faith that a proposed transfer or other event has taken place that violates the restrictions on ownership and transfer of our stock set forth in our charter, our board of directors or such committee may take such action as it deems advisable in its sole discretion to refuse to give effect to or to prevent such transfer, including, but not limited to, causing us to redeem shares of stock, refusing to give effect to the transfer on our books or instituting proceedings to enjoin the transfer.

Every owner of 5% or more (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder) of the outstanding shares of our stock, within 30 days after the end of each taxable year, must give written notice to us stating the name and address of such owner, the number of shares of each class and series of our stock that the owner beneficially owns and a description of the manner in which the shares are held. Each such owner also must provide us with any additional information that we request in order to determine the effect, if any, of the person's actual or beneficial ownership on our status as a REIT and to ensure compliance with the ownership limits. In addition, any person that is an actual owner, beneficial owner or constructive owner of shares of our stock and any person (including the stockholder of record) who is holding shares of our stock for an actual owner, beneficial owner or constructive owner must, on request, disclose to us such information as we may request in good faith in order to determine our status as a REIT and comply with requirements of any taxing authority or governmental authority or to determine such compliance.

Any certificates representing shares of our stock will bear a legend referring to the restrictions on ownership and transfer of our stock described above.

These restrictions on ownership and transfer could delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for our common stock that our stockholders believe to be in their best interest.

Transfer Agent and Registrar

We expect the transfer agent and registrar for our shares of common stock to be .

MATERIAL PROVISIONS OF MARYLAND LAW AND OF OUR CHARTER AND BYLAWS

The following summary of certain provisions of Maryland law and our charter and bylaws does not purport to be complete and is subject to and qualified in its entirety by reference to Maryland law and our charter and bylaws, copies of which are filed as exhibits to the registration statement of which this prospectus is a part. See "Where You Can Find More Information."

Our Board of Directors

Our charter and bylaws provide that the number of directors of our company may be established, increased or decreased only by a majority of our entire board of directors but may not be fewer than the minimum number required under the MGCL nor, unless our bylaws are amended, more than 15. Upon completion of this offering, we expect to have seven directors.

Our charter also provides that, at such time as we become eligible to elect to be subject to certain elective provisions of the MGCL (which we expect will be upon completion of this offering) and except as may be provided by our board of directors in setting the terms of any class or series of stock, any vacancy may be filled only by a majority of the remaining directors, even if the remaining directors do not constitute a quorum. Any director so elected will serve for the remainder of the full term of the directorship in which the vacancy occurred and until a successor is duly elected and qualifies.

Each of our directors is elected by our stockholders to serve until the next annual meeting of stockholders and until his or her successor is duly elected and qualifies under the MGCL. Holders of shares of our common stock will have no right to cumulative voting in the election of directors. Directors are elected by a plurality of the votes cast.

Removal of Directors

Our charter provides that, subject to the rights of holders of one or more classes or series of preferred stock to elect or remove one or more directors, a director may be removed only for cause (as defined in our charter) and only by the affirmative vote of at least two-thirds of the votes entitled to be cast generally in the election of directors. This provision, when coupled with the exclusive power of our board of directors to fill vacant directorships, may preclude stockholders from removing incumbent directors except for cause and by a substantial affirmative vote and filling the vacancies created by such removal with their own nominees.

Business Combinations

Under the MGCL, certain "business combinations" (including a merger, consolidation, share exchange or, in certain circumstances specified under the statute, an asset transfer or issuance or reclassification of equity securities) between a Maryland corporation and any interested stockholder, or an affiliate of such an interested stockholder, are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. Maryland law defines an interested stockholder as:

- any person who beneficially owns, directly or indirectly, 10% or more of the voting power of the corporation's outstanding voting stock; or
- an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting stock of the corporation.

A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. In approving a transaction, however, a board of directors may provide that its approval is subject to compliance, at or after the time of the approval, with any terms and conditions determined by it.

After such five-year period, any such business combination must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and
- two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom (or with whose affiliate) the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These supermajority approval requirements do not apply if, among other conditions, the corporation's common stockholders receive a minimum price (as defined in the MGCL) for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder for its shares.

These provisions of the MGCL do not apply, however, to business combinations that are approved or exempted by a corporation's board of directors prior to the time that the interested stockholder becomes an interested stockholder. Our board of directors has, by board resolution, elected to opt out of the business combination provisions of the MGCL. However, we cannot assure you that our board of directors will not opt to be subject to such business combination provisions in the future. Notwithstanding the foregoing, an alteration or repeal of this resolution will not have any effect on any business combinations that have been consummated or upon any agreements existing at the time of such modification or repeal.

Control Share Acquisitions

The MGCL provides that holders of "control shares" of a Maryland corporation acquired in a "control share acquisition" have no voting rights with respect to any control shares except to the extent approved by the affirmative vote of at least two-thirds of the votes entitled to be cast in the election of directors, generally, excluding shares of stock in a corporation in respect of which any of the following persons is entitled to exercise or direct the exercise of the voting power of such shares in the election of directors: (1) the person who made or proposes to make a control share acquisition, (2) an officer of the corporation or (3) an employee of the corporation who is also a director of the corporation. "Control shares" are voting shares of stock that, if aggregated with all other such shares of stock previously acquired by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing directors within one of the following ranges of voting power:

- one-tenth or more but less than one-third;
- one-third or more but less than a majority; or
- a majority or more of all voting power.

Control shares do not include shares that the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A "control share acquisition" means the acquisition, directly or indirectly, of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions (including an undertaking to pay expenses and making an "acquiring person statement" as described in the MGCL), may compel the corporation to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the control shares. If no request for a special meeting is made, the corporation may itself present the question at any stockholders meeting.

If voting rights of control shares are not approved at the meeting or if the acquiring person does not deliver an "acquiring person statement" as required by the statute, then, subject to certain conditions and limitations, the corporation may redeem any or all of the control shares (except those for which voting rights have previously been approved) for fair value determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquirer or of any meeting of stockholders at which the voting rights of such shares are considered and not approved. If voting rights for control shares are approved at a stockholders meeting and the acquirer becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of such appraisal rights may not be less than the highest price per share paid by the acquirer in the control share acquisition.

The control share acquisition statute does not apply to: (1) shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction or (2) acquisitions approved or exempted by the charter or bylaws of the corporation.

Our bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of shares of our stock. We cannot provide you any assurance, however, that our board of directors will not amend or eliminate this provision at any time in the future.

Subtitle 8

Subtitle 8 of Title 3 of the MGCL permits a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors and notwithstanding any contrary provision in the charter or bylaws, to any or all of the following five provisions:

- a classified board;
- a two-thirds vote requirement for removing a director;
- a requirement that the number of directors be fixed only by vote of the directors;
- a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the class of directors in which the vacancy occurred; or
- a majority requirement for the calling of a special meeting of stockholders.

Our charter provides that, at such time as we become eligible to make a Subtitle 8 election and except as may be provided by our board of directors in setting the terms of any class or series of stock, we elect to be subject to the provisions of Subtitle 8 relating to the filling of vacancies on our board of directors. Through provisions in our charter and bylaws unrelated to Subtitle 8, we already (1) require a two-thirds vote for the removal of any director from the board, which removal will be allowed only for cause, (2) vest in the board the exclusive power to fix the number of directorships, subject to limitations set forth in our charter and bylaws and (3) require, unless called by the chairman of our board of directors, our president, our chief executive officer or our board of directors, the request of stockholders entitled to cast not less than a majority of all votes entitled to be cast on a matter at such meeting to call a special meeting to consider and vote on any matter that may properly be considered at a meeting of stockholders. We have not elected to create a classified board. In the future, our board of directors may elect, without stockholder approval, to create a classified board or elect to be subject to one or more of the other provisions of Subtitle 8.

Amendments to Our Charter and Bylaws

Other than amendments to certain provisions of our charter described below and amendments permitted to be made without stockholder approval under Maryland law or by a specific provision in the charter, our charter may be amended only if such amendment is declared advisable by our board of directors and approved by the affirmative vote of stockholders entitled to cast a majority of all of the votes entitled to be cast on the matter. The provisions of our charter relating to the removal of directors or specifying that our stockholders may act without a meeting only by unanimous consent, or the provision specifying the vote required to amend such provisions, may be amended only if such amendment is declared advisable by our board of directors and approved by the affirmative vote of stockholders entitled to cast not less than two-thirds of all of the votes entitled to be cast on the matter. Our board of directors has the exclusive power to adopt, alter or repeal any provision of our bylaws or to make new bylaws.

Transactions Outside the Ordinary Course of Business

We generally may not merge with or into or consolidate with another company, sell all or substantially all of our assets or engage in a statutory share exchange unless such transaction is declared advisable by our board of directors and approved by the affirmative vote of stockholders entitled to cast a majority of all of the votes entitled to be cast on the matter. In addition, to the extent that such a merger, consolidation, sale of assets of statutory share exchange would require the vote of our stockholders, such transaction would also require the approval of the limited partners of our operating partnership. See “Description of the Partnership Agreement of American Assets Trust, L.P.—Restrictions on Transfers by the General Partner.”

Dissolution of Our Company

The dissolution of our company must be declared advisable by a majority of our entire board of directors and approved by the affirmative vote of stockholders entitled to cast a majority of all of the votes entitled to be cast on the matter.

Meetings of Stockholders

Under our bylaws, annual meetings of stockholders must be held each year at a date, time and place determined by our board of directors. Special meetings of stockholders may be called by the chairman of our board of directors, our chief executive officer, our president and our board of directors. Additionally, subject to the provisions of our bylaws, a special meeting of stockholders to act on any matter that may properly be considered at a meeting of stockholders must be called by our secretary upon the written request of stockholders entitled to cast a majority of all of the votes entitled to be cast on the matter at such meeting who have requested the special meeting in accordance with the procedures specified in our bylaws and provided the information and certifications required by our bylaws. Only matters set forth in the notice of a special meeting of stockholders may be considered and acted upon at such a meeting.

Advance Notice of Director Nominations and New Business

Our bylaws provide that:

- with respect to an annual meeting of stockholders, nominations of individuals for election to the board of directors and the proposal of business to be considered by stockholders at the annual meeting may be made only:
    - pursuant to our notice of the meeting;
    - by or at the direction of our board of directors; or

- by a stockholder who was a stockholder of record both at the time of giving of the notice required by our bylaws and at the time of the annual meeting, who is entitled to vote at the meeting in the election of each individual so nominated or on such other business and who has provided the information and certifications required by the advance notice procedures set forth in our bylaws; and

- with respect to special meetings of stockholders, only the business specified in our notice of meeting may be brought before the meeting of stockholders, and nominations of individuals for election to our board of directors may be made only:

  - by or at the direction of our board of directors; or

  - provided that the meeting has been called for the purpose of electing directors, by a stockholder who is a stockholder of record both at the time of giving of the notice required by our bylaws and at the time of the meeting, who is entitled to vote at the meeting in the election of each individual so nominated and who has provided the information and certifications required by the advance notice procedures set forth in our bylaws.

The purpose of requiring stockholders to give advance notice of nominations and other proposals is to afford our board of directors the opportunity to consider the qualifications of the proposed nominees or the advisability of the other proposals and, to the extent considered necessary by our board of directors, to inform stockholders and make recommendations regarding the nominations or other proposals. The advance notice procedures also permit a more orderly procedure for conducting our stockholder meetings.

Anti-takeover Effect of Certain Provisions of Maryland Law and Our Charter and Bylaws

The restrictions on ownership and transfer of our stock, the provisions of our charter regarding the removal of directors, the exclusive power of our board of directors to fill vacancies on the board and the advance notice provisions of the bylaws could delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for holders of our common stock or otherwise be in their best interests. Likewise, if our board of directors were to opt in to the business combination provisions of the MGCL or the provisions of Subtitle 8 of Title 3 of the MGCL providing for a classified board of directors, or if the provision in our bylaws opting out of the control share acquisition provisions of the MGCL were amended or rescinded, these provisions of the MGCL could have similar anti-takeover effects.

Indemnification and Limitation of Directors' and Officers' Liability

Maryland law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from actual receipt of an improper benefit or profit in money, property or services or active and deliberate dishonesty that is established by a final judgment and is material to the cause of action. Our charter contains a provision that eliminates such liability to the maximum extent permitted by Maryland law.

The MGCL requires a Maryland corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. The MGCL permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or are threatened to be made a party by reason of their service in those or other capacities unless it is established that:

- the act or omission of the director or officer was material to the matter giving rise to the proceeding and:

  - was committed in bad faith; or

- was the result of active and deliberate dishonesty;

- the director or officer actually received an improper personal benefit in money, property or services; or

- in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

However, under the MGCL, a Maryland corporation may not indemnify a director or officer for an adverse judgment in a suit by or in the right of the corporation or if the director or officer was adjudged liable on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, the MGCL permits a Maryland corporation to advance reasonable expenses to a director or officer, without requiring a preliminary determination of the director's or officer's ultimate entitlement to indemnification, upon the corporation's receipt of:

- a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and

- a written undertaking by the director or officer or on the director's of officer's behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.

Our charter authorizes us to obligate our company and our bylaws obligate us, to the fullest extent permitted by Maryland law in effect from time to time, to indemnify and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding, without requiring a preliminary determination of the director's or officer's ultimate entitlement to indemnification, to:

- any present or former director or officer who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity; or

- any individual who, while serving as our director or officer and at our request, serves or has served as a director, officer, partner, trustee, member or manager of another corporation, real estate investment trust, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity.

Our charter and bylaws also permit us, with the approval of our board of directors, to indemnify and advance expenses to any person who served a predecessor of ours in any of the capacities described above and to any employee or agent of our company or a predecessor of our company.

The partnership agreement also provides that we, as general partner, and our directors, officers, employees, agents and designees are indemnified to the extent provided therein. See "Description of the Partnership Agreement of American Assets Trust, L.P.—Exculpation and Indemnification of General Partner."

Insofar as the foregoing provisions permit indemnification of directors, officers or persons controlling us for liability arising under the Securities Act, we have been informed that in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Indemnification Agreements

We intend to enter into indemnification agreements with each of our executive officers and directors as described in "Management—Limitation of Liability and Indemnification."

Restrictions on Ownership and Transfer

Subject to certain exceptions, our charter provides that no person or entity may actually or beneficially own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Code, more than % (in value or number of shares, whichever is more restrictive) of the outstanding shares of our common stock or more than % in value of the aggregate outstanding shares of our stock. For a fuller description of this and other restrictions on ownership and transfer of our stock, see "Description of Securities—Restrictions on Ownership and Transfer."

REIT Qualification

Our charter provides that our board of directors may revoke or otherwise terminate our REIT election, without approval of our stockholders, if it determines that it is no longer in our best interests to continue to be qualified as a REIT. Our charter also provides that our board of directors may determine that compliance with the restrictions on ownership and transfer of our stock is no longer required in order for us to qualify as a REIT.

SHARES ELIGIBLE FOR FUTURE SALE

General

Upon completion of this offering, we will have outstanding shares of our common stock (shares if the underwriters' overallotment option is exercised in full). In addition, upon completion of this offering, shares of our common stock will be reserved for issuance upon exchange of common units.

Of these shares, the shares sold in this offering (shares if the underwriters' overallotment option is exercised in full) will be freely transferable without restriction or further registration under the Securities Act, subject to the limitations on ownership set forth in our charter, except for any shares purchased in this offering by our "affiliates," as that term is defined by Rule 144 under the Securities Act. The remaining shares of common stock issued to our officers, directors and affiliates in the formation transactions and the shares of our common stock issuable to officers, directors and affiliates upon exchange of common units will be "restricted shares" as defined in Rule 144.

Prior to this offering, there has been no public market for our common stock. Trading of our common stock on the NYSE is expected to commence immediately following the completion of this offering. No assurance can be given as to (1) the likelihood that an active market for our shares of common stock will develop, (2) the liquidity of any such market, (3) the ability of the stockholders to sell the shares or (4) the prices that stockholders may obtain for any of the shares. No prediction can be made as to the effect, if any, that future sales of shares, or the availability of shares for future sale, will have on the market price prevailing from time to time. Sales of substantial amounts of our common stock (including shares issued upon the exchange of units tendered for redemption or the exercise of stock options), or the perception that such sales could occur, may adversely affect prevailing market prices of our common stock. See "Risk Factors—Risks Related to this Offering."

For a description of certain restrictions on transfers of our shares of common stock held by certain of our stockholders, see "Description of Securities—Restrictions on Ownership and Transfer."

Rule 144

After giving effect to this offering, shares of our outstanding shares of common stock will be "restricted" securities under the meaning of Rule 144 under the Securities Act, and may not be sold in the absence of registration under the Securities Act unless an exemption from registration is available, including the exemption provided by Rule 144.

In general, under Rule 144 as currently in effect, beginning 90 days after the date of this prospectus, a person who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale and who has beneficially owned shares considered to be restricted securities under Rule 144 for at least six months would be entitled to sell those shares, subject only to the availability of current public information about us. A non-affiliated person who has beneficially owned shares considered to be restricted securities under Rule 144 for at least one year would be entitled to sell those shares without regard to the provisions of Rule 144.

An affiliate of ours who has beneficially owned shares of our common stock for at least six months would be entitled to sell, within any three-month period, a number of shares that does not exceed the greater of:

- 1.0% of the shares of our common stock then outstanding, which will equal approximately shares immediately after this offering (shares if the underwriters exercise their overallotment option in full); or
- the average weekly trading volume of our common stock on the NYSE during the four calendar weeks preceding the date on which notice of the sale is filed with the SEC.

Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to manner of sale provisions, notice requirements and the availability of current public information about us.

Redemption/Exchange Rights

In connection with the formation transactions, our operating partnership will issue an aggregate of common units to prior investors in the entities that own the properties in our portfolio. Beginning on or after the date which is 14 months after the completion of this offering, limited partners of our operating partnership and certain qualifying assignees of a limited partner will have the right to require our operating partnership to redeem part or all of their common units for cash, or, at our election, shares of our common stock, based upon the fair market value of an equivalent number of shares of our common stock at the time of the redemption, subject to the restrictions on ownership and transfer of our stock set forth in our charter and described under the section entitled "Description of Securities—Restrictions on Ownership and Transfer." See "Description of the Partnership Agreement of American Assets Trust, L.P."

Registration Rights

In connection with the completion of this offering, will enter into a registration rights agreement with the various persons receiving shares of our common stock and/or common units in the formation transactions, including Mr. Rady his affiliates, immediate family members and related trusts and certain of our executive officers. Under the registration rights agreement, subject to certain limitations, commencing not later than 14 months after the date of this offering, we will file one or more registration statements covering the resale of the shares of our common stock issued in the formation transactions and the resale of the shares of our common stock issued or issuable, at our option, in exchange for operating partnership units issued in the formation transactions. We may, at our option, satisfy our obligation to prepare and file a resale registration statement by filing a registration statement registering the issuance by us of shares of our common stock registered under the Securities Act in lieu of our operating partnership's obligation to pay cash for such units.

Commencing one year after the date of this offering (but prior to the date upon which the registration statement described above becomes effective) or 16 months after the date of this offering if the shelf registration statement described above is not then effective, Mr. Rady and his affiliates, immediate family members and related trusts will have demand rights to require us to undertake an underwritten offering under a resale registration statement (so long as a majority-in-interest of such group makes such a demand). In addition, if we file a registration statement with respect to an underwritten offering for our own account, any of Mr. Rady and his affiliates, immediate family members and related trusts will have the right, subject to certain limitations, to register such number of shares of our common stock issued to him or her pursuant to the formation transactions as each such person requests.

Commencing upon our filing of a resale registration statement not later than 14 months after the date of this offering, under certain circumstances, we will also be required to undertake an underwritten offering upon the written request of holders of at least 10% in the aggregate of the securities originally issued in the formation transactions, provided the securities to be registered in such offering shall (1) have a market value of at least $25 million or (2) shall represent all of the remaining securities acquired in the formation transactions by Mr. Rady and his affiliates, immediate family members and related trusts and such securities shall have a market value of at least $10 million, and provided further that we are not obligated to effect more than three such underwritten offerings. We will agree to pay all of the expenses relating to the securities registrations described above. See "Shares Eligible for Future Sale—Registration Rights."

Equity Incentive Award Plan

We intend to adopt our 2010 Equity Incentive Award Plan immediately prior to the completion of this offering. The plan will provide for the grant of incentive awards to our directors, officers, employees and consultants. We expect that an aggregate of shares of our common stock will be available for issuance under the awards granted pursuant to our 2010 Equity Incentive Award Plan.

We intend to file with the SEC a Registration Statement on Form S-8 covering the shares of common stock issuable under our 2010 Equity Incentive Award Plan. Shares of our common stock covered by this registration statement, including any shares of our common stock issuable upon the exercise of options or shares of restricted common stock, will be eligible for transfer or resale without restriction under the Securities Act unless held by affiliates.

Lock-up Agreements

In addition to the limits placed on the sale of our common stock by operation of Rule 144 and other provisions of the Securities Act, our directors, executive officers, director nominees and their affiliates, as well as each of the prior investors have agreed with the underwriters of this offering, subject to certain exceptions, not to sell or otherwise transfer or encumber, or enter into any transaction that transfers, in whole or in part, directly or indirectly, any shares of common stock or securities convertible into, exchangeable for or exercisable for shares of common stock owned by them at the completion of this offering or thereafter acquired by them for a period of 365 days (with respect to Mr. Rady and our other directors, director nominees and executive officers and their affiliates) and 180 days (with respect to other prior investors) after the date of this prospectus, without the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated, Wells Fargo Securities, LLC and Morgan Stanley & Co. Incorporated (with respect to our executive officers, directors and director nominees and their affiliates) or Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Securities, LLC (with respect to other prior investors).

However, in addition to certain other exceptions, (1) each of our directors, director nominees, executive officers and their affiliates, as well as prior investors may transfer or dispose of his or her shares during the lock-up period in the case of gifts or for estate planning purposes, and (2) each of the prior investors that is an entity may distribute its shares to its limited partners, members or stockholders or to its affiliates or to any investment fund or other entity controlled or managed by it, provided in each case that each transferee agrees to a similar lock-up agreement for the remainder of the lock-up period, the transfer does not involve a disposition for value, no report is required to be filed by the transferor under the Exchange Act as a result of the transfer and the transferor does not voluntarily effect any public filing or report regarding such transfer. See “Underwriting—No Sales of Similar Securities.”

FEDERAL INCOME TAX CONSIDERATIONS

The following is a general summary of certain material U.S. federal income tax considerations regarding our company and this offering of our common stock. For purposes of this discussion, references to "we," "our" and "us" mean only American Assets Trust, Inc., and do not include any of its subsidiaries, except as otherwise indicated. This summary is for general information only and is not tax advice. The information in this summary is based on:

- the Internal Revenue Code of 1986, as amended, or the Code;
- current, temporary and proposed Treasury Regulations promulgated under the Code;
- the legislative history of the Code;
- administrative interpretations and practices of the Internal Revenue Service, or the IRS; and
- court decisions;

in each case, as of the date of this prospectus. In addition, the administrative interpretations and practices of the IRS include its practices and policies as expressed in private letter rulings that are not binding on the IRS except with respect to the particular taxpayers who requested and received those rulings. The sections of the Code and the corresponding Treasury Regulations that relate to qualification and taxation as a REIT are highly technical and complex. The following discussion sets forth certain material aspects of the sections of the Code that govern the federal income tax treatment of a REIT and its stockholders. This summary is qualified in its entirety by the applicable Code provisions, Treasury Regulations promulgated under the Code, and administrative and judicial interpretations thereof. Future legislation, Treasury Regulations, administrative interpretations and practices and/or court decisions may adversely affect the tax considerations contained in this discussion. Any such change could apply retroactively to transactions preceding the date of the change. We have not requested and do not intend to request a ruling from the IRS that we qualify as a REIT, and the statements in this prospectus are not binding on the IRS or any court. Thus, we can provide no assurance that the tax considerations contained in this discussion will not be challenged by the IRS or will be sustained by a court if challenged by the IRS. This summary does not discuss any state, local or non-U.S. tax consequences associated with the purchase, ownership, or disposition of our common stock or our election to be taxed as a REIT.

You are urged to consult your tax advisors regarding the tax consequences to you of:

- **the purchase, ownership or disposition of our common stock, including the federal, state, local, non-U.S. and other tax consequences;**
- **our election to be taxed as a REIT for federal income tax purposes; and**
- **potential changes in applicable tax laws.**

Taxation of Our Company

General

We currently have in effect an election to be taxed as an S corporation under subchapter S of the Code, but intend to revoke our subchapter S election prior to the closing date of this offering. We intend to elect to be taxed as a REIT under Sections 856 through 860 of the Code commencing with our taxable year ending December 31, 2010. We believe that we are organized and will operate in a manner that will allow us to qualify for taxation as a REIT under the Code commencing with our taxable year ending December 31, 2010, and we

intend to continue to be organized and operate in this manner. However, qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code, including through actual annual operating results, asset composition, distribution levels and diversity of stock ownership. Accordingly, no assurance can be given that we have been organized or will be able to operate in a manner so as to qualify or remain qualified as a REIT. See "—Failure to Qualify."

Latham & Watkins LLP has acted as our tax counsel in connection with this offering of our common stock and our intended election to be taxed as a REIT. Latham & Watkins LLP will render an opinion to us to the effect that, commencing with our taxable year ending December 31, 2010, we have been organized in conformity with the requirements for qualification and taxation as a REIT under the Code, and our proposed method of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code. It must be emphasized that this opinion will be based on various assumptions and representations as to factual matters, including representations made by us in a factual certificate provided by one of our officers. In addition, this opinion will be based upon our factual representations set forth in this prospectus. Moreover, our qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code, which are discussed below, including through actual annual operating results, asset composition, distribution levels and diversity of stock ownership, the results of which have not been and will not be reviewed by Latham & Watkins LLP. Accordingly, no assurance can be given that our actual results of operation for any particular taxable year will satisfy those requirements. Further, the anticipated federal income tax treatment described in this discussion may be changed, perhaps retroactively, by legislative, administrative or judicial action at any time. Latham & Watkins LLP has no obligation to update its opinion subsequent to the date of such opinion.

Provided we qualify for taxation as a REIT, we generally will not be required to pay federal corporate income taxes on our REIT taxable income that is currently distributed to our stockholders. This treatment substantially eliminates the "double taxation" that ordinarily results from investment in a C corporation. A C corporation is a corporation that generally is required to pay tax at the corporate level. Double taxation means taxation once at the corporate level when income is earned and once again at the stockholder level when the income is distributed. We will, however, be required to pay federal income tax as follows:

- First, we will be required to pay tax at regular corporate rates on any undistributed REIT taxable income, including undistributed net capital gains.

- Second, we may be required to pay the "alternative minimum tax" on our items of tax preference under some circumstances.

- Third, if we have (1) net income from the sale or other disposition of "foreclosure property" held primarily for sale to customers in the ordinary course of business or (2) other nonqualifying income from foreclosure property, we will be required to pay tax at the highest corporate rate on this income. To the extent that income from foreclosure property is otherwise qualifying income for purposes of the 75% gross income test, this tax is not applicable. Subject to certain other requirements, foreclosure property generally is defined as property we acquired through foreclosure or after a default on a loan secured by the property or a lease of the property.

- Fourth, we will be required to pay a 100% tax on any net income from prohibited transactions. Prohibited transactions are, in general, sales or other taxable dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business.

- Fifth, if we fail to satisfy the 75% gross income test or the 95% gross income test, as described below, but have otherwise maintained our qualification as a REIT because certain other requirements are met, we will be required to pay a tax equal to (1) the greater of (A) the amount by which we fail to satisfy the 75% gross income test and (B) the amount by which we fail to satisfy the 95% gross income test, multiplied by (2) a fraction intended to reflect our profitability.

- Sixth, if we fail to satisfy any of the asset tests (other than a de minimis failure of the 5% or 10% asset test), as described below, due to reasonable cause and not due to willful neglect, and we nonetheless maintain our REIT qualification because of specified cure provisions, we will be required to pay a tax equal to the greater of $50,000 or the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets that caused us to fail such test.

- Seventh, if we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a violation of the gross income tests or certain violations of the asset tests, as described below) and the violation is due to reasonable cause and not due to willful neglect, we may retain our REIT qualification but we will be required to pay a penalty of $50,000 for each such failure.

- Eighth, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of (1) 85% of our ordinary income for the year, (2) 95% of our capital gain net income for the year, and (3) any undistributed taxable income from prior periods.

- Ninth, if we acquire any asset from a corporation that is or has been a C corporation in a transaction in which our basis in the asset is determined by reference to the C corporation's basis in the asset (as is expected to occur in connection with certain mergers that are part of the formation transactions), and we subsequently recognize gain on the disposition of the asset during the ten-year period beginning on the date on which we acquired the asset, then we will be required to pay tax at the highest regular corporate tax rate on this gain to the extent of the excess of (1) the fair market value of the asset over (2) our adjusted basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of gain assume that the C corporation will refrain from making an election to receive different treatment under applicable Treasury Regulations on its tax return for the year in which we acquire the asset from the C corporation.

- Tenth, our subsidiaries that are C corporations, including our "taxable REIT subsidiaries," generally will be required to pay federal corporate income tax on their earnings.

- Eleventh, we will be required to pay a 100% tax on any "redetermined rents," "redetermined deductions" or "excess interest." See "—Penalty Tax." In general, redetermined rents are rents from real property that are overstated as a result of services furnished to any of our tenants by a taxable REIT subsidiary of ours. Redetermined deductions and excess interest generally represent amounts that are deducted by a taxable REIT subsidiary of ours for amounts paid to us that are in excess of the amounts that would have been deducted based on arm's length negotiations.

- Twelfth, we may elect to retain and pay income tax on our net capital gain. In that case, a stockholder would include its proportionate share of our undistributed net capital gain (to the extent we make a timely designation of such gain to the stockholder) in its income, would be deemed to have paid the tax that we paid on such gain, and would be allowed a credit for its proportionate share of the tax deemed to have been paid, and an adjustment would be made to increase the basis of the stockholder in our common stock.

Requirements for Qualification as a REIT. The Code defines a REIT as a corporation, trust or association:

(1) that is managed by one or more trustees or directors;

(2) that issues transferable shares or transferable certificates to evidence its beneficial ownership;

(3) that would be taxable as a domestic corporation, but for Sections 856 through 860 of the Code;

(4) that is not a financial institution or an insurance company within the meaning of certain provisions of the Code;

(5) that is beneficially owned by 100 or more persons;

(6) not more than 50% in value of the outstanding stock of which is owned, actually or constructively, by five or fewer individuals, including certain specified entities, during the last half of each taxable year; and

(7) that meets other tests, described below, regarding the nature of its income and assets and the amount of its distributions.

The Code provides that conditions (1) to (4), inclusive, must be met during the entire taxable year and that condition (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. Conditions (5) and (6) do not apply until after the first taxable year for which an election is made to be taxed as a REIT. For purposes of condition (6), the term "individual" includes a supplemental unemployment compensation benefit plan, a private foundation or a portion of a trust permanently set aside or used exclusively for charitable purposes, but generally does not include a qualified pension plan or profit sharing trust.

We believe that we have been organized, will operate and will issue sufficient shares of our common stock with sufficient diversity of ownership pursuant to this offering of our common stock to allow us to satisfy conditions (1) through (7) inclusive, during the relevant time periods. In addition, our charter provides for restrictions regarding ownership and transfer of our shares which are intended to assist us in continuing to satisfy the share ownership requirements described in (5) and (6) above. A description of the share ownership and transfer restrictions relating to our stock is contained in the discussion in this prospectus under the heading "Description of Securities—Restrictions on Ownership and Transfer." These restrictions, however, may not ensure that we will, in all cases, be able to satisfy the share ownership requirements described in (5) and (6) above. If we fail to satisfy these share ownership requirements, except as provided in the next sentence, our status as a REIT will terminate. If, however, we comply with the rules contained in applicable Treasury Regulations that require us to ascertain the actual ownership of our shares and we do not know, or would not have known through the exercise of reasonable diligence, that we failed to meet the requirement described in condition (6) above, we will be treated as having met this requirement. See "—Failure to Qualify."

In addition, we may not maintain our status as a REIT unless our taxable year is the calendar year. We will have a calendar taxable year.

Ownership of Interests in Partnerships, Limited Liability Companies and Qualified REIT Subsidiaries. In the case of a REIT that is a partner in a partnership or a member in a limited liability company treated as a partnership for federal income tax purposes, Treasury Regulations provide that the REIT will be deemed to own its proportionate share of the assets of the partnership or limited liability company, as the case may be, based on its interest in partnership capital, subject to special rules relating to the 10% asset test described below. Also, the REIT will be deemed to be entitled to its proportionate share of the income of that entity. The assets and gross income of the partnership or limited liability company retain the same character in the hands of the REIT for purposes of Section 856 of the Code, including satisfying the gross income tests and the asset tests. Thus, our pro rata share of the assets and items of income of our operating partnership, including our operating partnership's share of these items of any partnership or limited liability company treated as a partnership or disregarded entity for federal income tax purposes in which it owns an interest, is treated as our assets and items of income for purposes of applying the requirements described in this discussion, including the gross income and asset tests described below. A brief summary of the rules governing the federal income taxation of partnerships and limited liability companies is set forth below in "—Tax Aspects of Our Operating Partnership, the Subsidiary Partnerships and the Limited Liability Companies."

We expect to control our operating partnership and the subsidiary partnerships and limited liability companies and intend to operate them in a manner consistent with the requirements for our qualification as a REIT. If we become a limited partner or non-managing member in any partnership or limited liability company and such entity takes or expects to take actions that could jeopardize our status as a REIT or require us to pay tax, we may be forced to dispose of our interest in such entity. In addition, it is possible that a partnership or limited liability company could take an action which could cause us to fail a gross income or asset test, and that we would not become aware of such action in time to dispose of our interest in the partnership or limited liability company or take other corrective action on a timely basis. In that case, we could fail to qualify as a REIT unless we were entitled to relief, as described below.

We may from time to time own and operate certain properties through subsidiaries that we intend to be treated as "qualified REIT subsidiaries" under the Code. A corporation will qualify as our qualified REIT subsidiary if we own 100% of the corporation's outstanding stock and do not elect with the subsidiary to treat it as a "taxable REIT subsidiary," as described below. A qualified REIT subsidiary is not treated as a separate corporation, and all assets, liabilities and items of income, gain, loss, deduction and credit of a qualified REIT subsidiary are treated as assets, liabilities and items of income, gain, loss, deduction and credit of the parent REIT for all purposes under the Code, including all REIT qualification tests. Thus, in applying the federal tax requirements described in this discussion, any qualified REIT subsidiaries we own are ignored, and all assets, liabilities and items of income, gain, loss, deduction and credit of such corporations are treated as our assets, liabilities and items of income, gain, loss, deduction and credit. A qualified REIT subsidiary is not subject to federal income tax, and our ownership of the stock of a qualified REIT subsidiary will not violate the restrictions on ownership of securities, as described below under "—Asset Tests."

Ownership of Interests in Taxable REIT Subsidiaries. We will own an interest in one or more taxable REIT subsidiaries and may acquire securities in additional taxable REIT subsidiaries in the future. A taxable REIT subsidiary is a corporation other than a REIT in which a REIT directly or indirectly holds stock, and that has made a joint election with such REIT to be treated as a taxable REIT subsidiary. If a taxable REIT subsidiary owns more than 35% of the total voting power or value of the outstanding securities of another corporation, such other corporation will also be treated as a taxable REIT subsidiary. Other than some activities relating to lodging and health care facilities as more fully described below under "—Income Tests," a taxable REIT subsidiary may generally engage in any business, including the provision of customary or non-customary services to tenants of its parent REIT. A taxable REIT subsidiary is subject to federal income tax as a regular C corporation. In addition, a taxable REIT subsidiary may be prevented from deducting interest on debt funded directly or indirectly by its parent REIT if certain tests regarding the taxable REIT subsidiary's debt to equity ratio and interest expense are not satisfied. A REIT's ownership of securities of a taxable REIT subsidiary is not subject to the 5% or 10% asset test described below. See "—Asset Tests."

Income Tests

We must satisfy two gross income requirements annually to maintain our qualification as a REIT. First, in each taxable year we must derive directly or indirectly at least 75% of our gross income (excluding gross income from prohibited transactions, certain hedging transactions, and certain foreign currency gains) from investments relating to real property or mortgages on real property, including "rents from real property" and, in certain circumstances, interest, or certain types of temporary investments. Second, in each taxable year we must derive at least 95% of our gross income (excluding gross income from prohibited transactions, certain hedging transactions, and certain foreign currency gains) from the real property investments described above or dividends, interest and gain from the sale or disposition of stock or securities, or any combination of the foregoing. For these purposes, the term "interest" generally does not include any amount received or accrued, directly or indirectly, if the determination of all or some of the amount depends in any way on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term "interest" solely by reason of being based on a fixed percentage or percentages of receipts or sales.

Rents we receive from a tenant will qualify as "rents from real property" for the purpose of satisfying the gross income requirements for a REIT described above only if all of the following conditions are met:

- The amount of rent is not based in any way on the income or profits of any person. However, an amount we receive or accrue generally will not be excluded from the term "rents from real property" solely because it is based on a fixed percentage or percentages of receipts or sales;

- Neither we nor an actual or constructive owner of 10% or more of our stock actually or constructively owns 10% or more of the interests in the assets or net profits of a non-corporate tenant, or, if the tenant is a corporation, 10% or more of the voting power or value of all classes of stock of the tenant. Rents we receive from such a tenant that is a taxable REIT subsidiary of ours, however, will not be excluded from the definition of "rents from real property" as a result of this condition if (1) at least 90% of the space at the property to which the rents relate is leased to third parties, and the rents paid by the taxable REIT subsidiary are substantially comparable to rents paid by our other tenants for comparable space, or (2) the property to which the rents relate is a qualified lodging facility and such property is operated on behalf of the taxable REIT subsidiary by a person who is an eligible independent contractor and certain other requirements are met, as described below. Whether rents paid by a taxable REIT subsidiary are substantially comparable to rents paid by other tenants is determined at the time the lease with the taxable REIT subsidiary is entered into, extended, and modified, if such modification increases the rents due under such lease. Notwithstanding the foregoing, however, if a lease with a "controlled taxable REIT subsidiary" is modified and such modification results in an increase in the rents payable by such taxable REIT subsidiary, any such increase will not qualify as "rents from real property." For purposes of this rule, a "controlled taxable REIT subsidiary" is a taxable REIT subsidiary in which the parent REIT owns stock possessing more than 50% of the voting power or more than 50% of the total value of the outstanding stock of such taxable REIT subsidiary;

- Rent attributable to personal property, leased in connection with a lease of real property, is not greater than 15% of the total rent received under the lease. If this condition is not met, then the portion of the rent attributable to personal property will not qualify as "rents from real property." To the extent that rent attributable to personal property, leased in connection with a lease of real property, exceeds 15% of the total rent received under the lease, we may transfer a portion of such personal property to a taxable REIT subsidiary; and

- We generally do not operate or manage the property or furnish or render services to our tenants, subject to a 1% *de minimis* exception and except as provided below. We may, however, perform services that are "usually or customarily rendered" in connection with the rental of space for occupancy only and are not otherwise considered "rendered to the occupant" of the property. Examples of these services include the provision of light, heat, or other utilities, trash removal and general maintenance of common areas. In addition, we may employ an independent contractor from whom we derive no revenue to provide customary services, or a taxable REIT subsidiary, which may be wholly or partially owned by us, to provide both customary and non-customary services to our tenants without causing the rent we receive from those tenants to fail to qualify as "rents from real property." Any amounts we receive from a taxable REIT subsidiary with respect to the taxable REIT subsidiary's provision of non-customary services will, however, be nonqualifying income under the 75% gross income test and, except to the extent received through the payment of dividends, the 95% gross income test.

A portion of our rental income will be derived from the lease of our hotel property, which we plan to lease to our taxable REIT subsidiary. In order for the rent payable under this lease to constitute "rents from real property," the lease must be respected as a true lease for federal income tax purposes and must not be treated as a service contract, joint venture, or some other similar type of arrangement. We believe that this lease will be

respected as a true lease for federal income tax purposes. However, this determination is inherently a question of fact, and we cannot assure you that the IRS will not successfully assert a contrary position. If this lease is not respected as a true lease, part or all of the payments that we receive as rent from our taxable REIT subsidiary with respect to such lease may not be considered rent or may not otherwise satisfy the various requirements for qualification as "rents from real property." In that case, we may not be able to satisfy either the 75% or 95% gross income test and could fail to qualify as a REIT.

Also, our taxable REIT subsidiary may not operate or manage a lodging facility or provide rights to any brand name under which any lodging facility is operated. However, rents we receive from a lease of a hotel to our taxable REIT subsidiary will constitute "rents from real property" if the following conditions are satisfied:

- First, the hotel must be a "qualified lodging facility." A qualified lodging facility is a hotel, motel or other establishment more than one-half of the dwelling units in which are used on a transient basis, unless wagering activities are conducted at or in connection with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility. Accordingly, we will not be permitted to have gambling or wagering activity on the premises of our hotel property or to earn income from gambling or wagering activities.

- Second, the hotel manager must be an "eligible independent contractor." An eligible independent contractor is an independent contractor that, at the time the management contract is entered into, is actively engaged in the trade or business of operating qualified lodging facilities for any person not related to us or any of our taxable REIT subsidiaries. For this purpose, an independent contractor means any person (1) that does not own (taking into account relevant attribution rules) more than 35% of our stock, and (2) with respect to which no person or group owning directly or indirectly (taking into account relevant attribution rules) 35% or more of our stock owns 35% or more directly or indirectly (taking into account relevant attribution rules) of the ownership interest in the contractor.

We believe that our hotel property will be a qualified lodging facility, and that the hotel manager engaged by our taxable REIT subsidiary to manage the hotel will be an eligible independent contractor. Furthermore, while we will monitor the activities of the eligible independent contractor to maximize the value of our hotel investment, neither we nor our taxable REIT subsidiary lessee will directly or indirectly operate or manage our hotel. Thus, we believe that the rents we derive from our taxable REIT subsidiary with respect to the lease of our hotel property will qualify as "rents from real property."

We generally do not intend, and as a general partner of our operating partnership, do not intend to permit our operating partnership, to take actions we believe will cause us to fail to satisfy the rental conditions described above. However, we may intentionally fail to satisfy some of these conditions to the extent we determine, based on the advice of our tax counsel, that the failure will not jeopardize our tax status as a REIT. For example, as described in "Description of Our Securities—Restrictions on Ownership and Transfer," an excepted holder limit was established for Mr. Rady and his affiliates in excess of the ownership limit. Because Mr. Rady and his affiliates will own in excess of 10% of our stock and in excess of 10% or more of the voting power or value of all classes of stock of certain of our tenants, we anticipate the rents payable by such tenants will not qualify as "rents from real property" and, therefore, will not qualify under the 95% and 75% gross income tests described above. We believe, however, that we will be able to satisfy the REIT gross income tests notwithstanding our receipt of such nonqualifying rental income. With respect to the limitation on the rental of personal property, we have not obtained appraisals of the real property and personal property leased to tenants. Accordingly, there can be no assurance that the IRS will not disagree with our determinations of value of such property.

Income we receive that is attributable to the rental of parking spaces at the properties generally will constitute rents from real property for purposes of the gross income tests if certain services provided with respect

to the parking spaces are performed by independent contractors from whom we derive no revenue, either directly or indirectly, or by a taxable REIT subsidiary, and certain other conditions are met. We believe that the income we receive that is attributable to parking spaces will meet these tests and, accordingly, will constitute rents from real property for purposes of the gross income tests.

From time to time, we may enter into hedging transactions with respect to one or more of our assets or liabilities. Our hedging activities may include entering into interest rate swaps, caps, and floors, options to purchase these items, and futures and forward contracts. Income from a hedging transaction, including gain from the sale or disposition of such a transaction, that is clearly identified as a hedging transaction as specified in the Code will not constitute gross income and thus will be exempt from the 75% and 95% gross income tests. The term "hedging transaction," as used above, generally means any transaction we enter into in the normal course of our business primarily to manage risk of (1) interest rate changes or fluctuations with respect to borrowings made or to be made by us to acquire or carry real estate assets, or (2) currency fluctuations with respect to an item of qualifying income under the 75% or 95% gross income test. To the extent that we do not properly identify such transactions as hedges or we hedge with other types of financial instruments, the income from those transactions is not likely to be treated as qualifying income for purposes of the gross income tests. We intend to structure any hedging transactions in a manner that does not jeopardize our status as a REIT.

To the extent our taxable REIT subsidiaries pay dividends, we generally will derive our allocable share of such dividend income through our interest in our operating partnership. Such dividend income will qualify under the 95%, but not the 75%, gross income test.

We will monitor the amount of the dividend and other income from our taxable REIT subsidiaries and will take actions intended to keep this income, and any other nonqualifying income, within the limitations of the gross income tests. Although we expect these actions will be sufficient to prevent a violation of the gross income tests, we cannot guarantee that such actions will in all cases prevent such a violation.

If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for the year if we are entitled to relief under certain provisions of the Code. We generally may make use of the relief provisions if:

- following our identification of the failure to meet the 75% or 95% gross income tests for any taxable year, we file a schedule with the IRS setting forth each item of our gross income for purposes of the 75% or 95% gross income tests for such taxable year in accordance with Treasury Regulations to be issued; and

- our failure to meet these tests was due to reasonable cause and not due to willful neglect.

It is not possible, however, to state whether in all circumstances we would be entitled to the benefit of these relief provisions. For example, if we fail to satisfy the gross income tests because nonqualifying income that we intentionally accrue or receive exceeds the limits on nonqualifying income, the IRS could conclude that our failure to satisfy the tests was not due to reasonable cause. If these relief provisions do not apply to a particular set of circumstances, we will not qualify as a REIT. As discussed above in "—Taxation of Our Company—General," even if these relief provisions apply, and we retain our status as a REIT, a tax would be imposed with respect to our nonqualifying income. We may not always be able to comply with the gross income tests for REIT qualification despite periodic monitoring of our income.

Prohibited Transaction Income. Any gain that we realize on the sale of property held as inventory or otherwise held primarily for sale to customers in the ordinary course of business, including our share of any such gain realized by our operating partnership, either directly or through its subsidiary partnerships and limited liability companies, will be treated as income from a prohibited transaction that is subject to a 100% penalty tax, unless certain safe harbor exceptions apply. This prohibited transaction income may also adversely affect our

ability to satisfy the gross income tests for qualification as a REIT. Under existing law, whether property is held as inventory or primarily for sale to customers in the ordinary course of a trade or business is a question of fact that depends on all the facts and circumstances surrounding the particular transaction. Our operating partnership intends to hold its properties for investment with a view to long-term appreciation, to engage in the business of acquiring, developing and owning its properties and to make occasional sales of the properties as are consistent with our operating partnership's investment objectives. We do not intend to enter into any sales that are prohibited transactions. However, the IRS may successfully contend that some or all of the sales made by our operating partnership or its subsidiary partnerships or limited liability companies are prohibited transactions. We would be required to pay the 100% penalty tax on our allocable share of the gains resulting from any such sales.

Penalty Tax. Any redetermined rents, redetermined deductions or excess interest we generate will be subject to a 100% penalty tax. In general, redetermined rents are rents from real property that are overstated as a result of any services furnished to any of our tenants by a taxable REIT subsidiary of ours, and redetermined deductions and excess interest represent any amounts that are deducted by a taxable REIT subsidiary of ours for amounts paid to us that are in excess of the amounts that would have been deducted based on arm's length negotiations. Rents we receive will not constitute redetermined rents if they qualify for certain safe harbor provisions contained in the Code.

We anticipate that one or more of our taxable REIT subsidiaries will provide services to certain of our tenants and will pay rent to us. We intend to set the fees paid to our taxable REIT subsidiaries for such services, and the rent payable to us at arm's length rates, although the amounts paid may not satisfy the safe-harbor provisions described above. These determinations are inherently factual, and the IRS has broad discretion to assert that amounts paid between related parties should be reallocated to clearly reflect their respective incomes. If the IRS successfully made such an assertion, we would be required to pay a 100% penalty tax on the excess of an arm's length fee for tenant services over the amount actually paid, or on the excess rents paid to us.

Asset Tests

At the close of each calendar quarter of our taxable year, we must also satisfy four tests relating to the nature and diversification of our assets. First, at least 75% of the value of our total assets must be represented by real estate assets, cash, cash items and government securities. For purposes of this test, the term "real estate assets" generally means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other REITs, as well as any stock or debt instrument attributable to the investment of the proceeds of a stock offering or a public offering of debt with a term of at least five years, but only for the one-year period beginning on the date the REIT receives such proceeds.

Second, not more than 25% of the value of our total assets may be represented by securities (including securities of one or more taxable REIT subsidiaries), other than those securities includable in the 75% asset test.

Third, of the investments included in the 25% asset class, and except for investments in other REITs, our qualified REIT subsidiaries and taxable REIT subsidiaries, the value of any one issuer's securities may not exceed 5% of the value of our total assets, and we may not own more than 10% of the total vote or value of the outstanding securities of any one issuer except, in the case of the 10% value test, securities satisfying the "straight debt" safe-harbor or securities issued by a partnership that itself would satisfy the 75% income test if it were a REIT. Certain types of securities we may own are disregarded as securities solely for purposes of the 10% value test, including, but not limited to, any loan to an individual or an estate, any obligation to pay rents from real property and any security issued by a REIT. In addition, solely for purposes of the 10% value test, the determination of our interest in the assets of a partnership or limited liability company in which we own an interest will be based on our proportionate interest in any securities issued by the partnership or limited liability company, excluding for this purpose certain securities described in the Code.

Fourth, not more than 25% of the value of our total assets may be represented by the securities of one or more taxable REIT subsidiaries. Our operating partnership will own 100% of the securities of one or more corporations that will elect, together with us, to be treated as our taxable REIT subsidiaries, and we may acquire securities in other taxable REIT subsidiaries in the future. We believe that the aggregate value of our taxable REIT subsidiaries will not exceed 25% of the aggregate value of our gross assets. No independent appraisals have been obtained to support these conclusions. In addition, there can be no assurance that the IRS will not disagree with our determinations of value.

The asset tests must be satisfied at the close of each calendar quarter of our taxable year in which we (directly or through our operating partnership) acquire securities in the applicable issuer, and also at the close of each calendar quarter in which we increase our ownership of securities of such issuer (including as a result of increasing our interest in our operating partnership). For example, our indirect ownership of securities of each issuer will increase as a result of our capital contributions to our operating partnership or as limited partners exercise their redemption/exchange rights. Accordingly, after initially meeting the asset tests at the close of any quarter, we will not lose our status as a REIT for failure to satisfy the asset tests at the end of a later quarter solely by reason of changes in asset values. If we fail to satisfy an asset test because we acquire securities or other property during a quarter (including as a result of an increase in our interest in our operating partnership), we may cure this failure by disposing of sufficient nonqualifying assets within 30 days after the close of that quarter. We believe that we have maintained and intend to maintain adequate records of the value of our assets to ensure compliance with the asset tests. If we fail to cure any noncompliance with the asset tests within the 30 day cure period, we would cease to qualify as a REIT unless we are eligible for certain relief provisions discussed below.

Certain relief provisions may be available to us if we discover a failure to satisfy the asset tests described above after the 30-day cure period. Under these provisions, we will be deemed to have met the 5% and 10% asset tests if the value of our nonqualifying assets (1) does not exceed the lesser of (a) 1% of the total value of our assets at the end of the applicable quarter or (b) $10,000,000, and (2) we dispose of the nonqualifying assets or otherwise satisfy such tests within (a) six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or (b) the period of time prescribed by Treasury Regulations to be issued. For violations of any of the asset tests due to reasonable cause and not due to willful neglect and that are, in the case of the 5% and 10% asset tests, in excess of the *de minimis* exception described above, we may avoid disqualification as a REIT after the 30-day cure period by taking steps including (1) the disposition of sufficient nonqualifying assets, or the taking of other actions, which allow us to meet the asset tests within (a) six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or (b) the period of time prescribed by Treasury Regulations to be issued, (2) paying a tax equal to the greater of (a) $50,000 or (b) the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets, and (3) disclosing certain information to the IRS.

Although we believe we have satisfied the asset tests described above and plan to take steps to ensure that we satisfy such tests for any quarter with respect to which retesting is to occur, there can be no assurance that we will always be successful, or will not require a reduction in our operating partnership's overall interest in an issuer (including in a taxable REIT subsidiary). If we fail to cure any noncompliance with the asset tests in a timely manner, and the relief provisions described above are not available, we would cease to qualify as a REIT.

Annual Distribution Requirements

To maintain our qualification as a REIT, we are required to distribute dividends, other than capital gain dividends, to our stockholders in an amount at least equal to the sum of:

- 90% of our "REIT taxable income"; and
- 90% of our after-tax net income, if any, from foreclosure property; minus
- the excess of the sum of certain items of non-cash income over 5% of our "REIT taxable income."

For these purposes, our "REIT taxable income" is computed without regard to the dividends paid deduction and our net capital gain. In addition, for purposes of this test, non-cash income means income attributable to leveled stepped rents, original issue discount on purchase money debt, cancellation of indebtedness, or a like-kind exchange that is later determined to be taxable.

In addition, if we dispose of any asset we acquired from a corporation which is or has been a C corporation in a transaction in which our basis in the asset is determined by reference to the basis of the asset in the hands of that C corporation, within the ten-year period following our acquisition of such asset, we would be required to distribute at least 90% of the after-tax gain, if any, we recognized on the disposition of the asset, to the extent that gain does not exceed the excess of (a) the fair market value of the asset over (b) our adjusted basis in the asset, in each case, on the date we acquired the asset.

We generally must pay, or be treated as paying, the distributions described above in the taxable year to which they relate. At our election, a distribution will be treated as paid in a taxable year if it is declared before we timely file our tax return for such year and paid on or before the first regular dividend payment after such declaration, provided such payment is made during the 12-month period following the close of such year. These distributions are treated as received by our stockholders in the year in which paid. This is so even though these distributions relate to the prior year for purposes of the 90% distribution requirement. In order to be taken into account for purposes of our distribution requirement, the amount distributed must not be preferential—*i.e.*, every stockholder of the class of stock to which a distribution is made must be treated the same as every other stockholder of that class, and no class of stock may be treated other than according to its dividend rights as a class. To the extent that we do not distribute all of our net capital gain, or distribute at least 90%, but less than 100%, of our "REIT taxable income," as adjusted, we will be required to pay tax on the undistributed amount at regular corporate tax rates. We believe that we will make timely distributions sufficient to satisfy these annual distribution requirements and to minimize our corporate tax obligations. In this regard, the partnership agreement of our operating partnership authorizes us, as general partner of our operating partnership, to take such steps as may be necessary to cause our operating partnership to distribute to its partners an amount sufficient to permit us to meet these distribution requirements and to minimize our corporate tax obligation.

We expect that our REIT taxable income will be less than our cash flow because of depreciation and other non-cash charges included in computing REIT taxable income. Accordingly, we anticipate that we generally will have sufficient cash or liquid assets to enable us to satisfy the distribution requirements described above. However, from time to time, we may not have sufficient cash or other liquid assets to meet these distribution requirements due to timing differences between the actual receipt of income and actual payment of deductible expenses, and the inclusion of income and deduction of expenses in determining our taxable income. If these timing differences occur, we may borrow funds to pay dividends or pay dividends in the form of taxable stock dividends in order to meet the distribution requirements, while preserving our cash. In addition, we may decide to retain our cash, rather than distribute it, in order to repay debt or for other reasons.

Pursuant to recent IRS guidance, certain part-stock and part-cash dividends distributed by publicly traded REITs with respect to calendar years 2008 though 2011, and in some cases declared as late as December 31, 2012, will be treated as distributions for purposes of the REIT distribution requirements. Under the terms of this Revenue Procedure, up to 90% of our distributions could be paid in shares of our stock. If we make such a distribution, taxable stockholders would be required to include the full amount of the dividend (*i.e.*, the cash and the stock portion) as ordinary income (subject to limited exceptions), to the extent of our current and accumulated earnings and profits for federal income tax purposes, as described under the headings "—Federal Income Tax Considerations for Holders of Our Common Stock—Taxation of Taxable U.S. Stockholders—Distributions Generally" and "—Federal Income Tax Considerations for Holders of Our Common Stock—Taxation of Non-U.S. Stockholders— Distributions Generally." As a result, our stockholders could recognize taxable income in excess of the cash received and may be required to pay tax with respect to such dividends in excess of the cash received. If a taxable stockholder sells the stock it receives as a dividend, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of

the stock at the time of the sale. Furthermore, with respect to non-U.S. stockholders, we may be required to withhold U.S. tax with respect to such dividends, including in respect of all or a portion of such dividend that is payable in stock.

Under some circumstances, we may be able to rectify an inadvertent failure to meet the 90% distribution requirement for a year by paying "deficiency dividends" to our stockholders in a later year, which may be included in our deduction for dividends paid for the earlier year. Thus, we may be able to avoid being taxed on amounts distributed as deficiency dividends, subject to the 4% excise tax described below. However, we will be required to pay interest to the IRS based upon the amount of any deduction claimed for deficiency dividends.

Furthermore, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of 85% of our ordinary income for such year, 95% of our capital gain net income for the year and any undistributed taxable income from prior periods. Any ordinary income and net capital gain on which this excise tax is imposed for any year is treated as an amount distributed during that year for purposes of calculating such tax.

For purposes of the 90% distribution requirement and excise tax described above, dividends declared during the last three months of the taxable year, payable to stockholders of record on a specified date during such period and paid during January of the following year, will be treated as paid by us and received by our stockholders on December 31 of the year in which they are declared.

Like-Kind Exchanges

We may dispose of properties in transactions intended to qualify as like-kind exchanges under the Code. Such like-kind exchanges are intended to result in the deferral of gain for federal income tax purposes. The failure of any such transaction to qualify as a like-kind exchange could require us to pay federal income tax, possibly including the 100% prohibited transaction tax, depending on the facts and circumstances surrounding the particular transaction.

Failure To Qualify

If we discover a violation of a provision of the Code that would result in our failure to qualify as a REIT, certain specified cure provisions may be available to us. Except with respect to violations of the gross income tests and asset tests (for which the cure provisions are described above), and provided the violation is due to reasonable cause and not due to willful neglect, these cure provisions generally impose a $50,000 penalty for each violation in lieu of a loss of REIT status. If we fail to satisfy the requirements for taxation as a REIT in any taxable year, and the relief provisions do not apply, we will be required to pay tax, including any applicable alternative minimum tax, on our taxable income at regular corporate rates. Distributions to stockholders in any year in which we fail to qualify as a REIT will not be deductible by us, and we will not be required to distribute any amounts to our stockholders. As a result, we anticipate that our failure to qualify as a REIT would reduce the cash available for distribution by us to our stockholders. In addition, if we fail to qualify as a REIT, all distributions to stockholders will be taxable as regular corporate dividends to the extent of our current and accumulated earnings and profits. In such event, corporate distributees may be eligible for the dividends-received deduction. In addition, non-corporate stockholders, including individuals, may be eligible for the preferential tax rates on qualified dividend income. Unless entitled to relief under specific statutory provisions, we will also be ineligible to elect to be treated as a REIT for the four taxable years following the year for which we lost our qualification. It is not possible to state whether in all circumstances we would be entitled to this statutory relief.

Tax Aspects of Our Operating Partnership, the Subsidiary Partnerships and the Limited Liability Companies

General. All of our investments will be held indirectly through our operating partnership. In addition, our operating partnership will hold certain of its investments indirectly through subsidiary partnerships and limited liability companies which we expect will be treated as partnerships or disregarded entities for federal

income tax purposes. In general, entities that are classified as partnerships or disregarded entities for federal income tax purposes are "pass-through" entities which are not required to pay federal income tax. Rather, partners or members of such entities are allocated their shares of the items of income, gain, loss, deduction and credit of the partnership or limited liability company, and are potentially required to pay tax on this income, without regard to whether they receive a distribution from the partnership or limited liability company. We will include in our income our share of these partnership and limited liability company items for purposes of the various gross income tests, the computation of our REIT taxable income, and the REIT distribution requirements. Moreover, for purposes of the asset tests, we will include our pro rata share of assets held by our operating partnership, including its share of its subsidiary partnerships and limited liability companies, based on our capital interests in each such entity. See "—Taxation of Our Company."

Entity Classification. Our interests in our operating partnership and the subsidiary partnerships and limited liability companies involve special tax considerations, including the possibility that the IRS might challenge the status of these entities as partnerships (or disregarded entities). For example, an entity that would otherwise be classified as a partnership for federal income tax purposes may nonetheless be taxable as a corporation if it is a "publicly traded partnership" and certain other requirements are met. A partnership or limited liability company would be treated as a publicly traded partnership if its interests are traded on an established securities market or are readily tradable on a secondary market or a substantial equivalent thereof, within the meaning of applicable Treasury Regulations. Interests in a partnership are not treated as readily tradable on a secondary market, or the substantial equivalent thereof, if all interests in the partnership were issued in one or more transactions that were not required to be registered under the Securities Act, and the partnership does not have more than 100 partners at any time during the taxable year of the partnership, taking into account certain ownership attribution and anti-avoidance rules (the "100 Partner Safe Harbor"). Our operating partnership may not qualify for the 100 Partner Safe Harbor. In the event that the 100 Partner Safe Harbor or certain other safe harbor provisions of applicable Treasury Regulations are not available, our operating partnership could be classified as a publicly traded partnership.

If our operating partnership does not qualify for the 100 Partner Safe Harbor, interests in our operating partnership may nonetheless be viewed as not readily tradable on a secondary market or the substantial equivalent thereof if the sum of the percentage interests in capital or profits of our operating partnership transferred during any taxable year of our operating partnership does not exceed 2% of the total interests in our operating partnership's capital or profits, subject to certain exceptions. For purpose of this 2% trading restriction, our interests in our operating partnership are excluded from the determination of the percentage interests in capital or profits of our operating partnership. In addition, this 2% trading restriction does not apply to transfers by a limited partner in one or more transactions during any 30-day period representing in the aggregate more than 2% of the total interests in our operating partnership's capital or profits. We, as general partner of our operating partnership, have the authority to take any steps we determine necessary or appropriate to prevent any trading of interests in our operating partnership that would cause our operating partnership to become a publicly traded partnership, including any steps necessary to ensure compliance with this 2% trading restriction.

We believe our operating partnership and each of our other partnerships and limited liability companies will be classified as partnerships or disregarded entities for federal income tax purposes, and we do not anticipate that our operating partnership or any subsidiary partnership or limited liability company will be treated as a publicly traded partnership that is taxable as a corporation.

If our operating partnership or any of our other partnerships or limited liability companies were to be treated as a publicly traded partnership, it would be taxable as a corporation unless it qualified for the statutory "90% qualifying income exception." Under that exception, a publicly traded partnership is not subject to corporate-level tax if 90% or more of its gross income consists of dividends, interest, "rents from real property" (as that term is defined for purposes of the rules applicable to REITs, with certain modifications), gain from the sale or other disposition of real property, and certain other types of qualifying income. However, if any such entity did not qualify for this exception or was otherwise taxable as a corporation, it would be required to pay an

entity-level tax on its income. In this situation, the character of our assets and items of gross income would change and could prevent us from satisfying the REIT asset tests and possibly the REIT income tests. See "—Taxation of Our Company—Asset Tests" and "—Income Tests." This, in turn, could prevent us from qualifying as a REIT. See "—Failure to Qualify" for a discussion of the effect of our failure to meet these tests. In addition, a change in the tax status of our operating partnership or a subsidiary partnership or limited liability company might be treated as a taxable event. If so, we might incur a tax liability without any related cash payment.

Allocations of Income, Gain, Loss and Deduction. Except for special allocations to holders of LTIP units described under "Description of the Partnership Agreement of American Assets Trust, L.P.—Special Allocations and Liquidations Distributions on LTIP Units," the operating partnership agreement generally provides that allocations of net income to holders of common units generally will be made proportionately to all such holders in respect of such units. Certain limited partners will have the opportunity to guarantee debt of our operating partnership, indirectly through an agreement to make capital contributions to our operating partnership under limited circumstances. As a result of these guaranties or contribution agreements, and notwithstanding the foregoing discussion of allocations of income and loss of our operating partnership to holders of units, such limited partners could under limited circumstances be allocated a disproportionate amount of net loss upon a liquidation of our operating partnership, which net loss would have otherwise been allocable to us.

If an allocation of partnership income or loss does not comply with the requirements of Section 704(b) of the Code and the Treasury Regulations thereunder, the item subject to the allocation will be reallocated in accordance with the partners' interests in the partnership. This reallocation will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item. Our operating partnership's allocations of taxable income and loss are intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations thereunder.

Tax Allocations With Respect to the Properties. Under Section 704(c) of the Code, income, gain, loss and deduction attributable to appreciated or depreciated property that is contributed to a partnership in exchange for an interest in the partnership, must be allocated in a manner so that the contributing partner is charged with the unrealized gain or benefits from the unrealized loss associated with the property at the time of the contribution. The amount of the unrealized gain or unrealized loss generally is equal to the difference between the fair market value or book value and the adjusted tax basis of the contributed property at the time of contribution, as adjusted from time to time. These allocations are solely for federal income tax purposes and do not affect the book capital accounts or other economic or legal arrangements among the partners.

Our operating partnership may, from time to time, acquire interests in property in exchange for interests in our operating partnership. In that case, the tax basis of these property interests generally carries over to the operating partnership, notwithstanding their different book (*i.e.*, fair market) value (this difference is referred to as a book-tax difference). The partnership agreement requires that income and loss allocations with respect to these properties be made in a manner consistent with Section 704(c) of the Code. Treasury Regulations issued under Section 704(c) of the Code provide partnerships with a choice of several methods of accounting for book-tax differences. Depending on the method we choose in connection with any particular contribution, the carryover basis of each of the contributed interests in the properties in the hands of our operating partnership (1) could cause us to be allocated lower amounts of depreciation deductions for tax purposes than would be allocated to us if any of the contributed properties were to have a tax basis equal to its respective fair market value at the time of the contribution and (2) could cause us to be allocated taxable gain in the event of a sale of such contributed interests or properties in excess of the economic or book income allocated to us as a result of such sale, with a corresponding benefit to the other partners in our operating partnership. An allocation described in clause (2) above might cause us or the other partners to recognize taxable income in excess of cash proceeds in the event of a sale or other disposition of property, which might adversely affect our ability to comply with the REIT distribution requirements. See "—General—Requirements for Qualification as a REIT" and "—Annual Distribution Requirements."

Any property acquired by our operating partnership in a taxable transaction will initially have a tax basis equal to its fair market value, and Section 704(c) of the Code generally will not apply.

Certain Tax Considerations Related to the Formation Transactions

As described under "Structure and Formation of Our Company—Formation Transactions," we intend to acquire certain entities through separate mergers of such entities with and into us. Each such merger is intended to constitute a "reorganization" within the meaning of Section 368(a) of the Code. If each merger qualifies as a reorganization for U.S. federal income tax purposes, we will succeed to the tax liabilities and earnings and profits, if any, of each acquired entity, and our tax basis of the assets we acquire from each such entity will be determined by reference to the tax basis of the asset in the hands of each such entity.

To qualify as a REIT, any earnings and profits accumulated in a year in which we, or any entity the earnings and profits of which we succeed to, were not a REIT must be distributed as of the close of the taxable year in which we accumulated or acquired such earnings and profits. Some of the entities merging with and into us have elected since their formation to be taxed as an S corporation for U.S. federal income tax purposes. Assuming each such entity has at all times so qualified, we believe those entities will have no accumulated earnings and profits at the time of the formation transactions. However, if any of these entities did not qualify as an S corporation for U.S. federal income tax purposes, we may succeed to earnings and profits accumulated by such entities, which we would be required to distribute by the close of the taxable year in which the merger occurs. In addition, certain taxable C corporations are also merging with and into us in connection with the formation transactions, and we will be required to distribute any earnings and profits accumulated by such entities by the close of the taxable year in which each such merger occurs. If the IRS were to determine that we acquired earnings and profits that we failed to distribute prior to the end of the appropriate taxable year, we could avoid disqualification as a REIT by using "deficiency dividend" procedures. Under these procedures, we generally would be required to distribute any such earnings and profits to our stockholders within 90 days of the determination and pay a statutory interest charge at a specified rate to the IRS.

In addition, in the case of assets we acquire from a C corporation in a transaction in which the tax basis of corporation's assets in our hands is determined by reference to the tax basis of the asset in the hands of the corporation (a "Carry-Over Basis Transaction"), if we dispose of any such asset in a taxable transaction during the ten-year period beginning on the date of the Carry-Over Basis Transaction, then we will be required to pay tax at the highest regular corporate tax rate on the gain recognized to the extent of the excess of (a) the fair market value of the asset over (b) our tax basis in the asset, in each case determined as of the date of the Carry-Over Basis Transaction. The foregoing rules regarding the recognition of gain assume that the C corporation will refrain from making an election to receive different treatment under applicable Treasury Regulations on its tax return for the year in which we acquire the asset from the C corporation. Assuming that each target entity that has elected to be taxed as an S corporation at all times so qualified for U.S. federal income tax purposes, and has not acquired assets from a C corporation in a Carry-Over Basis Transaction, we will not be treated as acquiring assets from a C corporation in a Carry-Over Basis Transaction with respect to our merger with each such entity. However, because we are also merging with certain entities that are taxable C corporations, we will be treated as acquiring assets from a C corporation in a Carry-Over Basis Transaction with respect to such mergers, and any sales of such assets in a taxable transaction during the ten-year period beginning on the date of the merger would be subject to taxation as described above.

Furthermore, our tax basis in the assets we acquire in a Carry-Over Basis Transaction will be lower than the assets' fair market values. This lower tax basis could cause us to have lower depreciation deductions and more gain on a subsequent sale of the assets than would be the case if we had directly purchased the assets in a taxable transaction.

If any of the mergers described above does not qualify as a reorganization within the meaning of Section 368(a) of the Code, the merger would be treated as a sale of the assets of the applicable target entity to us in a taxable transaction, and such entity would recognize taxable gain. In such a case, as the successor-in-interest

to the target entity, we would be required to pay the tax on any such gain, but we would not succeed to the earnings and profits, if any, of such entity and our tax basis of the assets we acquire from such entity would not be determined by reference to the basis of the asset in the hands of such entity.

Federal Income Tax Considerations for Holders of Our Common Stock

The following summary describes the principal federal income tax consequences to you of purchasing, owning and disposing of our common stock. This summary assumes you hold shares of our common stock as a "capital asset" (generally, property held for investment within the meaning of Section 1221 of the Code). It does not address all the tax consequences that may be relevant to you in light of your particular circumstances. In addition, this discussion does not address the tax consequences relevant to persons who receive special treatment under the federal income tax law, except where specifically noted. Holders receiving special treatment include, without limitation:

- financial institutions, banks and thrifts;
- insurance companies;
- tax-exempt organizations;
- "S" corporations;
- traders in securities that elect to mark to market;
- partnerships, pass-through entities and persons holding our stock through a partnership or other pass-through entity;
- stockholders subject to the alternative minimum tax;
- regulated investment companies and REITs;
- foreign governments and international organizations;
- broker-dealers or dealers in securities or currencies;
- U.S. expatriates;
- persons holding our stock as part of a hedge, straddle, conversion, integrated or other risk reduction or constructive sale transaction; or
- U.S. stockholders (as defined below) whose functional currency is not the U.S. dollar.

If you are considering purchasing our common stock, you should consult your tax advisors concerning the application of federal income tax laws to your particular situation as well as any consequences of the purchase, ownership and disposition of our common stock arising under the laws of any state, local or non-U.S. taxing jurisdiction.

When we use the term "U.S. stockholder," we mean a holder of shares of our common stock who, for federal income tax purposes, is:

- an individual who is a citizen or resident of the United States;
- a corporation, including an entity treated as a corporation for federal income tax purposes, created or organized in or under the laws of the United States or of any state thereof or in the District of Columbia;

- an estate the income of which is subject to federal income taxation regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more U.S. persons or (2) has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

If you hold shares of our common stock and are not a U.S. stockholder, you are a "non-U.S. stockholder."

If a partnership or other entity treated as a partnership for federal income tax purposes holds shares of our common stock, the tax treatment of a partner generally will depend on the status of the partner and on the activities of the partnership. Partners of partnerships holding shares of our common stock are encouraged to consult their tax advisors.

Taxation of Taxable U.S. Stockholders

Distributions Generally. Distributions out of our current or accumulated earnings and profits will be treated as dividends and, other than with respect to capital gain dividends and certain amounts which have previously been subject to corporate level tax discussed below, will be taxable to our taxable U.S. stockholders as ordinary income when actually or constructively received. See "—Tax Rates" below. As long as we qualify as a REIT, these distributions will not be eligible for the dividends-received deduction in the case of U.S. stockholders that are corporations or, except to the extent provided in "—Tax Rates" below, the preferential rates on qualified dividend income applicable to non-corporate U.S. stockholders, including individuals.

To the extent that we make distributions on our common stock in excess of our current and accumulated earnings and profits, these distributions will be treated first as a tax-free return of capital to a U.S. stockholder. This treatment will reduce the U.S. stockholder's adjusted tax basis in such shares of stock by the amount of the distribution, but not below zero. Distributions in excess of our current and accumulated earnings and profits and in excess of a U.S. stockholder's adjusted tax basis in its shares will be taxable as capital gain. Such gain will be taxable as long-term capital gain if the shares have been held for more than one year. Dividends we declare in October, November, or December of any year and which are payable to a stockholder of record on a specified date in any of these months will be treated as both paid by us and received by the stockholder on December 31 of that year, provided we actually pay the dividend on or before January 31 of the following year. U.S. stockholders may not include in their own income tax returns any of our net operating losses or capital losses.

Certain stock dividends, including dividends partially paid in our stock and partially paid in cash that comply with IRS Revenue Procedure 2010-12, will be taxable to the recipient U.S. stockholder to the same extent as if paid in cash.

Capital Gain Dividends. Dividends that we properly designate as capital gain dividends will be taxable to our U.S. stockholders as a gain from the sale or disposition of a capital asset held for more than one year, to the extent that such gain does not exceed our actual net capital gain for the taxable year. U.S. stockholders that are corporations may, however, be required to treat up to 20% of certain capital gain dividends as ordinary income.

Retention of Net Capital Gains. We may elect to retain, rather than distribute as a capital gain dividend, all or a portion of our net capital gains. If we make this election, we would pay tax on our retained net capital gains. In addition, to the extent we so elect, our earnings and profits (determined for federal income tax purposes) would be adjusted accordingly, and a U.S. stockholder generally would:

- include its pro rata share of our undistributed net capital gains in computing its long-term capital gains in its return for its taxable year in which the last day of our taxable year falls, subject to certain limitations as to the amount that is includable;

- be deemed to have paid its share of the capital gains tax imposed on us on the designated amounts included in the U.S. stockholder's income as long-term capital gain;
- receive a credit or refund for the amount of tax deemed paid by it;
- increase the adjusted basis of its stock by the difference between the amount of includable gains and the tax deemed to have been paid by it; and
- in the case of a U.S. stockholder that is a corporation, appropriately adjust its earnings and profits for the retained capital gains in accordance with Treasury Regulations to be promulgated by the IRS.

Passive Activity Losses and Investment Interest Limitations. Distributions we make and gain arising from the sale or exchange by a U.S. stockholder of our shares will not be treated as passive activity income. As a result, U.S. stockholders generally will not be able to apply any "passive losses" against this income or gain. A U.S. stockholder may elect to treat capital gain dividends, capital gains from the disposition of our stock and income designated as qualified dividend income, described in "—Tax Rates" below, as investment income for purposes of computing the investment interest limitation, but in such case, the stockholder will be taxed at ordinary income rates on such amount. Other distributions made by us, to the extent they do not constitute a return of capital, generally will be treated as investment income for purposes of computing the investment interest limitation.

Dispositions of Our Common Stock. If a U.S. stockholder sells or disposes of shares of common stock, it will recognize gain or loss for federal income tax purposes in an amount equal to the difference between the amount of cash and the fair market value of any property received on the sale or other disposition and the holder's adjusted basis in the shares. This gain or loss, except as provided below, will be a long-term capital gain or loss if the holder has held such common stock for more than one year. However, if a U.S. stockholder recognizes a loss upon the sale or other disposition of common stock that it has held for six months or less, after applying certain holding period rules, the loss recognized will be treated as a long-term capital loss to the extent the U.S. stockholder received distributions from us which were required to be treated as long-term capital gains.

Tax Rates. The maximum tax rate for non-corporate taxpayers for (1) capital gains, including certain "capital gain dividends," has generally been reduced to 15% (although depending on the characteristics of the assets which produced these gains and on designations which we may make, certain capital gain dividends may be taxed at a 25% rate) and (2) "qualified dividend income" has generally been reduced to 15%. In general, dividends payable by REITs are not eligible for the reduced tax rate on qualified dividend income, except to the extent that certain holding requirements have been met and the REIT's dividends are attributable to dividends received from taxable corporations (such as its taxable REIT subsidiaries) or to income that was subject to tax at the corporate/REIT level (for example, if it distributed taxable income that it retained and paid tax on in the prior taxable year) or to dividends properly designated by the REIT as "capital gain dividends." The currently applicable provisions of the federal income tax laws relating to the 15% tax rate are currently scheduled to "sunset" or revert to the provisions of prior law effective for taxable years beginning after December 31, 2010, at which time the capital gains tax rate will be increased to 20% and the rate applicable to dividends will be increased to the tax rate then applicable to ordinary income. U.S. stockholders that are corporations may be required to treat up to 20% of some capital gain dividends as ordinary income.

Medicare Tax on Unearned Income. Newly enacted legislation requires certain U.S. stockholders that are individuals, estates or trusts to pay an additional 3.8% tax on, among other things, dividends on and capital gains from the sale or other disposition of stock for taxable years beginning after December 31, 2012. U.S. stockholders should consult their tax advisors regarding the effect, if any, of this legislation on their ownership and disposition of our common stock.

New Legislation Relating to Foreign Accounts. Under newly enacted legislation, certain payments made after December 31, 2012 to "foreign financial institutions" in respect of accounts of U.S. stockholders at such financial institutions may be subject to withholding at a rate of 30%. U.S. stockholders should consult their tax advisors regarding the effect, if any, of this new legislation on their ownership and disposition of our common stock. See "—Taxation of Non-U.S. Stockholders—New Legislation Relating to Foreign Accounts."

Information Reporting and Backup Withholding. We are required to report to our U.S. stockholders and the IRS the amount of dividends paid during each calendar year, and the amount of any tax withheld. Under the backup withholding rules, a stockholder may be subject to backup withholding with respect to dividends paid unless the holder comes within certain exempt categories and, when required, demonstrates this fact, or provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with applicable requirements of the backup withholding rules. A U.S. stockholder that does not provide us with its correct taxpayer identification number may also be subject to penalties imposed by the IRS. Backup withholding is not an additional tax. Any amount paid as backup withholding will be creditable against the stockholder's federal income tax liability, provided the required information is timely furnished to the IRS. In addition, we may be required to withhold a portion of capital gain distributions to any stockholders who fail to certify their non-foreign status. See "—Taxation of Non-U.S. Stockholders."

Taxation of Tax-Exempt Stockholders

Dividend income from us and gain arising upon a sale of our shares generally should not be unrelated business taxable income, or UBTI, to a tax-exempt stockholder, except as described below. This income or gain will be UBTI, however, if a tax-exempt stockholder holds its shares as "debt-financed property" within the meaning of the Code or if the shares are used in a trade or business of the tax-exempt stockholder. Generally, "debt-financed property" is property the acquisition or holding of which was financed through a borrowing by the tax-exempt stockholder.

For tax-exempt stockholders that are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, or qualified group legal services plans exempt from federal income taxation under Sections 501(c)(7), (c)(9), (c)(17) or (c)(20) of the Code, respectively, income from an investment in our shares will constitute UBTI unless the organization is able to properly claim a deduction for amounts set aside or placed in reserve for specific purposes so as to offset the income generated by its investment in our shares. These prospective investors should consult their tax advisors concerning these "set aside" and reserve requirements.

Notwithstanding the above, however, a portion of the dividends paid by a "pension-held REIT" may be treated as unrelated business taxable income as to certain trusts that hold more than 10%, by value, of the interests in the REIT. A REIT will not be a "pension-held REIT" if it is able to satisfy the "not closely held" requirement without relying on the "look-through" exception with respect to certain trusts or if such REIT is not "predominantly held" by "qualified trusts." As a result of restrictions on ownership and transfer of our stock contained in our charter, we do not expect to be classified as a "pension-held REIT," and as a result, the tax treatment described above should be inapplicable to our stockholders. However, because our stock will be publicly traded, we cannot guarantee that this will always be the case.

Taxation of Non-U.S. Stockholders

The following discussion addresses the rules governing federal income taxation of the purchase, ownership and disposition of our common stock by non-U.S. stockholders. These rules are complex, and no attempt is made herein to provide more than a brief summary of such rules. Accordingly, the discussion does not address all aspects of federal income taxation and does not address state, local or non-U.S. tax consequences that may be relevant to a non-U.S. stockholder in light of its particular circumstances. We urge non-U.S. stockholders to consult their tax advisors to determine the impact of federal, state, local and non-U.S. income tax laws on the purchase, ownership and disposition of shares of our common stock, including any reporting requirements.

Distributions Generally. Distributions (including any taxable stock dividends) that are neither attributable to gains from sales or exchanges by us of U.S. real property interests nor designated by us as capital gain dividends (except as described below) will be treated as dividends of ordinary income to the extent that they are made out of our current or accumulated earnings and profits. Such distributions ordinarily will be subject to withholding of federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty, unless the distributions are treated as effectively connected with the conduct by the non-U.S. stockholder of a U.S. trade or business. Under certain treaties, however, lower withholding rates generally applicable to dividends do not apply to dividends from a REIT. Certain certification and disclosure requirements must be satisfied to be exempt from withholding under the effectively connected income exemption. Dividends that are treated as effectively connected with a U.S. trade or business will generally not be subject to withholding but will be subject to federal income tax on a net basis at graduated rates, in the same manner as dividends paid to U.S. stockholders are subject to federal income tax. Any such dividends received by a non-U.S. stockholder that is a corporation may also be subject to an additional branch profits tax at a 30% rate (applicable after deducting federal income taxes paid on such effectively connected income) or such lower rate as may be specified by an applicable income tax treaty.

Except as otherwise provided below, we expect to withhold federal income tax at the rate of 30% on any distributions made to a non-U.S. stockholder unless:

(1) a lower treaty rate applies and the non-U.S. stockholder files with us an IRS Form W-8BEN evidencing eligibility for that reduced treaty rate; or

(2) the non-U.S. stockholder files an IRS Form W-8ECI with us claiming that the distribution is income effectively connected with the non-U.S. stockholder's trade or business.

Distributions in excess of our current and accumulated earnings and profits will not be taxable to a non-U.S. stockholder to the extent that such distributions do not exceed the adjusted basis of the stockholder's common stock, but rather will reduce the adjusted basis of such stock. To the extent that such distributions exceed the non-U.S. stockholder's adjusted basis in such common stock, they will give rise to gain from the sale or exchange of such stock, the tax treatment of which is described below. For withholding purposes, we expect to treat all distributions as made out of our current or accumulated earnings and profits. However, amounts withheld may be refundable if it is subsequently determined that the distribution was, in fact, in excess of our current and accumulated earnings and profits, provided that certain conditions are met.

Capital Gain Dividends and Distributions Attributable to a Sale or Exchange of U.S. Real Property Interests. Distributions to a non-U.S. stockholder that we properly designate as capital gain dividends, other than those arising from the disposition of a U.S. real property interest, generally should not be subject to federal income taxation, unless:

(1) the investment in our stock is treated as effectively connected with the non-U.S. stockholder's U.S. trade or business, in which case the non-U.S. stockholder will be subject to the same treatment as U.S. stockholders with respect to such gain, except that a non-U.S. stockholder that is a non-U.S. corporation may also be subject to a branch profits tax of up to 30%, as discussed above; or

(2) the non-U.S. stockholder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and certain other conditions are met, in which case the nonresident alien individual will be subject to a 30% tax on the individual's capital gains.

Pursuant to the Foreign Investment in Real Property Tax Act, which is referred to as "FIRPTA," distributions to a non-U.S. stockholder that are attributable to gain from sales or exchanges by us of "U.S. real property interests," or USRPI, whether or not designated as capital gain dividends, will cause the non-U.S. stockholder to be treated as recognizing such gain as income effectively connected with a U.S. trade or business. Non-U.S. stockholders would generally be taxed at the same rates applicable to U.S. stockholders, subject to any

applicable alternative minimum tax. We also will be required to withhold and to remit to the IRS 35% (or 15% to the extent provided in Treasury Regulations) of any distribution to non-U.S. stockholders that is designated as a capital gain dividend or, if greater, 35% of any distribution to non-U.S. stockholders that could have been designated as a capital gain dividend. The amount withheld is creditable against the non-U.S. stockholder's federal income tax liability. However, any distribution with respect to any class of stock that is "regularly traded" on an established securities market located in the United States is not subject to FIRPTA, and therefore, not subject to the 35% U.S. withholding tax described above, if the non-U.S. stockholder did not own more than 5% of such class of stock at any time during the one-year period ending on the date of the distribution. Instead, such distributions will generally be treated as ordinary dividend distributions and subject to withholding in the manner described above with respect to ordinary dividends.

Retention of Net Capital Gains. Although the law is not clear on the matter, it appears that amounts designated by us as retained net capital gains in respect of the stock held by stockholders generally should be treated with respect to non-U.S. stockholders in the same manner as actual distributions of capital gain dividends. Under that approach, the non-U.S. stockholders would be able to offset as a credit against their federal income tax liability resulting from their proportionate share of the tax paid by us on such retained net capital gains and to receive from the IRS a refund to the extent their proportionate share of such tax paid by us exceeds their actual federal income tax liability. If we were to designate any portion of our net capital gain as retained net capital gain, a non-U.S. stockholder should consult its tax advisor regarding the taxation of such retained net capital gain.

Sale of Our Common Stock. Gain recognized by a non-U.S. stockholder upon the sale, exchange or other taxable disposition of our common stock generally will not be subject to federal income taxation unless such stock constitutes a USRPI. In general, stock of a domestic corporation that constitutes a "U.S. real property holding corporation," or USRPHC, will constitute a USRPI. We expect that we will be a USRPHC. Our common stock will not, however, constitute a USRPI so long as we are a "domestically controlled qualified investment entity." A "domestically controlled qualified investment entity" includes a REIT in which at all times during a specified testing period less than 50% in value of its stock is held directly or indirectly by non-U.S. stockholders. We believe, but cannot guarantee, that we are a "domestically controlled qualified investment entity." Because our common stock will be publicly traded, no assurance can be given that we will continue to be a "domestically controlled qualified investment entity."

Notwithstanding the foregoing, gain from the sale, exchange or other taxable disposition of our common stock not otherwise subject to FIRPTA will be taxable to a non-U.S. stockholder if either (a) the investment in our common stock is treated as effectively connected with the non-U.S. stockholder's U.S. trade or business or (b) the non-U.S. stockholder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and certain other conditions are met. In addition, even if we are a domestically controlled qualified investment entity, upon disposition of our stock (subject to the 5% exception applicable to "regularly traded" stock described below), a non-U.S. stockholder may be treated as having gain from the sale or other taxable disposition of a USRPI if the non-U.S. stockholder (1) disposes of our stock within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been treated as gain from the sale or exchange of a USRPI and (2) acquires, or enters into a contract or option to acquire, or is deemed to acquire, other shares of that stock during the 61-day period beginning with the first day of the 30-day period described in clause (1).

Even if we do not qualify as a "domestically controlled qualified investment entity" at the time a non-U.S. stockholder sells our stock, gain arising from the sale or other taxable disposition by a non-U.S. stockholder of such stock would not be subject to federal income taxation under FIRPTA as a sale of a USRPI if:

(1) such class of stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market such as the NYSE; and

(2) such non-U.S. stockholder owned, actually and constructively, 5% or less of such class of our stock throughout the five-year period ending on the date of the sale or exchange.

If gain on the sale, exchange or other taxable disposition of our common stock were subject to taxation under FIRPTA, the non-U.S. stockholder would be subject to regular federal income tax with respect to such gain in the same manner as a taxable U.S. stockholder (subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals). In addition, if the sale, exchange or other taxable disposition of our common stock were subject to taxation under FIRPTA, and if shares of our common stock were not "regularly traded" on an established securities market, the purchaser of such common stock would generally be required to withhold and remit to the IRS 10% of the purchase price.

Information Reporting and Backup Withholding Tax. Generally, we must report annually to the IRS the amount of dividends paid to a non-U.S. stockholder, such holder's name and address, and the amount of tax withheld, if any. A similar report is sent to the non-U.S. stockholder. Pursuant to tax treaties or other agreements, the IRS may make its reports available to tax authorities in the non-U.S. stockholder's country of residence.

Payments of dividends or of proceeds from the disposition of stock made to a non-U.S. stockholder may be subject to information reporting and backup withholding unless such holder establishes an exemption, for example, by properly certifying its non-U.S. status on an IRS Form W-8BEN or another appropriate version of IRS Form W-8. Notwithstanding the foregoing, backup withholding and information reporting may apply if either we have or our paying agent has actual knowledge, or reason to know, that a non-U.S. stockholder is a U.S. person.

Backup withholding is not an additional tax. Rather, the federal income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund or credit may be obtained, provided that the required information is timely furnished to the IRS.

New Legislation Relating to Foreign Accounts. Newly enacted legislation may impose withholding taxes on certain types of payments made to "foreign financial institutions" and certain other non-U.S. entities. Under this legislation, the failure to comply with additional certification, information reporting and other specified requirements could result in withholding tax being imposed on payments of dividends and sales proceeds to U.S. stockholders that own the shares through foreign accounts or foreign intermediaries and certain non-U.S. stockholders. The legislation imposes a 30% withholding tax on dividends on, and gross proceeds from the sale or other disposition of, our stock paid to a foreign financial institution or to a foreign nonfinancial entity, unless (1) the foreign financial institution undertakes certain diligence and reporting obligations or (2) the foreign non-financial entity either certifies it does not have any substantial U.S. owners or furnishes identifying information regarding each substantial U.S. owner. In addition, if the payee is a foreign financial institution, it generally must enter into an agreement with the U.S. Treasury that requires, among other things, that it undertake to identify accounts held by certain U.S. persons or U.S.-owned foreign entities, annually report certain information about such accounts, and withhold 30% on payments to certain other account holders. The legislation applies to payments made after December 31, 2012. Prospective investors should consult their tax advisors regarding this legislation.

Other Tax Consequences

State, local and non-U.S. income tax laws may differ substantially from the corresponding federal income tax laws, and this discussion does not purport to describe any aspect of the tax laws of any state, local or non-U.S. jurisdiction. You should consult your tax advisor regarding the effect of state, local and non-U.S. tax laws with respect to our tax treatment as a REIT and on an investment in our common stock.

ERISA CONSIDERATIONS

General

The following is a summary of certain considerations arising under the Employee Retirement Income Security Act of 1974, as amended, or ERISA, and the prohibited transaction provisions of Section 4975 of the Code that may be relevant to a prospective purchaser that is an employee benefit plan subject to ERISA. The following summary may also be relevant to a prospective purchaser that is not an employee benefit plan subject to ERISA, but is a tax-qualified retirement plan or an individual retirement account, individual retirement annuity, medical savings account or education individual retirement account, which we refer to collectively as an "IRA." This discussion does not address all aspects of ERISA or Section 4975 of the Code or, to the extent not preempted, state law that may be relevant to particular employee benefit plan stockholders in light of their particular circumstances, including plans subject to Title I of ERISA, other employee benefit plans and IRAs subject to the prohibited transaction provisions of Section 4975 of the Code, and governmental, church, foreign and other plans that are exempt from ERISA and Section 4975 of the Code but that may be subject to other federal, state, local or foreign law requirements.

A fiduciary making the decision to invest in shares of our common stock on behalf of a prospective purchaser which is an ERISA plan, a tax qualified retirement plan, an IRA or other employee benefit plan is advised to consult its legal advisor regarding the specific considerations arising under ERISA, Section 4975 of the Code, and, to the extent not preempted, state law with respect to the purchase, ownership or sale of shares of our common stock by the plan or IRA.

Plans should also consider the entire discussion under the heading "Federal Income Tax Considerations," as material contained in that section is relevant to any decision by an employee benefit plan, tax-qualified retirement plan or IRA to purchase our common stock.

Employee Benefit Plans, Tax-Qualified Retirement Plans and IRAs

Each fiduciary of an "ERISA plan," which is an employee benefit plan subject to Title I of ERISA, should carefully consider whether an investment in shares of our common stock is consistent with its fiduciary responsibilities under ERISA. In particular, the fiduciary requirements of Part 4 of Title I of ERISA require that:

- an ERISA plan make investments that are prudent and in the best interests of the ERISA plan, its participants and beneficiaries;
- an ERISA plan make investments that are diversified in order to reduce the risk of large losses, unless it is clearly prudent for the ERISA plan not to do so;
- an ERISA plan's investments are authorized under ERISA and the terms of the governing documents of the ERISA plan; and
- the fiduciary not cause the ERISA plan to enter into transactions prohibited under Section 406 of ERISA (and certain corresponding provisions of the Code).

In determining whether an investment in shares of our common stock is prudent for ERISA purposes, the appropriate fiduciary of an ERISA plan should consider all of the facts and circumstances, including whether the investment is reasonably designed, as a part of the ERISA plan's portfolio for which the fiduciary has investment responsibility, to meet the objectives of the ERISA plan, taking into consideration the risk of loss and opportunity for gain or other return from the investment, the diversification, cash flow and funding requirements of the ERISA plan, and the liquidity and current return of the ERISA plan's portfolio. A fiduciary should also take into account the nature of our business, the length of our operating history and other matters described in the

section entitled “Risk Factors.” Specifically, before investing in shares of our common stock, any fiduciary should, after considering the employee plan’s or IRA’s particular circumstances, determine whether the investment is appropriate under the fiduciary standards of ERISA or other applicable law including standards with respect to prudence, diversification and delegation of control and the prohibited transaction provisions of ERISA and the Code.

Our Status Under ERISA

In some circumstances where an ERISA plan holds an interest in an entity, the assets of the entity are deemed to be ERISA plan assets. This is known as the “look-through rule.” Under those circumstances, the obligations and other responsibilities of plan sponsors, plan fiduciaries and plan administrators, and of parties in interest and disqualified persons, under Parts 1 and 4 of Subtitle B of Title I of ERISA and Section 4975 of the Code, as applicable, may be expanded, and there may be an increase in their liability under these and other provisions of ERISA and the Code (except to the extent (if any) that a favorable statutory or administrative exemption or exception applies). For example, a prohibited transaction may occur if our assets are deemed to be assets of investing ERISA plans and persons who have certain specified relationships to an ERISA plan (“parties in interest” within the meaning of ERISA, and “disqualified persons” within the meaning of the Code) deal with these assets. Further, if our assets are deemed to be assets of investing ERISA plans, any person that exercises authority or control with respect to the management or disposition of the assets is an ERISA plan fiduciary.

ERISA plan assets are not defined in ERISA or the Code, but the United States Department of Labor has issued regulations that outline the circumstances under which an ERISA plan’s interest in an entity will be subject to the look-through rule. The Department of Labor regulations apply to the purchase by an ERISA plan of an “equity interest” in an entity, such as stock of a REIT. However, the Department of Labor regulations provide an exception to the look-through rule for equity interests that are “publicly offered securities.”

Under the Department of Labor regulations, a “publicly offered security” is a security that is:

- freely transferable;
- part of a class of securities that is widely held; and
- either part of a class of securities that is registered under section 12(b) or 12(g) of the Exchange Act or sold to an ERISA plan as part of an offering of securities to the public pursuant to an effective registration statement under the Securities Act, and the class of securities of which this security is a part is registered under the Exchange Act within 120 days, or longer if allowed by the SEC, after the end of the fiscal year of the issuer during which this offering of these securities to the public occurred.

Whether a security is considered “freely transferable” depends on the facts and circumstances of each case. Under the Department of Labor regulations, if the security is part of an offering in which the minimum investment is $10,000 or less, then any restriction on or prohibition against any transfer or assignment of the security for the purposes of preventing a termination or reclassification of the entity for federal or state tax purposes will not ordinarily prevent the security from being considered freely transferable. Additionally, limitations or restrictions on the transfer or assignment of a security which are created or imposed by persons other than the issuer of the security or persons acting for or on behalf of the issuer will ordinarily not prevent the security from being considered freely transferable.

A class of securities is considered “widely held” if it is a class of securities that is owned by 100 or more investors independent of the issuer and of one another. A security will not fail to be “widely held” because the number of independent investors falls below 100 subsequent to the initial public offering as a result of events beyond the issuer’s control.

The shares of our common stock offered in this prospectus may meet the criteria of the publicly offered securities exception to the look-through rule. First, the common stock could be considered to be freely transferable, as the minimum investment will be less than $10,000 and the only restrictions upon its transfer are those generally permitted under the Department of Labor regulations, those required under federal tax laws to maintain our status as a REIT, resale restrictions under applicable federal securities laws with respect to securities not purchased pursuant to this prospectus and those owned by our officers, directors and other affiliates, and voluntary restrictions agreed to by the selling stockholder regarding volume limitations.

Second, we expect (although we cannot confirm) that our common stock will be held by 100 or more investors, and we expect that at least 100 or more of these investors will be independent of us and of one another.

Third, the shares of our common stock will be part of an offering of securities to the public pursuant to an effective registration statement under the Securities Act and the common stock is registered under the Exchange Act.

In addition, the Department of Labor regulations provide exceptions to the look-through rule for equity interests in some types of entities, including any entity which qualifies as either a "real estate operating company" or a "venture capital operating company."

Under the Department of Labor regulations, a "real estate operating company" is defined as an entity which on testing dates has at least 50% of its assets, other than short-term investments pending long-term commitment or distribution to investors, valued at cost:

- invested in real estate which is managed or developed and with respect to which the entity has the right to substantially participate directly in the management or development activities; and
- which, in the ordinary course of its business, is engaged directly in real estate management or development activities.

According to those same regulations, a "venture capital operating company" is defined as an entity which on testing dates has at least 50% of its assets, other than short-term investments pending long-term commitment or distribution to investors, valued at cost:

- invested in one or more operating companies with respect to which the entity has management rights; and
- which, in the ordinary course of its business, actually exercises its management rights with respect to one or more of the operating companies in which it invests.

We have not endeavored to determine whether we will satisfy the "real estate operating company" or "venture capital operating company" exception.

Prior to making an investment in the shares offered in this prospectus, prospective employee benefit plan investors (whether or not subject to ERISA or section 4975 of the Code) should consult with their legal and other advisors concerning the impact of ERISA and the Code (and, particularly in the case of non-ERISA plans and arrangements, any additional state, local and foreign law considerations), as applicable, and the potential consequences in their specific circumstances of an investment in such shares.

UNDERWRITING

Merrill Lynch, Pierce, Fenner & Smith Incorporated, Wells Fargo Securities, LLC and Morgan Stanley & Co. Incorporated are acting as representatives of each of the underwriters named below. Subject to the terms and conditions set forth in a purchase agreement among us and the underwriters, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the number of shares of common stock set forth opposite its name below.

Underwriter	Number of Shares
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Wells Fargo Securities, LLC	
Morgan Stanley & Co. Incorporated	
Total	

Subject to the terms and conditions set forth in the purchase agreement, the underwriters have agreed, severally and not jointly, to purchase all of the shares of common stock sold under the purchase agreement if any of these shares are purchased. If an underwriter defaults, the purchase agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the purchase agreement may be terminated.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares of common stock, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares of common stock, and other conditions contained in the purchase agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

Commissions and Discounts

The representatives have advised us that the underwriters propose initially to offer the shares of common stock to the public at the public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of $ per share. The underwriters may allow, and the dealers may reallow, a discount not in excess of $ per share to other dealers. After the initial offering, the public offering price, concession or any other term of the offering may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us. The information assumes either no exercise or full exercise by the underwriters of their overallotment option.

	Per Share	Without Option	With Option
Public offering price	$	$	$
Underwriting discount	$	$	$
Proceeds, before expenses, to us	$	$	$

The expenses of the offering, including the filing fees and reasonable fees and disbursements of counsel to the underwriters in connection with FINRA filings, but not including the underwriting discount, are estimated at $ million and are payable by us.

Overallotment Option

We have granted an option to the underwriters, exercisable for 30 days after the date of this prospectus, to purchase up to additional shares at the public offering price, less the underwriting discount. The underwriters may exercise this option solely to cover any overallotments. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the purchase agreement, to purchase a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

Reserved Shares

At our request, the underwriters have reserved for sale, at the initial public offering price, up to shares of common stock offered by this prospectus for sale to our directors, officers, employees, friends and family. The number of shares of our common stock available for sale to the general public will be reduced to the extent these persons purchase such reserved shares. Any reserved shares of our common stock that are not so purchased will be offered by the underwriters to the general public on the same terms as the other shares of our common stock offered by this prospectus. All purchasers of reserved shares will be subject to a -day lock-up with respect to any shares sold to them pursuant to the reserved share program. This lock-up will have similar restrictions and an identical extension provision to the lock-up agreements described below.

No Sales of Similar Securities

We, our executive officers, directors and director nominees and their affiliates, as well as each of the prior investors have agreed not to sell or transfer any common stock or securities convertible into, exchangeable for or exercisable for common stock, for 365 days (with respect to Mr. Rady and our other directors, director nominees and executive officers and their affiliates) and 180 days (with respect to the other prior investors and us) after the date of this prospectus without first obtaining the written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated, Wells Fargo Securities, LLC and Morgan Stanley & Co. Incorporated. Specifically, we and these other persons have agreed, with certain limited exceptions, not to directly or indirectly:

- offer, pledge, sell or contract to sell any common stock,
- sell any option or contract to purchase any common stock,
- purchase any option or contract to sell any common stock,
- grant any option, right or warrant for the sale of any common stock,
- lend or otherwise dispose of or transfer any common stock,
- request or demand that we file a registration statement related to the common stock, or
- enter into any swap or other agreement or transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of any common stock whether any such swap or transaction is to be settled by delivery of shares of common stock or other securities, in cash or otherwise.

The restrictions described in the immediately preceding paragraph do not apply to: (A) with respect to the company, (1) the sale of shares to the underwriters, (2) any shares of our common stock issued or options to purchase our common stock granted pursuant to our existing employee benefit plans referred to in this prospectus, (3) any shares of our common stock issued pursuant to any non-employee director stock plan or

dividend reinvestment plan referred to in this prospectus, (4) any shares of our common stock or units issued in connection with the formation transactions, (5) shares of our common stock transferred in accordance with Article VI of our charter, (6) shares of our common stock, in the aggregate not to exceed 10% of the number of shares of common stock outstanding, issued in connection with other acquisitions of real property or real property companies, provided, in the case of this clause (6), that each acquirer agrees to similar restrictions, and (7) the filing of a registration statement on Form S-8 relating to the offering of securities in accordance with the terms of an equity incentive plan; (B) with respect to our officers, directors, director nominees and their affiliates, as well as prior investors, (1)(i) the establishment of a written trading plan designed to comply with Rule 10b5-1(c) of the Exchange Act, provided that no sales or other dispositions may occur under such plans until the expiration of the lock-up period referred to above, (ii) *bona fide* gifts or gifts or other dispositions by will or intestacy, (iii) transfers made (a) to any trust for the direct or indirect benefit of the transferor or the immediate family of the transferor, (b) to an immediate family member, a partnership or limited liability company solely for the direct or indirect benefit of the transferor or the immediate family member of the transferor, (c) to a spouse, former spouse, child or other dependent pursuant to a domestic relations order or an order of a court of competent jurisdiction, (d) as a distribution to limited partners, limited liability company members or stockholders of the transferor, (e) to the transferor's affiliates or to any investment fund or other entity controlled or managed by the transferor, (f) to the company upon termination of the transferor's employment with the company, (g) to pay the exercise price of options to purchase common stock pursuant to the cashless exercise feature of such options, or (h) to a nominee or custodian of a person or entity to whom a disposition or transfer would be permissible under clauses (ii) or (iii)(a) through (g) above; provided that, in the case of this clause (1), (w) the representatives receive a signed lock-up agreement for the balance of the lock-up period from each donee, trustee, distributee, or transferee, as the case may be, (x) any such transfer shall not involve a disposition for value, (y) such transfers or other actions are not required to be reported with the SEC on Form 4 in accordance with Section 16 of the Exchange Act, and (z) the transferor does not otherwise voluntarily effect any public filing or report regarding such transfers, and (2) transactions relating to shares of our common stock acquired by the transferor in the open market after completion of the offering; provided, however, that (i) any subsequent sale of the shares of our common stock acquired in the open market are not required to be reported in any public report or filing with the SEC, or otherwise and (ii) the transferor does not otherwise voluntarily effect any public filing or report regarding such sales; and (C) with respect to Mr. Rady and his affiliates, including the Rady Trust, in addition to the exceptions set forth in clause (B) above, transfers made to an escrow account by Mr. Rady or any of his affiliates, or from an escrow account to the company, in connection with the operation of any pledge arrangements entered into pursuant to indemnification obligations under agreements entered into in connection with the formation transactions, in each case for the benefit of the company.

This lock-up provision applies to common stock and to securities convertible into or exchangeable or exercisable for common stock. It also applies to common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition. In the event that either (x) during the last 17 days of the lock-up period referred to above, we issue an earnings release or material news or a material event relating to us occurs or (y) prior to the expiration of the lock-up period, we announce that we will release earnings results or become aware that material news or a material event will occur during the 16-day period beginning on the last day of the lock-up period, the restrictions described above may, at the representatives' discretion, continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event, as applicable.

New York Stock Exchange Listing

We expect the shares of common stock to be approved for listing on the NYSE under the symbol "AAT." In order to meet the requirements for listing on that exchange, the underwriters have undertaken to sell a minimum number of shares of common stock to a minimum number of beneficial owners as required by that exchange.

Before this offering, there has been no public market for our common stock. The initial public offering price will be determined through negotiations between us and the representatives. In addition to prevailing market conditions, the factors to be considered in determining the initial public offering price are:

- the valuation multiples of publicly traded companies that the representatives believe to be comparable to us,
- our financial information,
- the prospects for our company and the industry in which we compete,
- an assessment of our management, its past and present operations, and the prospects for, and timing of, our future revenues,
- the present state of our development, and
- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares of common stock may not develop. It is also possible that after the offering the shares of common stock will not trade in the public market at or above the initial public offering price.

The underwriters do not expect to sell more than 5% of the shares in the aggregate to accounts over which they exercise discretionary authority.

Price Stabilization, Short Positions and Penalty Bids

Until the distribution of the shares of common stock is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our common stock. However, the representatives may engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

In connection with the offering, the underwriters may purchase and sell our common stock in the open market. These transactions may include short sales, purchases on the open market to cover positions created by short sales and stabilizing transactions. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. “Covered” short sales are sales made in an amount not greater than the underwriters’ overallotment option described above. The underwriters may close out any covered short position by either exercising their overallotment option or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the overallotment option. “Naked” short sales are sales in excess of the overallotment option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of our common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of shares of common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Similar to other purchase transactions, the underwriters’ purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. The underwriters may conduct these transactions on the NYSE, in the over-the-counter market or otherwise.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor any of the underwriters make any representation that the representatives will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

Electronic Offer, Sale and Distribution of Shares

In connection with the offering, certain of the underwriters or securities dealers may distribute prospectuses by electronic means, such as e-mail. In addition, certain of the underwriters may facilitate Internet distribution for this offering to certain of their Internet subscription customers. These underwriters may allocate a limited number of shares for sale to its online brokerage customers. An electronic prospectus may be available on the Internet Web site maintained by certain underwriters. Other than any prospectus in electronic format, the information on an underwriter's Web site is not part of this prospectus.

Other Relationships

Some of the underwriters and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

Affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated, one of the underwriters in this offering, are lenders under two outstanding loans totaling approximately $31.6 million in the aggregate, each of which will be repaid with a portion of the proceeds of this offering. Additionally, affiliates of Wells Fargo Securities, LLC, another underwriter in this offering, are lenders under three outstanding loans totaling approximately $44.8 million in the aggregate, each of which will be repaid with a portion of the proceeds of this offering. As such, these affiliates will receive the portion of the net proceeds of this offering that are used to repay such indebtedness.

Certain affiliates of the underwriters will participate as lenders under the $ million revolving credit facility that we anticipate entering into upon the completion of this offering. In their capacity as lenders, these affiliates of the underwriters will receive certain financing fees in connection with the credit facility in addition to the underwriting discounts and commissions that may result from this offering.

In addition, in the ordinary course of their business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

Notice to Prospective Investors in the EEA

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State") an offer to the public of any shares of common stock which are the subject of the offering contemplated by this prospectus may not be made in that Relevant Member State, except that an offer to the public in that Relevant Member State of any shares of common stock may be made at any time under the following exemptions under the Prospectus Directive, if they have been implemented in that Relevant Member State:

(a) to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;

(b) to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;

(c) by the Managers to fewer than 100 natural or legal persons (other than "qualified investors" as defined in the Prospectus Directive) subject to obtaining the prior consent of the Managers for any such offer; or

(d) in any other circumstances falling within Article 3(2) of the Prospectus Directive;

provided that no such offer of shares shall result in a requirement for the publication by us or any Manager of a prospectus pursuant to Article 3 of the Prospectus Directive.

Any person making or intending to make any offer of shares within the EEA should only do so in circumstances in which no obligation arises for us or any of the underwriters to produce a prospectus for such offer. Neither we nor the underwriters have authorized, nor do they authorize, the making of any offer of shares through any financial intermediary, other than offers made by the underwriters which constitute the final offering of shares contemplated in this prospectus.

For the purposes of this provision the expression an "offer to the public" in relation to any shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase any shares, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State and the expression "Prospectus Directive" means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

Each person in a Relevant Member State who receives any communication in respect of, or who acquires any shares under, the offer of shares of common stock contemplated by this prospectus will be deemed to have represented, warranted and agreed to and with us and each underwriter that:

(a) it is a "qualified investor" within the meaning of the law in that Relevant Member State implementing Article 2(1)(e) of the Prospectus Directive; and

(b) in the case of any shares acquired by it as a financial intermediary, as that term is used in Article 3(2) of the Prospectus Directive, (1) the shares acquired by it in the offering have not been acquired on behalf of, nor have they been acquired with a view to their offer or resale to, persons in any Relevant Member State other than "qualified investors" (as defined in the Prospectus Directive), or in circumstances in which the prior consent of the representatives has been given to the offer or resale; or (2) where shares have been acquired by it on behalf of persons in any Relevant Member State other than qualified investors, the offer of those shares to it is not treated under the Prospectus Directive as having been made to such persons.

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are "qualified investors" (as defined in the Prospectus Directive) (1) who have professional experience in matters relating to investments falling within Article 19 (5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the "Order") and/or (2) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons"). This document must not be acted on or relied on in the United Kingdom by persons who are not relevant persons. In the United Kingdom, any investment or investment activity to which this document relates is only available to, and will be engaged in with, relevant persons.

Notice to Prospective Investors in Switzerland

This document, as well as any other material relating to the shares which are the subject of the offering contemplated by this prospectus, do not constitute an issue prospectus pursuant to Articles 652a and/or 1156 of the Swiss Code of Obligations. The shares will not be listed on the SIX Swiss Exchange and, therefore, the documents relating to the shares, including, but not limited to, this document, do not claim to comply with the disclosure standards of the listing rules of the SIX Swiss Exchange and corresponding prospectus schemes annexed to the listing rules of the SIX Swiss Exchange. The shares are being offered in Switzerland by way of a private placement, *i.e.*, to a small number of selected investors only, without any public offer and only to investors who do not purchase the shares with the intention to distribute them to the public. The investors will be individually approached by the issuer from time to time. This document, as well as any other material relating to the shares, is personal and confidential and does not constitute an offer to any other person. This document may only be used by those investors to whom it has been handed out in connection with the offering described herein and may neither directly nor indirectly be distributed or made available to other persons without express consent of the issuer. It may not be used in connection with any other offer and shall in particular not be copied and/or distributed to the public in (or from) Switzerland.

Notice to Prospective Investors in the Dubai International Financial Centre

This offering memorandum relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ("DFSA"). This offering memorandum is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this offering memorandum nor taken steps to verify the information set forth herein and has no responsibility for the offering memorandum. The securities to which this offering memorandum relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the securities offered should conduct their own due diligence on the securities. If you do not understand the contents of this offering memorandum you should consult an authorized financial advisor.

LEGAL MATTERS

Certain legal matters will be passed upon for us by Latham & Watkins LLP and for the underwriters by Hogan Lovells US LLP. Venable LLP will pass upon the validity of the shares of common stock sold in this offering and certain other matters of Maryland law.

EXPERTS

The (1) balance sheet of American Assets Trust Inc. as of August 12, 2010; (2) combined financial statements of American Assets Predecessor at December 31, 2009 and 2008, and for each of the three years in the period ended December 31, 2009; (3) financial statements of Novato FF Venture, LLC at December 31, 2009 and 2008, and for each of the three years in the period ended December 31, 2009; (4) statements of revenue and certain operating expenses of The Landmark at One Market for the years ended December 31, 2009, 2008 and 2007; (5) combined statements of revenues and certain operating expenses of Solana Beach Centre for the years ended December 31, 2009, 2008 and 2007, all appearing in this Prospectus and Registration Statement, have been audited by Ernst & Young LLP, an independent registered public accounting firm, as set forth in their reports thereon appearing elsewhere herein, and are included in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

The (1) consolidated financial statements of ABW Lewers LLC at December 31, 2009 and 2008, and for each of the three years in the period ended December 31, 2009; and (2) combined financial statements of Waikiki Beach Walk-Hotel Ownership Entities at December 31, 2009 and 2008, and for each of the three years in the period ended December 31, 2009, all appearing in this Prospectus and Registration Statement, have been audited by Accuity LLP, an independent registered public accounting firm, as set forth in their reports thereon appearing elsewhere herein, and are included in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

Unless otherwise indicated, the statistical and economic market data included in this prospectus, including information relating to the economic conditions within our markets contained in “Prospectus Summary” and “Industry Background and Market Opportunity” is derived from market information prepared for us by Rosen Consulting Group, or RCG, a nationally recognized real estate consulting firm, and is included in this prospectus in reliance on RCG’s authority as an expert in such matters. We paid RCG a fee of $32,500 for its services.

WHERE YOU CAN FIND MORE INFORMATION

We maintain a web site at www.americanassetstrust.com. Information contained on, or accessible through our website is not incorporated by reference into and does not constitute a part of this prospectus or any other report or documents we file with or furnish to the SEC.

We have filed with the SEC a Registration Statement on Form S-11, including exhibits, schedules and amendments thereto, of which this prospectus is a part, under the Securities Act with respect to the shares of our common stock to be sold in this offering. This prospectus does not contain all of the information set forth in the registration statement and exhibits and schedules to the registration statement. For further information with respect to our company and the shares of our common stock to be sold in this offering, reference is made to the registration statement, including the exhibits and schedules thereto. Statements contained in this prospectus as to the contents of any contract or other document referred to in this prospectus are not necessarily complete and, where that contract or other document has been filed as an exhibit to the registration statement, each statement in this prospectus is qualified in all respects by the exhibit to which the reference relates. Copies of the registration statement, including the exhibits and schedules to the registration statement, may be examined without charge at the public reference room of the SEC, 100 F Street, N.E., Washington, DC 20549. Information about the

operation of the public reference room may be obtained by calling the SEC at 1-800-SEC-0300. Copies of all or a portion of the registration statement can be obtained from the public reference room of the SEC upon payment of prescribed fees. Our SEC filings, including our registration statement, are also available to you, free of charge, on the SEC's website, www.sec.gov.

AS A RESULT OF THIS OFFERING, WE WILL BECOME SUBJECT TO THE INFORMATION AND PERIODIC REPORTING REQUIREMENTS OF THE EXCHANGE ACT, AND WILL FILE PERIODIC REPORTS AND OTHER INFORMATION WITH THE SEC. THESE PERIODIC REPORTS AND OTHER INFORMATION WILL BE AVAILABLE FOR INSPECTION AND COPYING AT THE SEC'S PUBLIC REFERENCE FACILITIES AND THE WEB SITE OF THE SEC REFERRED TO ABOVE.

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American Assets Trust, Inc. and Subsidiaries

Pro Forma Consolidated Financial Statements
(Unaudited)

American Assets Trust, Inc. (together with its combined entities, the "Company," "we," "our" or "us"), which is a Maryland corporation formed on July 16, 2010 to acquire the entities owning various controlling and noncontrolling interests in real estate assets owned and/or managed by Ernest Rady and/or his affiliates, including the Ernest Rady Trust U/D/T March 10, 1983 (the "Rady Trust"), will not have any operating activity until the consummation of our initial public offering and the related acquisition of our predecessor. American Assets Trust, L.P. (our "Operating Partnership") was formed as a Maryland limited partnership on July 16, 2010. Upon completion of the offering and formation transactions described below, we expect our operations to be carried on through our Operating Partnership. At such time, we, as the sole general partner of our Operating Partnership, will own % of, and will have control of, our Operating Partnership. Accordingly, we will consolidate the assets, liabilities and results of operations of our Operating Partnership.

Our "Predecessor" includes (1) entities owned and/or controlled by Mr. Rady and/or his affiliates, including the Rady Trust, which in turn own controlling interests in 17 properties, and the property management business of American Assets, Inc. ("AAI") (the "Controlled Entities"), and (2) noncontrolling interests in entities owning four properties ("Noncontrolled Entities"). The Predecessor accounts for its investment in the Noncontrolled Entities under the equity method of accounting.

Prior to June 30, 2010, the Noncontrolled Entities owned an office property located in San Francisco, California referred to as The Landmark at One Market ("Landmark"). We refer to the entities owning Landmark as the "Landmark Entities." The outside ownership interest in the Landmark Entities was acquired by our Predecessor on June 30, 2010 for a cash payment of $23.0 million and the assumption of $133.0 million of outstanding debt (of which $87.1 million was attributable to the outside owners' interest). As of June 30, 2010, Landmark is controlled by our Predecessor. All but one of the properties owned by the Controlled Entities and Noncontrolled Entities are managed by AAI. The Noncontrolled Entities managed by AAI include the entities which own Solana Beach Towne Centre and Solana Beach Corporate Centre properties (collectively "Solana Beach Centre") and the entities that own the Fireman's Fund Headquarters office property ("Fireman's Fund"). The remaining property is managed by an unrelated third party. We refer to ABW Lewers LLC and the Waikiki Beach Walk—Hotel, the entities that own this non-AAI managed property, as the "Waikiki Beach Walk Entities."

As of June 30, 2010, the properties owned by us are as follows:

Controlled Entities (Properties Consolidated by our Predecessor)

Retail
- Carmel Country Plaza
- Carmel Mountain Plaza
- South Bay Marketplace
- Rancho Carmel Plaza
- Lomas Santa Fe Plaza
- Del Monte Center
- The Shops at Kalakaua
- Waiklele Center
- Alamo Quarry

Office
- Torrey Reserve Campus
- Valencia Corporate Center
- 160 King Street
- The Landmark at One Market

American Assets Trust, Inc. and Subsidiaries

Pro Forma Consolidated Financial Statements—(Continued)
(Unaudited)

Multifamily
- Loma Palisades
- Imperial Beach Gardens
- Mariner's Point
- Santa Fe Park RV Resort

Noncontrolled Properties (Equity Method of Accounting by our Predecessor)

Retail
- Solana Beach Towne Centre

Office
- Solana Beach Corporate Centre
- Fireman's Fund Headquarters

Mixed-Use
- Waikiki Beach Walk Retail and Hotel

Substantially concurrently with this offering we will complete a series of formation transactions pursuant to which we will acquire, through a series of merger and contribution transactions, 100% of the ownership interests in the Controlled Entities, the Waikiki Beach Walk entities, and the Solana Beach Centre entities (which includes our Predecessors' ownership interest in these entities). We will also acquire our Predecessors' noncontrolling 25% ownership interest in the entities owning Fireman's Fund, which we will continue to account for under the unconsolidated equity method of accounting. In the aggregate, these interests will comprise our ownership of our property portfolio.

To acquire the ownership interests in the entities that own the properties to be included in our portfolio from the prior investors, we will issue to the prior investors an aggregate of shares of our common stock and common units in our Operating Partnership, with an aggregate value of $, and we will pay $ in cash to those prior investors that are unaccredited. Cash amounts will be provided from the net proceeds of this offering. These contributions and mergers will be effected substantially concurrently with the completion of this offering.

We estimate that the net proceeds from this offering will be approximately $457.5 million, or approximately $ million if the underwriters' overallotment option is exercised in full (after deducting the underwriting discount and commissions and estimated expenses of this offering and formation transactions). We will contribute the net proceeds of this offering to our Operating Partnership in exchange for common units, and our Operating Partnership will use the proceeds received from us as described under "Use of Proceeds." Upon completion of this offering, we expect to enter into a $ million revolving credit facility under which we expect to have availability of $ million. In connection with this offering, we expect to use approximately 341.4 million to repay indebtedness (including $24.3 million of defeasance costs), pay $13.2 million to exercise our option to purchase the approximately 80,000 square foot building vacated by Mervyn's located in Carmel Mountain Plaza, pay up to $8.5 million to fund tenant improvements and leasing commissions at The Landmark at One Market, pay $ in cash to pay those prior investors that are unaccredited, and pay up to $2.0 million to pay costs related to the renovation of Solana Beach Towne Centre. Any remaining net proceeds will be used for general corporate purposes, including future acquisitions.

Upon completion of this offering and consummation of the formation transactions, we expect our operations to be carried on through our Operating Partnership and subsidiaries of our Operating Partnership, including our taxable REIT subsidiary. Consummation of the formation transactions will enable us to

American Assets Trust, Inc. and Subsidiaries

Pro Forma Consolidated Financial Statements—(Continued)
(Unaudited)

(1) consolidate the ownership of our property portfolio under our operating partnership; (2) succeed to the property management business of AAI; (3) facilitate this offering; and (4) qualify as a real estate investment trust for U.S. federal income tax purposes commencing with the taxable year ending December 31, 2010. As a result, we expect to be a vertically integrated and self-administered REIT with approximately 100 employees.

We have determined that the Predecessor is the acquirer for accounting purposes, and therefore the contribution of, or acquisition by merger of interests in, the Controlled Entities is considered a transaction between entities under common control since our Executive Chairman, Ernest Rady, and/or his affiliates, including the Rady Trust, own the controlling interest in each of the entities comprising the Predecessor. As a result, the acquisition of interests in each of the Controlled Entities will be recorded at our historical cost. The contribution of, or acquisition by merger of interests in, certain Noncontrolled Entities, including the Waikiki Beach Walk Entities and the Solana Beach Centre entities (including our Predecessor's ownership interest in these entities), will be accounted for as an acquisition under the acquisition method of accounting and recognized at the estimated fair value of acquired assets and assumed liabilities on the date of such contribution or acquisition. The acquisition of the ownership interests of the Landmark Entities by the Predecessor was accounted for under the acquisition method of accounting on June 30, 2010 and will be recorded at the Predecessors' historical cost when acquired by us upon the consummation of the formation transactions. The fair value of these assets and liabilities has been allocated in accordance with Accounting Standards Codification ("ASC") section 805-10, *Business Combinations*. Our methodology of allocating the cost of acquisitions to assets acquired and liabilities assumed is based on estimated fair values, replacement cost and appraised values. We estimate the fair value of acquired tangible assets (consisting of land, building and improvements), identified intangible lease assets and liabilities (consisting of acquired above-market leases, acquired in-place lease value, and acquired below-market leases) and assumed debt.

Based on these estimates, we allocate the purchase price to the applicable assets and liabilities. The value allocated to in-place leases is amortized over the related lease term and reflected as depreciation and amortization. The value of above- and below-market in place leases are amortized over the related lease term and reflected as either an increase (for below-market leases) or a decrease (for above-market leases) to rental income. The fair value of the debt assumed is determined using current market interest rates for comparable debt financings.

The following unaudited pro forma condensed consolidated financial information sets forth:

- the historical financial information as of and for the six months ended June 30, 2010 (unaudited) and for the year ended December 31, 2009 (audited) as derived from the financial statements of (1) the Predecessor, and (2) the Waikiki Beach Walk Entities (which consists of ABW Lewers LLC and Waikiki Beach Walk—Hotel financial statements); and

- pro forma adjustments assuming the formation transactions and the initial public offering were completed as of June 30, 2010 for purposes of the unaudited pro forma condensed consolidated balance sheet and as of January 1, 2009 for purposes of the unaudited pro forma condensed consolidated statements of operations.

The unaudited pro forma financial information has been adjusted to give effect to:

- the historical financial results of the Predecessor (the accounting acquirer) for the six months ended June 30, 2010 and for the year ended December 31, 2009;

- the acquisition of the ownership interests (including our Predecessor's noncontrolling interest) in the Solana Beach Centre in exchange for shares of our common stock and units of limited partner

American Assets Trust, Inc. and Subsidiaries

Pro Forma Consolidated Financial Statements—(Continued)
(Unaudited)

interest ("OP units") in our Operating Partnership, and the assumption of related debt, as of June 30, 2010 for purposes of the unaudited condensed consolidated balance sheet and as of January 1, 2009 for purposes of the unaudited pro forma condensed consolidated statement of operations for the six months ended June 30, 2010 and the year ended December 31, 2009;

- the annualization of the acquisition of the Landmark property by our Predecessor on June 30, 2010, to reflect the results of this property as if it were acquired on January 1, 2009 for purposes of the unaudited pro forma condensed consolidated statement of operations for the six months ended June 30, 2010 and the year ended December 31, 2009;

- the acquisition of ownership interests (including our Predecessors' noncontrolling interest) in the Waikiki Beach Walk Entities in exchange for shares of our common stock and OP units and the assumption of related debt, as of June 30, 2010 for purposes of the unaudited condensed consolidated balance sheet and as of January 1, 2009 for purposes of the unaudited pro forma condensed consolidated statement of operations for the six months ended June 30, 2010 and the year ended December 31, 2009. The Waikiki Beach Walk Entities own our mixed-use property, which is comprised of Waikiki Beach Walk—Hotel located in Honolulu, Hawaii and owned through tenants-in-common interests, and Waikiki Beach Walk—Retail (owned by ABW Lewers LLC), a retail shopping center integrated with the Waikiki Beach Walk—Hotel;

- certain incremental general and administrative expenses expected to be incurred to operate as a public company; and

- the completion of the formation transactions and the initial public offering of the Company, repayment of indebtedness and other use of proceeds from the offering, including the acquisition of an approximately 80,000 square foot vacant building at Carmel Mountain Plaza.

The pro forma financial information includes adjustments relating to the acquisition or contribution of outside ownership interests only when it is probable that we will take control of the entities that own the properties. In addition, properties in our portfolio may be reassessed for property tax purposes after the consummation of this offering. Therefore, the amount of property taxes we pay in the future may increase from what we have paid in the past. Given the uncertainty of the amounts involved, we have not included any property tax increase in our pro forma financial statements.

You should read the information below along with all other financial information and analysis presented in this prospectus, including the sections captioned "Management's Discussion and Analysis of Financial Condition and Results of Operations"; the American Assets Trust, Inc. and subsidiaries, Predecessor, ABW Lewers LLC, Waikiki Beach Walk—Hotel historical audited financial statements and related notes; and the Landmark and Solana Beach Centre audited statements of revenue and certain expenses and related notes; included elsewhere in this prospectus.

Our pro forma consolidated financial statements are presented for informational purposes only and should be read in conjunction with the historical financial statements and related notes thereto included elsewhere in this prospectus. The unaudited pro forma adjustments and eliminations to our pro forma consolidated financial statements are based on available information and assumptions that we consider reasonable. Our pro forma consolidated financial statements do not purport to (1) represent our financial position that would have actually occurred had this offering, the formation transactions and the debt repayments occurred on June 30, 2010, (2) represent the results of our operations that would have actually occurred had this offering, the formation transactions and the debt repayments occurred on January 1, 2009 or (3) project our financial position or results of operations as of any future date or for any future period, as applicable.

American Assets Trust, Inc. and Subsidiaries

Pro Forma Consolidated Balance Sheet
June 30, 2010
(Unaudited and In Thousands)

	American Assets Trust, Inc. and Subsidiaries (A)	Predecessor (B)	Acquisitions and Contributions: Solana Beach Centre (C)	Acquisitions and Contributions: Waikiki Beach Walk Entities (D)	Acquisitions and Contributions: Other Acquisition (E)	Eliminations (F)	Pro Forma Before Offering	Proceeds from Offering (G)	Use of Proceeds (H)	Other Pro Forma Adjustments	Company Pro Forma
Assets											
Net real estate	$ —	$ 928,831	$134,210	$ 214,150	$ 13,200	$ —	$ 1,290,391	$ —	$ —	$ —	$ 1,290,391
Cash and cash equivalents	—	31,592	2,196	6,721	(13,200)	—	27,309	456,000	(338,883)	(23,129)**(I)**	121,297
Restricted cash	—	4,675	181	4,584	—	—	9,440	—	(2,601)	—	6,839
Accounts and notes receivable, net	—	42,231	2,075	1,417	—	(110)	45,613	—	—	(23,868)**(J)**	21,745
Investment in real estate joint ventures	—	44,577	—	—	—	(32,352)	12,225	—	—	—	12,225
Prepaid expenses and other assets	—	45,194	12,481	15,323	—	—	72,998	—	—	—	72,998
Debt issuance costs, net	—	2,449	—	—	—	—	2,449	1,500	(972)	—	2,977
Total assets	$ —	$ 1,099,549	$151,143	$ 242,195	$ —	$ (32,462)	$ 1,460,425	$ 457,500	$(342,456)	$ (46,997)	$ 1,528,472
Liabilities											
Secured notes payable	$ —	$ 855,368	$ 88,230	$ 179,242	$ —	$ —	$ 1,122,840	$ —	$(263,524)	$ —	$ 859,316
Unsecured notes payable	—	33,482	—	14,874	—	—	48,356	—	(48,356)	—	—
Notes payable to affiliates	—	6,496	—	—	—	—	6,496	—	(5,271)	(1,225)**(J)**	—
Accounts payable and accrued expenses	—	8,436	721	2,597	—	(110)	11,644	—	—	—	11,644
Security deposits payable	—	2,660	651	849	—	—	4,160	—	—	—	4,160
Other liabilities and deferred credits	—	23,984	3,415	2,905	—	—	30,304	—	—	—	30,304
Distributions in excess of earnings in real estate joint venture	—	13,909	—	—	—	(13,909)	—	—	—	—	—
Total liabilities	—	944,335	93,017	200,467	—	(14,019)	1,223,800	—	(317,151)	(1,225)	905,424
Equity											
Total Predecessor equity	—	118,929	29,063	33,382		(18,443)	162,931	457,500	(25,305)	(45,772)	549,354
Noncontrolling interests	—	36,285	29,063	8,346	—	—	73,694	—	— **(K)**	— **(L)**	73,694
Total equity	$ —	$ 155,214	$ 58,126	$ 41,728	$ —	$ (18,443)	$ 236,625	$ 457,500	$ (25,305)	$ (45,772)	$ 623,048
Total Liabilities and Equity	$ —	$ 1,099,549	$151,143	$ 242,195	$ —	$ (32,462)	$ 1,460,425	$ 457,500	$(342,456)	$ 46,997	$ 1,528,472

American Assets Trust, Inc. and Subsidiaries

Pro Forma Consolidated Statement of Operations
For the Six Months Ended June 30, 2010
(Unaudited and In Thousands, except per share data)

			Acquisitions and Contributions							
	American Assets Trust, Inc. and Subsidiaries (AA)	Predecessor (BB)	Solana Beach Centre (CC)	Landmark at One Market (DD)	Waikiki Beach Walk Entities (EE)	Other Acquisition (FF)	Eliminations (GG)	Pro Forma Before Offering	Financing Transactions (HH)	Company Pro Forma
Revenue										
Rental income	$ —	$ 56,509	$ 7,144	$ 11,902	$ 18,573	(85)	$ —	$ 94,043	$ —	$ 94,043
Other property income	—	1,710	1	—	1,363	—	—	3,074	—	3,074
Total Revenues	—	58,219	7,145	11,902	19,936	(85)	—	97,117	—	97,117
Expenses										
Rental expenses	—	9,864	757	2,768	10,739		(60)	24,068	—	24,068
Real estate taxes	—	5,948	427	1,204	892		—	8,471	—	8,471
General and administrative	—	3,408	425	375	922		(665)	4,465	— **(II)**	4,465
Depreciation and amortization	—	14,739	3,582	3,586	3,408	150	—	25,465	—	25,465
Total operating expenses	—	33,959	5,191	7,933	15,961	150	(725)	62,469	—	62,469
Operating income	—	24,260	1,954	3,969	3,975	(235)	725	34,648	—	34,648
Interest income and other, net	—	31	4	1	(157)	—	—	(121)	—	(121)
Interest expense	—	(21,278)	(2,795)	(3,753)	(6,142)	—	—	(33,968)	7,216	(26,752)
Fee income from real estate joint ventures	—	1,943	—	—	—	—	(1,817)	126	—	126
Income (loss) from real estate joint ventures	—	1,407	—	—	—	—	(1,294)	113	—	113
Net income (loss)	$ —	$ 6,363	$ (837)	$ 217	$ (2,324)	$ (235)	$ (2,386)	$ 798	$ 7,216	8,014
Net income attributable to noncontrolling interests										$ ( )**(JJ)**
Net income attributable to controlling interests										$

American Assets Trust, Inc. and Subsidiaries

Pro Forma Consolidated Statement of Operations
For the Year Ended December 31, 2009
(Unaudited and In Thousands, except per share data)

			Acquisitions and Contributions							
	American Assets Trust, Inc. and Subsidiaries (AA)	Predecessor (BB)	Solana Beach Centre (CC)	Landmark at One Market (DD)	Waikiki Beach Walk Entities (EE)	Other Acquisition (FF)	Eliminations (GG)	Pro Forma Before Offering	Financing Transactions (HH)	Company Pro Forma
Revenue										
Rental income	$ —	$ 113,080	$ 13,902	$ 23,432	$ 38,868	$ (132)	$ —	$ 189,150	$ —	$ 189,150
Other property income	—	3,963	24	1	2,780	—	—	6,768	—	6,768
Total Revenues	—	117,043	13,926	23,433	41,648	(132)	—	195,918	—	195,918
Expenses										
Rental expenses	—	$ 20,336	$ 1,591	$ 5,416	$ 22,054	—	(120)	49,277	—	$ 49,277
Real estate taxes	—	8,306	843	2,382	1,767	—	—	13,298	—	13,298
General and administrative	—	7,058	794	736	1,813	—	(1,351)	9,050	— **(II)**	9,050
Depreciation and amortization	—	29,858	7,164	7,172	6,815	300	—	51,309	—	51,309
Total operating expenses	—	65,558	10,392	15,706	32,449	300	(1,471)	122,934	—	122,934
Operating income	—	51,485	3,534	7,727	9,199	(432)	1,471	72,984	—	72,984
Interest income and other, net	—	173	23	6	(315)	—	—	(113)	—	(113)
Interest expense	—	(43,290)	(5,615)	(7,569)	(12,187)	—	—	(68,661)	14,836	(53,825)
Fee income from real estate joint ventures	—	1,736	—	—	—	—	(1,482)	254	—	254
Income (loss) from real estate joint ventures	—	(4,865)	—	—	—	—	5,038	173	—	173
Net income (loss)	$ —	$ 5,239	$ (2,058)	$ 164	$ (3,303)	$ (432)	$ 5,027	$ 4,637	$ 14,836	19,473
Net income attributable to noncontrolling interests										$ ( )**(JJ)**
Net income attributable to controlling interests										$

American Assets Trust, Inc. and Subsidiaries

Notes and Management's Assumptions to Pro Forma Consolidated Financial Statements
June 30, 2010 (Unaudited)

1. Adjustments to the Pro Forma Consolidated Balance Sheet

(A) Represents the balance sheet of American Assets Trust, Inc. and subsidiaries as of July 16, 2010. We have had no corporate activity since our formation on July 16, 2010, other than the issuance of shares of common stock in connection with the initial capitalization of the Company, which was paid on August 12, 2010. Our operations will be carried out through our Operating Partnership upon completion of this offering. At such time, we, as the sole general partner of our Operating Partnership, will own, directly or indirectly, % of our Operating Partnership and will have control over major decisions, including decisions related to the sale or refinancing of owned properties. Accordingly, we will consolidate the assets, liabilities and results of operations of our Operating Partnership.

(B) Reflects a historical condensed combined balance sheet of our Predecessor, which we have determined to be the accounting acquirer and under the control of Ernest Rady and/or his affiliates, including the Rady Trust, as of June 30, 2010. Pursuant to contribution agreements and/or merger agreements entered into among the owners of, and the entities comprising, the Predecessor and the Company, the Operating Partnership and/or their subsidiaries, we will, directly or indirectly, acquire interests in the Predecessors' Controlled Entities, the Waikiki Beach Walk Entities and Solana Beach Centre in exchange for cash, shares of our common stock and/or OP units, and the assumption of related debt. These contributions and mergers will be consummated substantially concurrently with the completion of this offering. Because the accounting acquirer and the Predecessor are under common control, the Predecessor's assets and liabilities will be recorded at their historical cost basis.

(C) Reflects the acquisition by us of the ownership interests (including our Predecessor's noncontrolling interest) in Solana Beach Centre in exchange for cash, shares of our common stock and/or OP units and the assumption of related debt. Our Predecessor is responsible for the day to day management of Solana Beach Centre. Ernest Rady and/or his affiliates, including the Rady Trust, has a noncontrolling ownership interest in the entities that own Solana Beach Centre and therefore such ownership interests have been included in the Predecessor's financial statements as an equity method investment. After acquisition of the ownership interests in Solana Beach Centre (including our Predecessor's noncontrolling interest), the Solana Beach Centre will be 100% owned and consolidated by us. The acquisition of the interests in Solana Beach Centre will be accounted for as an acquisition under the purchase method of accounting in accordance with ASC Section 805-10, *Business Combinations*.

The acquisition method of accounting was used to allocate the fair value to tangible and identified intangible assets and liabilities acquired. The amounts allocated to net real estate, which includes buildings, are depreciated over the estimated weighted average remaining useful lives ranging from 30 to 40 years. The amounts allocated to above- and below-market leases and to intangible lease assets are amortized over the weighted average lives of the remaining lease terms. As a result of acquisition method accounting, the carrying value of debt for the Solana Beach Centre was adjusted to its fair value, resulting in a $1.1 million discount.

American Assets Trust, Inc. and Subsidiaries

Notes and Management's Assumptions to Pro Forma Consolidated Financial Statements—(Continued)
June 30, 2010 (Unaudited)

The allocation of purchase price shown below is based on our preliminary estimates and is subject to change based on the final determination of the fair value of assets and liabilities acquired. The pro forma adjustments to the historical basis of the balance sheet of Solana Beach Centre are as follows:

	As of June 30, 2010		
	Solana Beach Centre Historical	Acquisition Method Accounting Adjustments	Solana Beach Centre Pro Forma
		(in thousands; unaudited)	
Assets			
Net real estate	$ 55,458	$ 78,752[1]	$ 134,210
Cash and cash equivalents	2,196	—	2,196
Restricted cash	181	—	181
Accounts and notes receivable, net	3,685	(1,610)[2]	2,075
Prepaid expenses and other assets	878	11,603[3]	12,481
Debt issuance costs, net	887	(887)[4]	—
Total assets	$ 63,285	$ 87,858	151,143
Liabilities and Equity			
Liabilities			
Mortgages payable	$ 89,330	$ (1,100)[5]	$ 88,230
Accounts payable and accrued expenses	721	—	721
Security deposits payable	651	—	651
Other liabilities and deferred credits	400	3,015[6]	3,415
Total liabilities	$ 91,102	$ 1,915	93,017
Consideration paid for Solana Beach Centre			58,126[7]
Less: Predecessor's existing ownership interest at fair value			(29,063)[7]
Value of Shares of Common Stock, OP Units and cash exchanged for outside ownership interests			$ 29,063[7]

(1) Includes allocation of purchase price to tangible assets including land, buildings and improvements.

(2) Adjusts for removal of historical straight line rents and adding pro forma straight line rents.

(3) Includes allocation of purchase price to intangible assets including acquired in place leases and above market leases.

(4) Adjusts the historical debt issuance costs to estimated fair value.

(5) Adjusts the mortgage payable to estimated fair value.

(6) Includes allocation of purchase price to intangible liabilities including below market leases.

(7) Amounts are prior to working capital adjustment for Solana Beach Centre as discussed in Note (I).

(D) Reflects the acquisition by us of the ownership interest (including our Predecessor's noncontrolling interest) in the Waikiki Beach Walk Entities in exchange for cash, shares of our common stock, and/or OP units, and the assumption of related debt. Our Predecessor has an 80% noncontrolling interest in the Waikiki Beach Walk Entities through its ownership in ABW Lewers LLC, the entity that owns the Waikiki Beach Walk—Retail

American Assets Trust, Inc. and Subsidiaries

Notes and Management's Assumptions to Pro Forma Consolidated Financial Statements—(Continued)
June 30, 2010 (Unaudited)

property in Honolulu, Hawaii; and a tenant-in-common interest in the Waikiki Beach Walk—Hotel in Honolulu, Hawaii. The retail property and hotel are integrated with each other, and management views them as one mixed-use property. The outside owner in the Waikiki Beach Walk Entities is the managing member of the entities and is responsible for the day to day management of the property. After acquisition of the ownership interest in the Waikiki Beach Walk Entities the mixed-use property owned by the Waikiki Beach Walk Entities will be 100% owned and consolidated by us. The acquisition of the interests in the Waikiki Beach Walk Entities will be accounted for as an acquisition under the purchase method of accounting in accordance with ASC Section 805-10, *Business Combinations*.

The acquisition method of accounting was used to allocate the fair value to tangible and identified intangible assets and liabilities acquired. The amounts allocated to net real estate, which includes buildings, are depreciated over the estimated average remaining useful life of 35 to 40 years. The amounts allocated to above- and below- market leases and to intangible lease assets are amortized over the weighted average lives of the remaining lease terms. As a result of acquisition method accounting, the carrying value of debt for the Waikiki Beach Walk Entities was adjusted to its fair value, resulting in a $19.5 million discount.

The allocation of purchase price shown below is based on our preliminary estimates and is subject to change based on the final determination of the fair value of assets and liabilities acquired. The pro forma adjustments to the historical basis of the combined balance sheet of the Waikiki Beach Walk Entities (derived from a combination of the ABW Lewers LLC and Waikiki Beach Walk Hotel financial statements) are as follows:

	As of June 30, 2010		
	Waikiki Beach Walk Entities - Historical	Acquisition Method Accounting Adjustments	Waikiki Beach Walk Entities-Pro Forma
		(in thousands; unaudited)	
Assets			
Net real estate	$ 177,231	$ 36,919(1)	$ 214,150
Cash and cash equivalents	6,721	—	6,721
Restricted cash	4,584	—	4,584
Accounts and notes receivable, net	3,475	(2,058)(2)	1,417
Prepaid expenses and other assets	9,037	6,286(3)	15,323
Debt issuance costs, net	4,019	(4,019)(4)	—
Total assets	$ 205,067	$ 37,128	242,195
Liabilities and Equity			
Liabilities			
Mortgages payable	198,742	(19,500)(5)	179,242
Unsecured note payable	14,874	—	14,874
Accounts payable and accrued expenses	2,597	—	2,597
Security deposits payable	849	—	849
Other liabilities and deferred credits	652	2,253(6)	2,905
Total liabilities	$ 217,714	$ (17,247)	200,467
Consideration paid for Waikiki Beach Walk Entities			41,728(7)
Less: Predecessor's existing ownership interest at fair value			(33,382)(7)
Value of Shares of Common Stock, OP Units and cash exchanged for outside ownership interests			$ 8,346(7)

American Assets Trust, Inc. and Subsidiaries

Notes and Management's Assumptions to Pro Forma Consolidated Financial Statements—(Continued)
June 30, 2010 (Unaudited)

(1) Includes allocation of purchase price to tangible assets including land, buildings and improvements.

(2) Adjusts for removal of historical straight line rents and adding pro forma straight line rents.

(3) Includes allocation of purchase price to intangible assets including acquired in place leases and above market leases.

(4) Adjusts the historical debt issuance costs to estimated fair value.

(5) Adjusts the mortgage payable to estimated fair value.

(6) Includes allocation of purchase price to intangible liabilities including below market leases.

(7) Amounts are prior to working capital adjustment for the Waikiki Beach Walk Entities as discussed in Note (I).

(E) Reflects the acquisition of an approximately 80,000 square foot vacant building at Carmel Mountain Plaza for $13.2 million. The acquisition price is 100% allocated to net real estate, which includes buildings, and is depreciated over the estimated average remaining useful life of 35 years.

(F) Reflects the elimination of equity method investments of $32.4 million and distributions in excess of earnings in real estate joint ventures of $13.9 million related to the Predecessor's investment in the Solana Beach Centre and Waikiki Beach Walk Entities, which are eliminated in consolidation for pro forma purposes. In addition, accounts receivable and accounts payable of $0.11 million are eliminated in consolidation.

(G) Reflects gross proceeds in this offering of $500.0 million, which will be reduced by $42.5 million to reflect underwriters' discounts and commissions, financial advisory fees and other costs, resulting in net proceeds of $457.5 million. These costs will be charged against the gross offering proceeds upon completion of this offering. In connection with this offering we expect to enter into an agreement for a $ million secured revolving credit facility. In connection with this credit facility, we expect to incur $1.5 in financing fees, which will be amortized over the life of the respective credit facility as an adjustment to interest expense. A summary is as follows (in thousands):

Gross proceeds	$500,000
Transaction costs	(42,500)
Financing fees	(1,500)
	$456,000

(H) In connection with this offering, we anticipate repaying $263.5 million of secured mortgage debt, and $53.6 million of unsecured debt (of which $5.3 million is payable to prior investors). As part of the repayment of debt, we expect to pay $24.3 million in pre-payment fees (defeasance, yield maintenance, and other stated penalties) and loan assumption fees which have been reflected as a one-time charge in this pro forma adjustment. Concurrently with the repayment of the secured mortgage debt, restricted cash held in escrow for insurance and taxes will be released to us as unrestricted cash in the amount of $2.6 million. We will also

American Assets Trust, Inc. and Subsidiaries

Notes and Management's Assumptions to Pro Forma Consolidated Financial Statements—(Continued)
June 30, 2010 (Unaudited)

write-off $1.0 million of historical deferred financing fees associated with these repaid loans which has been reflected as a one-time charge in this pro-forma adjustment. A summary is as follows (in thousands):

Debt paydowns	$(317,151)
Defeasance costs	(24,333)
Release of restricted cash	2,601
Cash paid to non-accredited investors	( )(K)
	$(338,883)

(I) Pursuant to the formation transaction documents, any positive net working capital balance as of a date chosen by us within 45 days prior to the date of our preliminary prospectus will be distributed or paid to existing owners in connection with the closing of the offering, except for $10 million of working capital at the Waikiki Beach Walk Entities, which will be retained by those entities. Therefore $23.1 million of cash will be distributed or paid to prior investors in connection with closing. A summary is as follows (in thousands):

Pro forma working capital at June 30, 2010	$ 33,129
Target working capital for Waikiki Beach Walk Entities	$(10,000)
Cash to be distributed to prior investors in connection with closing	$ 23,129

(J) Represents the conversion of notes receivable from affiliates of $23.9 million and notes payable to affiliates related to certain investors in the Del Monte Center of $1.6 million, which are settled in the formation transactions in exchange for a reduction or increase, as the case may be, in common stock or OP units issued to these affiliates. In addition, we assumed a note payable to noncontrolling investors related to Valencia Corporate Center of $0.3 million as part of the formation transactions and repaid it with the proceeds from the offering. Therefore, these amounts are adjusted to be shown as an offset to equity.

(K) As part of the formation transactions non-accredited investors, who are not eligible to elect to receive either shares of common stock or OP units, will receive in consideration for their interests in our Predecessor's equity cash in an amount calculated to equal the value of the shares or OP units that would be issued to them under the applicable merger or contribution agreement if they were accredited investors. The Predecessor's noncontrolling interests on the pro forma balance sheet will be reduced by the historical cost basis of these acquired noncontrolling interests with the excess purchase price resulting in a reduction to our equity.

(L) Represents the allocation of our Predecessor's equity between controlling and noncontrolling interests. Investors in our Predecessor, Solana Beach Centre and the Waikiki Beach Walk Entities will receive cash, shares of our common stock, and/or OP units based on their irrevocable elections prior to the filing of our registration statement with the Securities and Exchange Commission. Investors in this offering will receive shares of our common stock.

2. Adjustments to the Pro Forma Consolidated Statement of Operations

The adjustments to the pro forma statements of operations for the six-month period ended June 30, 2010 and for the year ended December 31, 2009 are as follows:

(AA) Represents the historical consolidated statements of operations of American Assets Trust, Inc. and its subsidiaries for the six months ended June 30, 2010 and the year ended December 31, 2009. We have had no corporate activity since our formation on July 16, 2010, other than the issuance of 1,000 shares of common stock in connection with the initial capitalization of the company which was paid on August 12, 2010.

American Assets Trust, Inc. and Subsidiaries

Notes and Management's Assumptions to Pro Forma Consolidated Financial Statements—(Continued)
June 30, 2010 (Unaudited)

(BB) Reflects the Predecessor's historical combined statements of operations for the six months ended June 30, 2010 and for the year ended December 31, 2009. As discussed in note (B), our Predecessor's interests in the Controlled Entities will be acquired by our Operating Partnership in exchange for cash, shares of common stock and/or OP units, and the assumption of related debt, and will be recorded at the Predecessor's historical cost basis. As a result, expenses such as depreciation and amortization to be recognized by our Operating Partnership related to the acquired interests are based on the Predecessor's historical cost basis of the related assets and liabilities.

(CC) Reflects the results of operations from the acquisition of the Solana Beach Centre that will occur in connection with the formation transactions as discussed in note (C) above. The acquisition method of accounting was used to allocate the fair value to tangible and identified intangible assets and liabilities acquired. Adjustments to revenues represent the impact of the amortization of the net amount of above- and below-market rents and the net impact of straight-line rents. Adjustments to depreciation and amortization represent the additional depreciation expense and amortization of intangibles as a result of these purchase accounting adjustments.

As a result of acquisition method accounting, the carrying value of debt for the Solana Beach Centre was adjusted to its fair value, resulting in a $1.1 million discount. The discount is amortized to interest expense over the life of the underlying debt instrument. The amounts allocated to net real estate, which include buildings, are depreciated over the estimated weighted average remaining useful lives ranging from 30 to 40 years. The amounts allocated to above- and below-market leases and to intangible lease assets are amortized over the weighted average lives of the related leases ranging from 2.5 to 4 years.

The pro forma adjustments shown below are based on our preliminary estimates and are subject to change based on the final determination of the fair value of assets and liabilities acquired. The pro forma adjustments to the historical statement of operations of the Solana Beach Centre are as follows:

	For the Six Months Ended June 30, 2010			For the Year Ended December 31, 2009		
	Solana Beach Centre Historical	Pro Forma Adjustments	Solana Beach Centre Pro Forma	Solana Beach Centre Historical	Pro Forma Adjustments	Solana Beach Centre Pro Forma
	(in thousands; unaudited)					
Revenue						
Rental income[1]	$ 6,552	$ 592	$ 7,144	$ 12,953	$ 949	$ 13,902
Other property income	1	—	1	24	—	24
Total revenue	6,553	592	7,145	12,977	949	13,926
Expenses						
Rental expenses	757	—	757	1,591	—	1,591
Real estate taxes	427	—	427	843	—	843
General and administrative	425	—	425	794	—	794
Depreciation and amortization	1,806	1,776	3,582	3,700	3,464	7,164
Total operating expenses	3,415	1,776	5,191	6,928	3,464	10,392
Operating income	3,138	(1,184)	1,954	6,049	(2,515)	3,534
Interest income and other, net	4	—	4	23	—	23
Interest expense[2]	(2,716)	(79)	(2,795)	(5,458)	(157)	(5,615)
Net income (loss)	$ 426	$ (1,263)	$ (837)	$ 614	$ (2,672)	$ (2,058)

American Assets Trust, Inc. and Subsidiaries

Notes and Management's Assumptions to Pro Forma Consolidated Financial Statements—(Continued)
June 30, 2010 (Unaudited)

(1) Pro forma rental income includes $23 and $46 of (above) below market lease amortization for the six months ended June 30, 2010 and for the year ended December 31, 2009, respectively. The pro forma straight line rent adjustment was $513 and $756 for the six months ended June 30, 2010 and the year ended December 31, 2009, respectively.

(2) Pro forma interest expense includes $79 and $157 of amortization related to the fair value adjustment related to the assumed debt for the six months ended June 30, 2010 and the year ended December 31, 2009, respectively.

(DD) Reflects the annualization of the acquisition of the ownership interests in the Landmark Entities on June 30, 2010 to reflect the results of operations of this property as if it were acquired on January 1, 2009. The acquisition of the Landmark Entites by the Predecessor was accounted for under the purchase method of accounting in accordance with ASC Section 805-10, *Business Combinations.* Adjustments to revenues represent the impact of the amortization of the net amount of above- and below-market rents and the net impact of straight-line rents. Adjustments to depreciation and amortization represent the additional depreciation expense and amortization of intangibles as a result of these purchase accounting adjustments.

The amounts allocated to net real estate, which includes buildings, are depreciated over the estimated remaining useful life of 40 years. The amounts allocated to above- and below-market leases and to intangible lease assets are amortized over the weighted average life of the remaining terms of the related leases of 3 years.

The pro forma adjustments shown below are based on our preliminary estimates and are subject to change based on the final determination of the fair value of assets and liabilities acquired. The pro forma adjustments to the historical statement of operations of the Landmark Entities are as follows:

	For the Six Months Ended June 30, 2010			For the Year Ended December 31, 2009		
	Landmark-Historical	Pro Forma Adjustments	Landmark-Pro Forma	Landmark-Historical	Pro Forma Adjustments	Landmark-Pro Forma
	(in thousands; unaudited)					
Revenue						
Rental income[(1)]	$ 10,937	$ 965	$ 11,902	$ 21,775	$ 1,657	$ 23,432
Other property income	—	—	—	1	—	1
Total revenue	10,937	965	11,902	21,776	1,657	23,433
Expenses						
Rental expenses	2,768	—	2,768	5,416	—	5,416
Real estate taxes	1,204	—	1,204	2,382	—	2,382
General and administrative	375	—	375	736	—	736
Depreciation and amortization	3,412	174	3,586	6,830	342	7,172
Total operating expenses	7,759	174	7,933	15,364	342	15,706
Operating income	3,178	791	3,969	6,412	1,315	7,727
Interest income and other, net	1	—	1	6	—	6
Interest expense	(3,753)	—	(3,753)	(7,569)	—	(7,569)
Net income (loss)	$ (574)	$ 791	$ 217	$ (1,151)	$ 1,315	$ 164

American Assets Trust, Inc. and Subsidiaries

Notes and Management's Assumptions to Pro Forma Consolidated Financial Statements—(Continued)
June 30, 2010 (Unaudited)

(1) Pro forma rental income includes $417 and $834 of (above) below market lease amortization for the six months ended June 30, 2010 and for the year ended December 31, 2009, respectively. The pro forma straight-line rent adjustment was $(141) and $(124) for the six months ended June 30, 2010 and the year ended December 31, 2009, respectively.

(EE) Reflects adjustments relating to the proposed acquisition of the ownership interests in the Waikiki Beach Walk Entities, as discussed in note (D). The acquisition of the Waikiki Beach Walk Entities will be accounted for under the purchase method of accounting in accordance with ASC Section 805-10, *Business Combinations.* Adjustments to revenues represent the impact of the amortization of the net amount of above- and below-market rents and the net impact of straight-line rents. Adjustments to depreciation and amortization represent the additional depreciation expense and amortization of intangibles as a result of these purchase accounting adjustments.

As a result of acquisition method accounting, the carrying value of debt for the Waikiki Beach Walk Entities was adjusted to its fair value, resulting in a $19.5 million discount. The discount is amortized to interest expense over the life of the underlying debt instrument. The amounts allocated to buildings are depreciated over the estimated remaining useful life of 35 to 40 years. The amounts allocated to above- and below-market leases and to intangible lease assets are amortized over the weighted average life of the remaining terms of the related leases of 7 years.

	For the Six Months Ended June 30, 2010			For the Year Ended December 31, 2009		
	Waikiki Beach Walk Entities - Historical	Pro Forma Adjustments	Waikiki Beach Walk Entities - Pro Forma	Waikiki Beach Walk Entities - Historical	Pro Forma Adjustments	Waikiki Beach Walk Entities - Pro Forma
	(in thousands; unaudited)					
Revenue						
Rental income[1]	$ 18,590	$ (17)	$ 18,573	$ 38,934	$ (66)	$ 38,868
Other property income	1,363	—	1,363	2,780	—	2,780
Total revenue	19,953	(17)	19,936	41,714	(66)	41,648
Expenses						
Rental expenses	10,739	—	10,739	22,054	—	22,054
Real estate taxes	892	—	892	1,767	—	1,767
General and administrative	922	—	922	1,813	—	1,813
Depreciation and amortization	6,267	(2,859)	3,408	12,548	(5,733)	6,815
Total operating expenses	18,820	(2,859)	15,961	38,182	(5,733)	32,449
Operating income	1,133	2,842	3,975	3,532	5,667	9,199
Interest income and other, net	(157)	—	(157)	(315)	—	(315)
Interest expense[2]	(4,749)	(1,393)	(6,142)	(9,401)	(2,786)	(12,187)
Net income (loss)	$ (3,773)	$ 1,449	$ (2,324)	$ (6,184)	$ 2,881	$ (3,303)

(1) Pro forma rental income include $(311) and $(624) of (above) below market lease amortization for the six months ended June 30, 2010 and the year ended December 31, 2009, respectively. The pro forma straight

American Assets Trust, Inc. and Subsidiaries

Notes and Management's Assumptions to Pro Forma Consolidated Financial Statements—(Continued)
June 30, 2010 (Unaudited)

line rent adjustment was $352 and $809 for the six months ended June 30, 2010 and the year ended December 31, 2009, respectively.

(2) Pro forma interest expense includes $1,393 and $2,786 of amortization related to the fair value adjustment related to the assumed debt for the six months ended June 30, 2010 and the year ended December 31, 2009, respectively.

(FF) Reflects the acquisition of an approximately 80,000 square foot vacant building at Carmel Mountain Plaza for $13.2 million, as discussed in Note (E) above. The building is depreciated over its estimated useful life of 35 years. The tenant who formerly occupied the building has been paying its share of expense reimbursements to us of approximately $0.1 million for the six months ended June 30, 2010 and for the year ended December 31, 2009.

(GG) Due to the acquisition of Solana Beach Centre, Landmark and Waikiki Beach Walk Entities, $1.3 million and ($5.0) million of equity in net income (loss) from equity method investments is eliminated in the pro forma condensed consolidated statement of operations for the six months ended June 30, 2010 and the year ended December 31, 2009, respectively. Fee income earned by the Predecessor of $1.8 million and $1.5 million from Solana Beach Centre and Landmark is eliminated in consolidation for pro forma purposes for the six months ended June 30, 2010 and for the year ended December 31, 2009, respectively. In addition, fees paid to the Predecessor by Solana Beach Centre and Landmark of ($0.7) million and ($1.5) million for the six months ended June 30, 2010 and for the year ended December 31, 2009 are eliminated in consolidation.

(HH) Reflects the decrease in net interest expense as a result of the refinancing transactions described more fully in Notes (G) and (H) above. On a pro forma basis we expect interest expense to decrease $7.5 million and $15.3 million for the six months ended June 30, 2010 and for the year ended December 31, 2009, respectively. This decrease is the result of the related paydown of secured and unsecured debt for the six months ended June 30, 2010 and for the year ended December 31, 2009. The pro forma adjustment also includes amortization of capitalized fees in connection with our revolving credit facility of $0.3 million and $0.5 million, respectively, and estimated unused fees of $ and $, respectively, related to the proposed million revolving credit facility for the six months ended June 30, 2010 and for the year ended December 31, 2009.

(II) We expect to incur additional general and administrative expense as a result of becoming a public company, including but not limited to incremental salaries and equity incentives, board of directors fees and expenses, director's and officer's insurance, Sarbanes-Oxley Act of 2002 compliance costs, and incremental audit and tax fees. We estimate the incremental expenses of being a public company will range from $ million to $ million per year in excess of our historical general and administrative expenses. As we have not yet entered into employment agreements or contracts with third parties to provide these services, we have not included these expenses in the accompanying pro forma consolidated statement of operations.

We have included $ and $, respectively of stock-based compensation expense for the six months ended June 30, 2010 and the year ended December 31, 2009 based on equity awards to be granted to certain employees and directors upon completion of this offering.

(JJ) Reflects the allocation of net income (loss) to the noncontrolling interests and stockholders' equity.

(KK) Pro forma earnings (loss) per share—basic and diluted are calculated by dividing pro forma consolidated net income (loss) allocable to the Company's stockholders by the number of shares of common stock issued in this offering and the formation transactions.

American Assets Trust, Inc. and Subsidiaries

Notes and Management's Assumptions to Pro Forma Consolidated Financial Statements—(Continued)
June 30, 2010 (Unaudited)

Basic net income (loss) per common share is calculated based on the weighted average common shares outstanding, which was shares for each of the periods reported. Diluted net income (loss) per common share is calculated based on net income (loss) before allocation to noncontrolling interests by giving effect to the expected exchange of OP units for common stock on a one-for-one basis, which resulted in diluted shares of for each of the periods reported.

Set forth below is a reconciliation of pro forma weighted average shares outstanding:

Number of shares issued in this offering	
Number of shares issued in the formation transactions	

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholder
American Assets Trust, Inc.

We have audited the accompanying balance sheet of American Assets Trust, Inc. (the "Company") as of August 12, 2010. This balance sheet is the responsibility of the Company's management. Our responsibility is to express an opinion on this balance sheet based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the balance sheet is free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the balance sheet, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall balance sheet presentation. We believe that our audit of the August 12, 2010 balance sheet provides a reasonable basis for our opinion.

In our opinion, the balance sheet referred to above presents fairly, in all material respects, the financial position of American Assets Trust, Inc. as of August 12, 2010, in conformity with U.S. generally accepted accounting principles.

/s/ ERNST & YOUNG LLP

San Diego, California
September 13, 2010

American Assets Trust, Inc.

Balance Sheet
As of August 12, 2010

Assets	
Cash and cash equivalents	$1,000
	$1,000
Stockholders' Equity	
Common stock ($0.01 par value, 1,000,000 shares authorized, 1,000 issued and outstanding)	$ 10
Additional paid-in capital	990
	$1,000

See accompanying notes.

American Assets Trust, Inc.

Notes to Balance Sheet
August 12, 2010
(In thousands)

NOTE 1. ORGANIZATION

American Assets Trust, Inc. (the "Company," "we," "our" or "us") was formed as a Maryland corporation on July 16, 2010 to acquire the entities owning various controlling and noncontrolling interests in real estate assets owned and/or managed by Ernest Rady and his affiliates, including the Ernest Rady Trust U/D/T March 13, 1983 (the "Rady Trust"). The Company has filed a Registration Statement on Form S-11 with the Securities and Exchange Commission with respect to a proposed public offering (the "Offering") of common stock. The Company is the sole general partner of American Assets Trust, L.P., our "Operating Partnership," which was formed as a Maryland limited partnership on July 16, 2010. The Company had no operations other than the issuance of 1,000 shares of common stock to the Rady Trust in connection with our initial capitalization. As of July 16, 2010, the shares of common stock of the Company were issued to the Rady Trust in consideration for one-thousand dollars cash, which was paid on August 12, 2010. Our operations are planned to commence upon completion of the Offering and the Formation Transactions (as defined below). Upon completion of the Offering and the Formation Transactions, we expect our operations to be carried on through our Operating Partnership and its wholly owned subsidiary, American Assets Trust, LLC. At such time, we, as the general partner of our Operating Partnership, will control our Operating Partnership. We will consolidate the assets, liabilities, and results of operations of the Operating Partnership.

We have entered into a series of formation transactions (the "Formation Transactions"), pursuant to which we will acquire, substantially currently with the completion of the Offering through a series of merger and contribution transactions, the ownership interests in the entities owning the properties that will comprise our portfolio. Consummation of the Formation Transactions will enable us to (i) consolidate the ownership of our property portfolio under our Operating Partnership; (ii) succeed to the property management business of American Assets Inc., an entity controlled by Ernest Rady; (iii) facilitate the Offering; and (iv) qualify as a real estate investment trust ("REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended, for U.S. federal income tax purposes commencing with the taxable year ending December 31, 2010.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying financial statements are presented on the accrual basis of accounting in accordance with U.S. generally accepted accounting principles ("GAAP"). Subsequent events have been evaluated through the date the financial statements were issued.

Income Taxes

Subject to qualification as a REIT, the Company will be permitted to deduct distributions paid to its stockholders, eliminating the federal taxation of income represented by such distributions at the Company level.

REITs are subject to a number of organizational and operational requirements. If the Company fails to qualify as a REIT in any taxable year, the Company will be subject to federal income tax (including any applicable alternative minimum tax) on its taxable income at regular corporate tax rates.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make certain estimates and assumptions that affect the reported amounts in the balance sheet and accompanying notes. Actual results could differ from those estimates.

Underwriting Commissions and Costs

Underwriting commissions and costs to be incurred in connection with the Offering will be reflected as a reduction of additional paid-in capital.

NOTE 3. OFFERING COSTS

In connection with the Offering, American Assets, Inc. has advanced funds for legal, accounting, and related costs in connection with the Offering and Formation Transactions, which will be reimbursed by the Company upon the consummation of the Offering. Such costs will be deducted from the gross proceeds of the Offering.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Owners
American Assets Trust, Inc. Predecessor

We have audited the accompanying combined balance sheets of American Assets Trust, Inc. Predecessor as of December 31, 2009 and 2008, and the related combined statements of operations, equity, and cash flows for each of the three years in the period ended December 31, 2009. Our audits also included the financial statement schedule of real estate and accumulated depreciation. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the combined financial position of American Assets Trust, Inc. Predecessor at December 31, 2009 and 2008, and the combined results of its operations and its cash flows for each of the three years in the period ended December 31, 2009, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule referred to above, when considered in relation to the basic combined financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

/s/ ERNST & YOUNG LLP

San Diego, California
September 13, 2010

American Assets Trust, Inc. Predecessor

Combined Balance Sheets
(In Thousands)

	As of June 30 2010 (unaudited)	As of December 31, 2009	2008
Assets			
Real estate, at cost			
Operating real estate	$1,126,080	$ 959,724	$ 953,116
Construction in progress	1,540	762	1,347
Held for development	7,937	7,846	7,639
	1,135,557	968,332	962,102
Accumulated depreciation	(206,726)	(194,124)	(168,865)
Net real estate	928,831	774,208	793,237
Cash and cash equivalents	31,592	24,189	18,978
Restricted cash	4,675	4,644	4,527
Accounts receivable, net	20,462	20,767	19,843
Notes receivable from affiliate	21,769	20,969	22,099
Investment in real estate joint ventures	44,577	57,810	69,967
Prepaid expenses and other assets	45,194	34,003	39,993
Debt issuance costs, net of accumulated amortization	2,449	2,401	2,474
Total assets	$1,099,549	$ 938,991	$ 971,118
Liabilities and equity			
Liabilities:			
Secured notes payable	$ 855,368	$ 723,920	$ 724,206
Unsecured notes payable	33,482	12,864	21,143
Notes payable to affiliates	6,496	7,667	9,840
Accounts payable and accrued expenses	8,436	7,193	8,998
Security deposits payable	2,660	2,362	2,402
Other liabilities and deferred credits	23,984	11,573	13,049
Distributions in excess of earnings on real estate joint ventures	13,909	2,449	2,306
Total liabilities	944,335	768,028	781,944
Commitments and contingencies			
Equity:			
Controlling interests	118,929	133,173	148,864
Noncontrolling interests	36,285	37,790	40,310
Total equity	155,214	170,963	189,174
Total liabilities and equity	$1,099,549	$ 938,991	$ 971,118

See accompanying notes.

American Assets Trust, Inc. Predecessor

Combined Statements of Operations
(In Thousands)

	For the six months ended June 30,		Year ended December 31,		
	2010	2009	2009	2008	2007
	(unaudited)				
Revenue:					
Rental income	$ 56,509	$ 55,252	$113,080	$117,104	$113,324
Other property income	1,710	1,691	3,963	3,839	4,184
Total revenue	58,219	56,943	117,043	120,943	117,508
Expenses:					
Rental expenses	9,864	9,854	20,336	22,029	21,674
Real estate taxes	5,948	2,463	8,306	10,890	10,878
General and administrative	3,408	3,756	7,058	8,690	10,471
Depreciation and amortization	14,739	14,902	29,858	31,089	31,376
Total operating expenses	33,959	30,975	65,558	72,698	74,399
Operating income	24,260	25,968	51,485	48,245	43,109
Interest income	31	109	173	1,167	2,462
Interest expense	(21,278)	(21,489)	(43,290)	(43,737)	(42,902)
Fee income from real estate joint ventures	1,943	871	1,736	1,538	2,721
Income (loss) from real estate joint ventures	1,407	(2,503)	(4,865)	(19,272)	(7,191)
Income from continuing operations	6,363	2,956	5,239	(12,059)	(1,801)
Discontinued operations:					
Loss from discontinued operations	—	—	—	(2,071)	(2,874)
Gain on sale of real estate property	—	—	—	2,625	—
Results from discontinued operations	—	—	—	554	(2,874)
Net income (loss)	6,363	2,956	5,239	(11,505)	(4,675)
Net loss attributable to noncontrolling interests	(899)	(656)	(1,205)	(4,488)	(2,140)
Net income (loss) attributable to American Assets Trust Inc. Predecessor	$ 7,262	$ 3,612	$ 6,444	$ (7,017)	$ (2,535)

See accompanying notes.

American Assets Trust, Inc. Predecessor

Combined Statements of Equity
For the six months ended June 30, 2010 (unaudited) and
the years ended December 31, 2009, 2008 and 2007
(In Thousands)

	Controlling Interests	Noncontrolling Interests	Total
Combined equity, December 31, 2006	$ 223,193	$ 59,165	$282,358
Contributions	28,180	6,561	34,741
Distributions	(33,527)	(2,705)	(36,232)
Net loss	(2,535)	(2,140)	(4,675)
Combined equity, December 31, 2007	215,311	60,881	276,192
Contributions	4,863	570	5,433
Distributions	(64,293)	(16,653)	(80,946)
Net loss	(7,017)	(4,488)	(11,505)
Combined equity, December 31, 2008	148,864	40,310	189,174
Contributions	1,168	28	1,196
Distributions	(23,303)	(1,343)	(24,646)
Net income (loss)	6,444	(1,205)	5,239
Combined equity, December 31, 2009	133,173	37,790	170,963
Contributions	—	—	—
Distributions	(21,506)	(606)	(22,112)
Net income (loss)	7,262	(899)	6,363
Combined equity, June 30, 2010 (unaudited)	$ 118,929	$ 36,285	$155,214

See accompanying notes.

American Assets Trust, Inc. Predecessor

Combined Statements of Cash Flows
(In Thousands)

	For the six months ended June 30,		Year ended December 31,		
	2010	2009	2009	2008	2007
	(unaudited)				
OPERATING ACTIVITIES					
Net income (loss)	$ 6,363	$ 2,956	$ 5,239	$(11,505)	$ (4,675)
Net income (loss) from discontinued operations	—	—	—	554	(2,874)
Net income (loss) from continuing operations	6,363	2,956	5,239	(12,059)	(1,801)
Adjustments to reconcile net income (loss) from continuing operations to net cash provided by operating activities:					
Depreciation and amortization	14,739	14,902	29,858	31,089	31,376
Amortization of debt issuance costs	317	327	632	496	488
Net accretion of above and below market lease intangibles	876	701	1,407	170	(294)
Amortization of lease incentives	185	185	370	370	370
(Income) loss from real estate joint ventures	(1,407)	2,503	4,865	19,272	7,191
Distribution of earnings from real estate joint ventures	3,354	3,750	7,361	9,855	4,812
Deferred rent	(700)	(743)	(1,313)	(2,489)	(2,649)
Bad debt expense	254	232	273	488	459
Abandoned project costs	—	—	273	—	—
Changes in operating assets and liabilities	—	—	—	—	—
Increase in restricted cash	(47)	(12)	(50)	(549)	(103)
(Increase) decrease in accounts receivable	(656)	489	117	2,755	(1,552)
(Increase) decrease in prepaid expenses and other assets	653	428	(242)	301	164
(Decrease) increase in accounts payable and accrued expenses	(488)	1,227	(1,297)	129	(6,010)
(Decrease) increase in security deposits and other liabilities	(35)	668	8	(164)	1,714
Net cash provided by operating activities of continuing operations	23,408	27,613	47,501	49,664	34,165
Net cash used in operating activities of discontinued operations	—	—	—	(2,072)	(2,986)
Net cash provided by operating activities	23,408	27,613	47,501	47,592	31,179
INVESTING ACTIVITIES					
Acquisition of real estate, net of cash acquired	(19,718)	—	—	—	—
Capital expenditures—operating properties	(2,260)	(3,060)	(6,782)	(19,442)	(19,223)
Capital expenditures—properties held for development	(91)	(104)	(226)	(480)	(888)
Decrease (increase) in restricted cash	16	(773)	(67)	949	(382)
Investment in real estate joint ventures	—	—	—	—	(47,727)
Distribution of capital from real estate joint ventures	10,607	—	—	11,383	27,871
Leasing commissions	(776)	(339)	(1,599)	(3,309)	(2,041)
Issuance of notes receivable to affiliates	—	(30)	(30)	(15,635)	(29,098)
Repayment of notes receivable from affiliates	800	—	1,160	11,530	24,638
Net cash used in investing activities of continuing operations	(11,422)	(4,306)	(7,544)	(15,004)	(46,850)
Net cash provided by investing activities of discontinued operations	—	—	—	17,115	2,409
Net cash (used in) provided by investing activities	(11,422)	(4,306)	(7,544)	2,111	(44,441)
Financing activities					
Issuance of secured notes payable	7,500	24,887	24,887	74,024	73,315
Repayment of secured notes payable	(9,053)	(20,936)	(25,172)	(53,818)	(50,604)
Issuance of unsecured notes payable	23,000	—	—	—	300
Repayment of unsecured notes payable	(2,382)	(3,525)	(8,279)	(4,032)	(875)
Issuance of notes payable to affiliates	—	—	—	12,000	—
Repayment of notes payable to affiliates	(1,171)	(1,060)	(2,173)	(2,160)	(1,552)
Debt issuance costs	(365)	(404)	(559)	(458)	(243)
Contributions from controlling interests	—	985	1,168	4,863	28,180
Distributions to controlling interests	(21,506)	(13,187)	(23,303)	(64,293)	(33,527)
Contributions from noncontrolling interests	—	—	28	570	6,561
Distributions to noncontrolling interests	(606)	(497)	(1,343)	(16,653)	(2,705)
Net cash (used in) provided by financing activities	(4,583)	(13,737)	(34,746)	(49,957)	18,850
Net increase (decrease) in cash and cash equivalents	7,403	9,570	5,211	(254)	5,588
Cash and cash equivalents, beginning of period	24,189	18,978	18,978	19,232	13,644
Cash and cash equivalents, end of period	$ 31,592	$ 28,548	$ 24,189	$ 18,978	$ 19,232
Supplemental cash flow information					
Cash paid for interest, net of amounts capitalized	$ 21,165	$ 21,607	$ 42,702	$ 43,957	$ 42,669
Supplemental schedule of noncash investing and financing activities					
Accounts payable and accrued expenses for property under development	$ 804	$ 415	$ (508)	$ (4,484)	$ 2,681
Assumption of Landmark debt upon acquisition	$ 133,000	—	—	—	—
Acquisition of Landmark working capital	$ 1,278	—	—	—	—

See accompanying notes.

American Assets Trust, Inc. Predecessor

Notes to Combined Financial Statements
June 30, 2010 and 2009 (unaudited) and December 31, 2009, 2008, and 2007

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Business and Organization

American Assets Trust, Inc. is a Maryland corporation formed on July 16, 2010 that will not have any operating activity until the consummation of our initial public offering and the related acquisition of our predecessor. Accordingly, we believe that a discussion of the results of American Assets Trust, Inc. would not be meaningful for the periods covered by these financial statements prior to that acquisition.

Our Predecessor, which is not a legal entity but rather a combination of certain real estate entities, specializes in the ownership, management, development and redevelopment of real estate properties, which include the (1) property management business of American Assets, Inc. ("AAI") and (2) controlling and noncontrolling interests in 21 retail, office, multifamily and mixed-use operating properties and certain land parcels held for future development located in the western United States (collectively referred to as the "Predecessor" or the "Company"). During all periods presented in the accompanying combined financial statements, the Company is a collection of real estate entities controlled by Ernest Rady and his affiliates, including the Ernest Rady Trust U/D/T March 13, 1983 (the "Rady Trust"), that directly or indirectly own real estate properties. The ultimate owners of the Company are Ernest Rady and his affiliates, including the Rady Trust, and certain others who have minority ownership interests and voting rights. As used in these financial statements, unless the context otherwise requires, "we," "us" and "our company" mean our Predecessor for the periods presented and American Assets Trust, Inc., a Maryland corporation and its consolidated subsidiaries upon consummation of this offering and the formation transactions.

American Assets Trust, Inc. (the "REIT") intends to file a Registration Statement on Form S-11 with the Securities and Exchange Commission with respect to a proposed initial public offering (the "Offering") of its common stock. Substantially concurrently with the consummation of the Offering, which is expected to be completed in 2010, the REIT and its newly formed majority-owned limited partnership, American Assets Trust, L.P. (the "Operating Partnership"), will engage in certain formation transactions (the "Formation Transactions") with the partnerships, limited liability companies and corporations, and their partners, members and stockholders, that hold direct or indirect ownership interests in the properties to be acquired by the REIT and the Operating Partnership. The Formation Transactions will enable us to (1) consolidate the ownership of our property portfolio under the Operating Partnership; (2) succeed to the property management business of AAI; (3) facilitate the Offering; and (4) qualify as a real estate investment trust for U.S. federal income tax purposes commencing with the taxable year ending December 31, 2010.

The operations of the REIT will be carried on primarily through the Operating Partnership. It is the intent of the REIT to elect and qualify to be taxed as a real estate investment trust under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended, commencing with the taxable year ending December 31, 2010. Pursuant to the Formation Transactions, the REIT and the Operating Partnership will acquire indirect ownership of interests in the properties, as well as the property management, leasing, and real estate development operations of AAI, and will assume related debt and other specified liabilities in exchange for shares of common stock of the REIT and units of limited partner interest in the Operating Partnership. The REIT will be fully integrated, self-administered and self-managed. Additionally, the REIT will form a taxable subsidiary that will be owned by the Operating Partnership. The taxable REIT subsidiary, through several wholly owned limited liability companies, will conduct services businesses including property management, construction and property maintenance.

American Assets Trust, Inc. Predecessor

Notes to Combined Financial Statements—(Continued)
June 30, 2010 and 2009 (unaudited) and December 31, 2009, 2008, and 2007

Our combined financial statements include investments in certain real estate joint ventures in which Ernest Rady and his affiliates have significant influence, but not control, over major decisions, including the decision to sell or refinance the properties. These investments, which represent non-controlling 25% to 80% ownership interests, are accounted for using the equity method of accounting. Our investments in certain real estate joint ventures for which we have unilateral control, evidenced by the ability to make all major decisions, such as the acquisition, sale or refinancing of the property without approval of the minority party, have been combined in these financial statements as they are under the common control of Ernest Rady and his affiliates.

As of June 30, 2010, we owned or had a controlling interest in 17 office, retail and multifamily operating properties for which we consolidate their operations, and noncontrolling interests in four office, retail and mixed-use properties, which are accounted for under the equity method of accounting.

A summary of the properties owned by us are as follows:

Controlled Entities (Properties Consolidated by our Predecessor)

Retail

Carmel Country Plaza
Carmel Mountain Plaza
South Bay Marketplace
Rancho Carmel Plaza
Lomas Santa Fe Plaza
Del Monte Center
The Shops at Kalakaua
Waiklele Center
Alamo Quarry

Office

Torrey Reserve Campus
Valencia Corporate Centre
160 King Street
The Landmark at One Market

Multifamily

Loma Palisades
Imperial Beach Gardens
Mariner’s Point
Santa Fe Park RV Resort

Noncontrolled Properties (Equity Method of Accounting by our Predecessor)

Retail

Solana Beach Towne Centre

Office

Solana Beach Corporate Centre
Fireman’s Fund Headquarters

American Assets Trust, Inc. Predecessor

Notes to Combined Financial Statements—(Continued)
June 30, 2010 and 2009 (unaudited) and December 31, 2009, 2008, and 2007

Mixed-Use
Waikiki Beach Walk Retail and Hotel

Principles of Combination and Estimates

The combined financial statements include the accounts of the Predecessor and all entities in which the Predecessor has a controlling interest. When we are the general partner or managing member, we are presumed to control the partnership unless the limited partners or non-managing members possess either (a) the substantive ability to dissolve the partnership or otherwise remove us as the general partner or managing member without cause (commonly referred to as "kick-out rights"), or (b) the right to participate in substantive operating and financial decisions of the limited partnership or limited liability company that are expected to be made in the course of their business. The equity interests of other investors are reflected as noncontrolling interests. All significant intercompany transactions and balances are eliminated in combination. We account for our interests in joint ventures which we do not control using the equity method of accounting. Subsequent events have been evaluated through the date the financial statements were issued.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America, referred to as "GAAP," requires management to make estimates and assumptions that in certain circumstances affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities, and revenues and expenses. These estimates are prepared using management's best judgment, after considering past, current and expected events and economic conditions. Actual results could differ from these estimates.

Offering Costs

In connection with the Offering, affiliates have or will incur legal, accounting, and related costs, which will be assumed or reimbursed by the Company upon the consummation of the Offering. Such costs will be deducted from the gross proceeds of the Offering.

Revenue Recognition and Accounts Receivable

Our leases with tenants are classified as operating leases. Substantially all such leases contain fixed escalations which occur at specified times during the term of the lease. Base rents are recognized on a straight-line basis from when the tenant controls the space through the term of the related lease, net of valuation adjustments, based on management's assessment of credit, collection and other business risks. Percentage rents, which represent additional rents based upon the level of sales achieved by certain tenants, are recognized at the end of the lease year or earlier if we have determined the required sales level is achieved and the percentage rents are collectible. Real estate tax and other cost reimbursements are recognized on an accrual basis over the periods in which the related expenditures are incurred. For a tenant to terminate its lease agreement prior to the end of the agreed term, we may require that they pay a fee to cancel the lease agreement. Lease termination fees for which the tenant has relinquished control of the space are generally recognized on the termination date. When a lease is terminated early but the tenant continues to control the space under a modified lease agreement, the lease termination fee is generally recognized evenly over the remaining term of the modified lease agreement.

We make estimates of the collectability of our accounts receivable related to minimum rents, straight-line rents, expense reimbursements and other revenue. Accounts receivable is carried net of this allowance for doubtful accounts. We generally do not require collateral or other security from our tenants, other than letters of

credit or security deposits. Our determination as to the collectability of accounts receivable and correspondingly, the adequacy of this allowance, is based primarily upon evaluations of individual receivables, current economic conditions, historical experience and other relevant factors. The allowance for doubtful accounts is increased or decreased through bad debt expense. In some cases, primarily relating to straight-line rents, the collection of these amounts extends beyond one year. Our experience relative to unbilled straight-line rents is that a portion of the amounts otherwise recognizable as revenue is never billed to or collected from tenants due to early lease terminations, lease modifications, bankruptcies and other factors. Accordingly, the extended collection period for straight-line rents along with our evaluation of tenant credit risk may result in the nonrecognition of a portion of straight-line rental income until the collection of such income is reasonably assured. If our evaluation of tenant credit risk changes indicating more straight-line revenue is reasonably collectible than previously estimated and realized, the additional straight-line rental income is recognized as revenue. If our evaluation of tenant credit risk changes indicating a portion of realized straight-line rental income is no longer collectible, a reserve and bad debt expense is recorded. At June 30, 2010 (unaudited), December 31, 2009, and December 31, 2008, accounts receivable include approximately $18.7 million, $19.6 million and $18.3 million, respectively, related to straight-line rents. At June 30, 2010 (unaudited), December 31, 2009 and December 31, 2008, our allowance for doubtful accounts was $1.1 million, $0.9 million and $1.1 million, respectively.

We recognize gains on sales of properties upon the closing of the transaction with the purchaser. Gains on properties sold are recognized using the full accrual method when (1) the collectability of the sales price is reasonably assured, (2) we are not obligated to perform significant activities after the sale, (3) the initial investment from the buyer is sufficient and (4) other profit recognition criteria have been satisfied. Gains on sales of properties may be deferred in whole or in part until the requirements for gain recognition have been met.

We receive various fee income from unconsolidated real estate joint ventures including property management fees, construction management fees, acquisition and disposition fees, leasing fees, asset management fees, and financing fees. Fee income is recorded as earned in accordance with the respective fee agreement. Profit from these fees, if any, are eliminated to the extent of our ownership interest in these entities. See Note 14.

Real Estate

Land, buildings and improvements are recorded at cost. Depreciation is computed using the straight-line method. Estimated useful lives range generally from 30 years to a maximum of 40 years on buildings and major improvements. Minor improvements, furniture and equipment are capitalized and depreciated over useful lives ranging from 3 to 15 years. Maintenance and repairs that do not improve or extend the useful lives of the related assets are charged to operations as incurred. Tenant improvements are capitalized and depreciated over the life of the related lease or their estimated useful life, whichever is shorter. If a tenant vacates its space prior to contractual termination of its lease, the undepreciated balance of any tenant improvements are written off if they are replaced or have no future value. In 2009, 2008 and 2007, real estate depreciation expense was $25.3 million, $25.0 million and $24.2 million, respectively, including amounts from discontinued operations. Real estate depreciation expense was $12.6 million for the six months ended June 30, 2010 and 2009 (unaudited).

Acquisitions of properties are accounted for in accordance with the authoritative accounting guidance on acquisitions and business combinations. Our methodology of allocating the cost of acquisitions to assets acquired and liabilities assumed is based on estimated fair values, replacement cost and appraised values. When we acquire operating real estate properties, the purchase price is allocated to land and buildings, intangibles (for acquisitions made subsequent to June 30, 2001) such as in-place leases, and to current assets and liabilities

acquired, if any. The value allocated to in-place leases is amortized over the related lease term and reflected as depreciation and amortization in the statement of operations. The value of above and below market leases are amortized over the related lease term and reflected as either an increase (for below-market leases) or a decrease (for above-market leases) to rental income in the statement of operations. If a tenant vacates its space prior to contractual termination of its lease, the unamortized balance of any in-place lease value is written off to rental income and amortization expense.

We capitalize certain costs related to the development and redevelopment of real estate including pre-construction costs, real estate taxes, insurance and construction costs and salaries and related costs of personnel directly involved. Additionally, we capitalize interest costs related to development and significant redevelopment activities. Capitalization of these costs begins when the activities and related expenditures commence and cease when the project is substantially complete and ready for its intended use, at which time the project is placed in service and depreciation commences. Additionally, we make estimates as to the probability of certain development and redevelopment projects being completed. If we determine that the completion of development or redevelopment is no longer probable, we expense all capitalized costs which are not recoverable.

Impairment of Long Lived Assets

We review for impairment on a property by property basis. Impairment is recognized on properties held for use when the expected undiscounted cash flows for a property are less than its carrying amount at which time the property is written-down to fair value. Properties held for sale are recorded at the lower of the carrying amount or the expected sales price less costs to sell. The sale or disposal of a “component of an entity” is treated as discontinued operations. The operating properties sold by us typically meet the definition of a component of an entity and as such the revenues and expenses associated with sold properties are reclassified to discontinued operations for all periods presented.

Financial Instruments

The estimated fair values of financial instruments are determined using available market information and appropriate valuation methods. Considerable judgment is necessary to interpret market data and develop estimated fair values. The use of different market assumptions or estimation methods may have a material effect on the estimated fair value amounts. Accordingly, estimated fair values are not necessarily indicative of the amounts that could be realized in current market exchanges.

Cash and Cash Equivalents

We define cash and cash equivalents as cash on hand, demand deposits with financial institutions and short term liquid investments with an initial maturity less than three months. Cash balances in individual banks may exceed the federally insured limit of $250,000 by the Federal Deposit Insurance Corporation (the “FDIC”). At June 30, 2010 (unaudited) and December 31, 2009, we had $5.5 million and $1.8 million, respectively, in excess of the FDIC insured limit. At June 30, 2010 (unaudited) and December 31, 2009, we had $20.7 million and $17.3 million, respectively, in money market funds that are not FDIC insured.

Restricted Cash

Restricted cash consists of amounts held by lenders to provide for future real estate tax expenditures, insurance expenditures, and reserves for capital improvements. Activity for accounts related to real estate tax and insurance expenditures is classified as operating activities in the statement of cash flows. Changes in reserves for capital improvements are classified as investing activities in the statement of cash flows.

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Prepaid Expenses and Other Assets

Prepaid expenses and other assets consist primarily of lease costs, lease incentives, acquired in place leases and acquired above market leases. Capitalized lease costs are direct costs incurred which were essential to originate a lease and would not have been incurred had the leasing transaction not taken place and include third party commissions and internal salaries and personnel costs related to obtaining a lease. Capitalized lease costs are amortized over the life of the related lease and included in depreciation and amortization expense on the statement of operations. If a tenant vacates its space prior to the contractual termination of its lease, the unamortized balance of any lease costs are written off. We view these lease costs as part of the up-front initial investment we made in order to generate a long-term cash inflow. Therefore, we classify cash outflows for lease costs as an investing activity in our combined statements of cash flows.

Debt Issuance Costs

Costs related to the issuance of debt instruments are capitalized and are amortized as interest expense over the estimated life of the related issue using the straight-line method which approximates the effective interest method. If a debt instrument is paid off prior to its original maturity date, the unamortized balance of debt issuance costs are written off to interest expense or, if significant, included in “early extinguishment of debt.”

Variable Interest Entities

Certain entities that do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties or in which equity investors do not have the characteristics of a controlling financial interest qualify as variable interest entities (VIE). VIEs are required to be consolidated by their primary beneficiary. The primary beneficiary of a VIE is determined to be the party that absorbs a majority of the entity’s expected losses, receives a majority of its expected returns, or both. We have evaluated our investments in certain joint ventures and determined that these joint ventures do not meet the requirements of a VIE and, therefore, consolidation of these ventures is not required. These investments are accounted for using the equity method. Our investment balances in our real estate joint ventures are presented separately in our combined balance sheets.

Investments in Real Estate Joint Ventures

We analyze our investments in real estate joint ventures under applicable guidance to determine if the venture is considered a VIE and would require consolidation. To the extent that the ventures do not qualify as VIEs, we further assess the venture to determine whether a general partner, or the general partners as a group, controls a limited partnership or similar entity when the limited partners have certain rights in order to determine whether consolidation is required.

We consolidate those ventures that are considered to be variable interest entities where we are the primary beneficiary. For non-variable interest entities, we combine those ventures that Ernest Rady controls through majority ownership interests or where we are the managing member and our partner does not have substantive participating rights. Control is further demonstrated by the ability of the general partner to manage day-to-day operations, refinance debt and sell the assets of the venture without the consent of the limited partner and inability of the limited partner to replace the general partner. We use the equity method of accounting for those ventures where we do not have control over operating and financial policies. Under the equity method of accounting, the investment in each venture is included on our balance sheet; however, the assets and liabilities of

the ventures for which we use the equity method are not included in the balance sheet. The investment is adjusted for contributions, distributions and our proportionate share of the net earnings or losses of each respective venture.

We assess whether there has been impairment in the value of our investments in real estate joint ventures periodically. An impairment charge is recorded when events or changes in circumstances indicate that a decline in the fair value below the carrying value has occurred and such decline is other-than-temporary. The ultimate realization of the investments in unconsolidated real estate joint ventures is dependent on a number of factors, including the performance of the investments and market conditions. Based upon such periodic assessments, no impairment occurred for the years ended December 31, 2009 and 2007 or the six months ended June 30, 2010 and 2009 (unaudited). During the year ended December 31, 2008, we recorded an impairment on one of our investments in unconsolidated real estate joint ventures. See Note 3.

Notes Receivable from Affiliate

Certain entities have made loans to affiliates in order to attain a higher return on excess cash balances, and these loans are classified as notes receivable from affiliates. The notes bear interest at LIBOR and are to be repaid upon demand.

Notes Payable Affiliates

Owners of certain entities have made loans to the entities, and these loans are classified as notes payable to affiliates. The notes bear interest at 10% and mature in 2013.

Income Taxes

We are comprised primarily of limited partnerships and limited liability companies. Under applicable federal and state income tax rules, the allocated share of net income or loss from the limited partnerships and limited liability companies is reportable in the income tax returns of the respective partners and members. We have several C-corporations and S-corporations that hold 1% general partnership interests or managing member interests. Such corporations result in an immaterial amount of income tax liability, which is included in general and administrative expense. Additionally, these corporations do not give rise to any material deferred taxes.

Segment Information

Segment information is prepared on the same basis that our management reviews information for operational decision-making purposes. We operate in three business segments: (i) the acquisition, redevelopment, ownership and management of office real estate, (ii) the acquisition, redevelopment, ownership and management of retail real estate, and (iii) acquisition, redevelopment, ownership and management of multifamily real estate. The products for our office segment primarily include rental of office space and other tenant services, including tenant reimbursements, parking and storage space rental. The products for our retail segment primarily include rental of the retail space and other tenant services, including tenant reimbursements, parking and storage space rental. The products for our multifamily segment include rental of apartments and other tenant services.

FASB Accounting Standards Codification

In June 2009, the Financial Accounting Standards Board (“FASB”) issued new accounting requirements, which make the FASB Accounting Standards Codification (“Codification”) the single source of authoritative literature for U.S. accounting and reporting standards. The Codification is not meant to change

existing GAAP but rather provide a single source for all literature. The standard is effective for all periods ending after September 15, 2009. The standard required our financial statements to reflect Codification or "plain English" references rather than references to FASB Statements, Staff Positions or Emerging Issues Task Force Abstracts. The adoption of this requirement impacted certain disclosures in the financial statement but did not have an impact on our combined financial position, results of operations, or cash flows.

Recently Adopted Accounting Pronouncements

Effective January 1, 2009, we adopted a new accounting standard that broadens and clarifies the definition of a business, which will result in significantly more of our acquisitions being treated as business combinations rather than asset acquisitions. The new requirement is effective for business combinations for which the acquisition date is on or after January 1, 2009, and therefore, will only impact prospective acquisitions with no change to the accounting for acquisitions completed prior to or on December 31, 2008. The new standard requires us to expense all acquisition related transaction costs as incurred which could include broker fees, transfer taxes, legal, accounting, valuation, and other professional and consulting fees. For acquisitions prior to January 1, 2009, these costs were capitalized as part of the acquisition cost. While the adoption did not have a material impact on our financial statements for 2009, the impact to our future combined financial statements will vary significantly depending on the timing and number of acquisitions or potential acquisitions, size of the acquisitions, and location of the acquisitions. The new standard includes several other changes to the accounting for business combinations including requiring contingent consideration to be measured at fair value at acquisition and subsequently remeasured through the income statement if accounted for as a liability as the fair value changes, any adjustments during the purchase price allocation period to be "pushed back" to the acquisition date with prior periods being adjusted for any changes, and the business combination to be accounted for on the acquisition date or the date control is obtained.

Effective January 1, 2009, we adopted a new accounting standard that significantly changes the accounting and reporting of minority interests in the combined financial statements and requires a noncontrolling interest, which was previously referred to as a minority interest, to be recognized as a component of equity rather than included in the mezzanine section of the balance sheet where it was previously presented. The terminology "minority interest" has been changed to "noncontrolling interest". The "minority interest" caption on the statement of operations is now reflected as "net income attributable to noncontrolling interests" and shown after combined net income. This is a presentation only change for minority interest on both the balance sheet and statement of operations and has no impact to total liabilities and shareholders' equity, or net income available to common shareholders. The statement also requires the recognition of 100% of the fair value of assets acquired and liabilities assumed in acquisitions of less than 100% controlling interest with subsequent acquisitions of the noncontrolling interest recorded as equity transactions. The new accounting standard was adopted effective January 1, 2009 and has been applied prospectively except for the presentation changes to the balance sheet and statement of operations which have been applied retrospectively in the 2008 and 2007 combined financial statements. While there was no additional impact on the combined financial statements during 2009, the impact on our future combined financial statements will vary depending on the level of transactions with entities involving noncontrolling interests. The adoption of this standard impacted our accounting for the acquisition of the outside interest in an office property referred to as The Landmark at One Market ("Landmark"). See Note 2.

Effective January 1, 2009, we adopted a new accounting standard that requires enhanced disclosures about an entity's derivative instruments and hedging activities. The adoption did not have an impact on our combined financial statements as we currently have no derivative instruments outstanding.

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Effective January 1, 2009, we adopted a new accounting standard which clarifies the accounting for certain transactions and impairment considerations involving equity method investments. The new accounting standard clarifies that equity method investments should initially be measured at cost, the issuance of shares by the investee would result in a gain or loss on issuance of shares reflected in the income statement of the equity investor, and that a loss in value of an equity investment which is other than a temporary decline should be recognized. The standard was effective on a prospective basis beginning on January 1, 2009, and did not have a material impact on our financial position, results of operations, or cash flows.

Effective January 1, 2009, we adopted certain accounting guidance within ASC Topic 740, Income Taxes ("ASC 740"), with respect to how uncertain tax positions should be recognized, measured, presented and disclosed in the financial statements. The guidance requires the accounting and disclosure of tax positions taken or expected to be taken in the course of preparing our tax returns to determine whether the tax positions are "more-likely-than-not" of being sustained by the applicable tax authority. Tax positions not deemed to meet the more-likely-than-not threshold would be recorded as a tax benefit or expense in the current year. We are required to analyze all open tax years, as defined by the statute of limitations, for all major jurisdictions, which includes federal and certain states. We have had no examinations in progress and none are expected at this time. As of December 31, 2009, we have reviewed all open tax years and major jurisdictions and concluded the adoption of the new accounting guidance resulted in no impact to our financial position or results of operations. There is no tax liability resulting from unrecognized tax benefits relating to uncertain income tax positions taken or expected to be taken in future tax returns.

As of April 1, 2009, we adopted a new accounting standard which establishes general standards of accounting and disclosure of events that occur after the balance sheet date but before the financial statements are issued or available to be issued and requires disclosure of the date through which subsequent events have been evaluated. We have added disclosure in this Note 1 under "Principles of Combination and Estimates" regarding the date through which we have evaluated subsequent events.

In June 2009, the FASB issued a new accounting standard which provides certain changes to the evaluation of a VIE including requiring a qualitative rather than quantitative analysis to determine the primary beneficiary of a VIE, continuous assessments of whether an enterprise is the primary beneficiary of a VIE, and enhanced disclosures about an enterprise's involvement with a VIE. The standard is effective January 1, 2010, and is applicable to all entities in which an enterprise has a variable interest. The adoption of this standard did not have a material impact on our financial position, results of operations, or cash flows.

In January 2010, the FASB issued a new accounting standard to improve disclosure over fair value measurements. The new standard amends previously issued guidance and clarifies and provides additional disclosure requirements relating to recurring and non-recurring fair value measurements. This standard became effective for us on January 1, 2010. The adoption of the standard did not have a material impact on our combined financial statements.

Unaudited interim information

The financial statements as of June 30, 2010 and for the six months ended June 30, 2010 and 2009 are unaudited. In the opinion of management, such financial statements reflect all adjustments necessary for a fair presentation of the respective interim periods. All such adjustments are of a normal recurring nature.

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NOTE 2. REAL ESTATE

A summary of our real estate investments and related encumbrances is as follows (In thousands):

	Cost	Accumulated Depreciation and Amortization	Encumbrances
June 30, 2010 (unaudited)			
Retail	$ 696,421	$ (121,508)	$ 465,734
Office	368,595	(53,829)	286,311
Multifamily	70,541	(31,389)	103,323
	$ 1,135,557	$ (206,726)	$ 855,368
December 31, 2009			
Retail	$ 694,363	$ (112,404)	$ 467,728
Office	203,753	(51,208)	152,846
Multifamily	70,216	(30,512)	103,346
	$ 968,332	$ (194,124)	$ 723,920
December 31, 2008			
Retail	$ 692,723	$ (94,355)	$ 471,508
Office	201,381	(45,855)	149,310
Multifamily	67,998	(28,655)	103,388
	$ 962,102	$ (168,865)	$ 724,206

We completed no significant acquisitions in 2009, 2008, or 2007. On June 30, 2010 (unaudited), we acquired the controlling interests in an office building located in San Francisco, California, known as The Landmark at One Market (“Landmark”). Prior to acquisition of the controlling interests in Landmark, we owned a 35% noncontrolling interest in the entity owning Landmark, which was accounted for under the equity method of accounting. The aggregate net acquisition cost for this property approximated $23.0 million plus assumption of debt of $133.0 million (of which $87.1 million was attributable to the outside owners’ interest). Upon acquisition, we remeasured the assets and liabilities at fair value and recorded a gain of $4.3 million which is included in income (loss) from real estate joint ventures. The gain was calculated based on the difference between the estimated fair value of our ownership interest of $12.1 million compared to our historical cost interest of $7.8 million. The fair value was estimated utilizing the price we paid for the outside ownership interest as an indicator of value; and we compared this value to market data. The fair values assigned to identifiable intangible assets acquired were based on estimates and assumptions determined by management. Using information available at the time the acquisition closed, we allocated the purchase price to tangible assets and liabilities and identified intangible assets and liabilities. We may adjust the preliminary purchase price allocation after obtaining more information about asset valuations and liabilities assumed. The identified intangible assets are being amortized over a weighted average life of 9.1 years.

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The allocation of the estimated fair value of this acquired Landmark asset and liabilities was as follows (In thousands):

Land	$ 32,590
Building	126,795
Tenant improvements	4,685
Total Real Estate	164,070
Cash and cash equivalents	3,249
Accounts and notes receivable, net	193
Prepaid expenses and other assets	14,806
Total assets	182,318
Secured note payable	133,000
Accounts payable and accrued expenses	928
Security deposits payable	162
Other liabilities and deferred credits	13,159
Total liabilities	$ 147,249

We allocated $4.4 million, $8.9 million, and $1.4 million to acquired in place leases, acquired above-market leases, and lease commissions and other intangible assets, respectively. We further allocated $12.1 million to acquired below-market leases liability. We have included Landmark's results of operations in our combined results of operations from the date of acquisition of June 30, 2010.

On August 13, 2008, we sold an office property located in Chicago, Illinois for approximately $16.5 million in cash and recorded a net gain on disposal of $2.6 million. The vacant property was acquired on November 30, 2005 for a purchase price of $14.0 million. It was held for investment and was not leased to tenants.

NOTE 3. INVESTMENTS IN REAL ESTATE JOINT VENTURES

As of June 30, 2010, we have four joint venture arrangements with unrelated third parties. We own from 25% to 80% of each of these ventures. For two of these ventures, we are the general partner or managing member; however, the outside owners are either co-general partner or have substantive participating rights, and we cannot make significant decisions without the outside owners' approval. Accordingly, we account for these investments under the equity method. We act as the manager of the three properties owned by these two ventures and receive fees in accordance with service contracts (Note 14). We have the opportunity to receive performance-based earnings through our ownership interest in these entities.

For the joint venture that owns a mixed-use property in Honolulu, Hawaii, we have an effective 80% limited ownership interest in the property; however, the outside owner is the managing member and manages the day-to-day business of the property. In addition, we do not have "kick-out" rights relating to the outside owners' general partner interest. Accordingly, we account for these investments under the equity method of accounting.

The properties owned by these unconsolidated joint ventures at June 30, 2010, are as follows:

Property	Type	Location
Solana Beach Towne Centre	Retail	Solana Beach, CA
Solana Beach Corporate Centre	Office	Solana Beach, CA
Fireman's Fund Headquarters	Office	Novato, CA
Waikiki Beach Walk	Mixed Use	Honolulu, HI

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As discussed in Note 2, we previously held an investment in an office property in San Francisco, known as Landmark. On June 30, 2010, we acquired the unrelated third party's interest in the property, and the entity is included in our Predecessor balances as of June 30, 2010. Prior to acquisition of the third party interests, we owned 35% of the entity and accounted for our investments under the equity method. We recorded a gain on this acquisition of $4.3 million which is included in income (loss) from real estate joint ventures for the six months ended June 30, 2010. We were the managing member; however, the outside owners had substantive participating rights, and we could not make significant decisions without the outside owners' approval. We are the manager of the property. Landmark's results of operations for the six months ended June 30, 2010 and 2009 and the years ended December 31, 2009, 2008, and 2007 are included in the table below. Landmark's financial position is included in the table below as of December 31, 2009, 2008, and 2007.

During the year ended December 31, 2008, we recorded an impairment loss of $15.8 million on our investment in Fireman's Fund, which is included in equity in losses. The impairment loss was the result of the credit crisis in 2008 which caused increases in capitalization rates and therefore, a decline in the fair value of our investment in Fireman's Fund which we determined was other than temporary. Based on the significance of unobservable inputs used in estimating the fair value of our investment in Fireman's Fund, we classify this fair value investment within Level 3 of the valuation hierarchy (See Note 8 for hierarchy levels).

The following tables provide summarized operating results and the financial position of the unconsolidated entities (In thousands):

	Six Months Ended June 30,		Year Ended December 31,		
	2010	2009	2009	2008	2007
	(Unaudited)				
OPERATING RESULTS					
Revenue	$ 49,954	$ 51,038	$101,458	$107,356	$ 85,973
Expenses					
Other operating expenses	24,607	25,341	41,293	43,877	36,437
Impairment loss[3]	38,465	—	—	—	—
Depreciation and amortization	16,479	16,508	33,066	32,704	28,540
Interest expense	12,335	12,376	33,130	35,020	31,117
Total expenses	91,886	54,225	107,489	111,601	96,094
Net loss	$ (41,932)	$ (3,187)	$ (6,031)	$ (4,245)	$(10,121)
Our share of net loss	$ (2,890)[1]	$ (2,503)	$ (4,865)	$ (3,436)[2]	$ (7,191)

(1) Excludes the gain recorded on the acquisition of Landmark of $4,297.
(2) Excludes the impairment loss on Fireman's Fund of $15,836.
(3) The tenant that occupies the Fireman's Fund Headquarters has a right of first offer to acquire the property. In anticipation of the Formation Transactions discussed in Note 1, the real estate venture that owns the Fireman's Fund Headquarters delivered an offer notice to the tenant in August 2010. The delivery of this offer notice could potentially impact the venture's ability to hold the office property for a long-term investment. This potential inability to hold the real estate property for a long term investment, combined with the decline in fair value of the real estate property below its carrying amount resulted in the venture recording an impairment loss on the real estate property on the venture's financial statements during the six months ended June 30, 2010. During 2008, we recorded an impairment of our equity method investment in the Fireman's Fund Headquarters real estate venture, as we determined that during 2008 the fair value of our equity method investment in the Fireman's Fund Headquarters was below our historical cost as a result

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of a reduction in real estate values due to the credit crisis that occurred during 2008. As a result, for the six months ended June 30, 2010 (unaudited) we did not record our share of the impairment losses recorded on the venture's financial statements, as we believe our investment in the Fireman's Fund Headquarters joint venture at June 30, 2010 (adjusted for previously recorded impairment losses) is not impaired.

	June 30, 2010 (Unaudited)	December 31, 2009	December 31, 2008
	(In thousands)	(In thousands)	
BALANCE SHEETS			
Real estate, net	$ 466,511	$675,388	$701,987
Cash	14,237	18,419	12,222
Other assets	51,298	64,078	74,284
Total assets	$ 532,046	$757,885	$788,493
Mortgages payable	462,083	579,771	583,273
Notes payable to affiliate	14,874	14,874	14,888
Other liabilities	21,774	37,277	41,773
Partners' capital	33,315	125,963	148,559
Total liabilities and partners' capital	$ 532,046	$757,885	$788,493
Our share of unconsolidated debt	$ 247,162	$285,145	$286,280
Our share of partners' capital	$ (5,581)	$ 21,073	$ 29,948
Our investment in real estate joint ventures, net	$ 30,668	$ 55,361	$ 67,661

The difference between our investment in real estate ventures and our share of the underlying capital is attributable to the following items which are included in our investments in the real estate ventures: estimated impairment losses relating to our investments, the allocation of fair value in excess of historical cost recorded upon formation of our investment in the venture, capitalized interest, and intercompany profit elimination adjustments. These differences are recognized by us in our share of net income or loss and upon the sale of the real estate held by the real estate ventures.

NOTE 4. ACQUIRED IN-PLACE LEASES AND ABOVE/BELOW-MARKET LEASES

Acquired in-place leases are included in prepaid expenses and other assets and had a balance of $40.9 million (unaudited), $36.4 million and $36.4 million and accumulated amortization of $28.3 million (unaudited), $27.3 million and $25.1 million at June 30, 2010 (unaudited), December 31, 2009 and 2008, respectively. Acquired above market leases are included in prepaid expenses and other assets and had a balance of $36.4 million (unaudited), $27.5 million and $27.5 million and accumulated amortization of $18.6 million (unaudited), $17.2 million and $14.2 million at June 30, 2010 (unaudited), December 31, 2009 and 2008, respectively. Acquired below market leases are included in other liabilities and deferred credits and had a balance of $38.9 million (unaudited), $26.9 million and $26.9 million and accumulated amortization of $20.2 million (unaudited), $19.6 million and $18.1 million at June 30, 2010 (unaudited), December 31, 2009 and 2008, respectively. The value allocated to in-place leases is amortized over the related lease term as depreciation and amortization expense in the statement of operations. Above and below market leases are amortized over the related lease term as additional rental income for below market leases or a reduction of rental income for above market leases in the statement of operations. Rental income (loss) included net amortization from acquired above and below market leases of $(1.4) million, $(0.2) million and $0.3 million in 2009, 2008 and 2007, respectively and $(0.9) million and $(0.7) million for the six months ended June 30, 2010 and 2009 (unaudited), respectively. The remaining weighted-average amortization period as of December 31, 2009, is 5.1 years, 4.7 years and 8.9 years for in place leases, above market leases and below market leases, respectively.

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Increases (decreases) in net income as a result of amortization of the Company's in-place leases, above-market leases and below-market leases are as follows (In thousands):

	Six Months Ended June 30,		Year Ended December 31,		
	2010	2009	2009	2008	2007
	(Unaudited)				
Amortization of in-place leases	$ (976)	$(1,100)	$(2,173)	$(3,555)	$(4,833)
Amortization of above market leases	(1,453)	(1,465)	(2,931)	(3,207)	(3,441)
Amortization of below market leases	577	764	1,524	3,037	3,735
	$(1,852)	$(1,801)	$(3,580)	$(3,725)	$(4,539)

As of December 31, 2009, the amortization for acquired in-place leases during the next five years and thereafter, assuming no early lease terminations, is as follows:

	In-Place Leases	Above Market Leases	Below Market Leases
		(In thousands)	
Year ending December 31,			
2010	$1,881	$ 2,887	$1,229
2011	1,705	2,875	1,060
2012	1,527	1,658	1,003
2013	1,238	1,167	799
2014	697	400	598
Thereafter	2,117	1,345	2,619
	$9,165	$ 10,332	$7,308

NOTE 5. PREPAID EXPENSES AND OTHER ASSETS

Prepaid expenses and other assets consist of the following as of:

	June 30, 2010 (unaudited)	December 31, 2009	December 31, 2008
		(In thousands)	
Leasing commissions, net of accumulated amortization of $12,535, $12,525 and $11,379, respectively	$ 11,553	$ 11,013	$ 11,547
Acquired above market leases, net	17,808	10,332	13,263
Acquired in-place leases, net	12,609	9,165	11,338
Lease incentives, net of accumulated amortization of $1,295, $1,110 and $740, respectively	2,405	2,590	2,960
Other intangible assets, net of accumulated amortization of $1,097, $1,066 and $1,000, respectively	566	174	239
Prepaid expenses and deposits	253	729	646
Total prepaid expenses and other assets	$ 45,194	$ 34,003	$ 39,993

Lease incentives are amortized over the term of the related lease and included as a reduction of rental income in the statement of operations.

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NOTE 6. OTHER LIABILITIES AND DEFERRED CREDITS

Other liabilities and deferred credits consist of the following as of:

	June 30, 2010 (unaudited)	December 31, 2009	December 31, 2008
		(In thousands)	
Acquired below market leases, net	$ 18,791	$ 7,308	$ 8,833
Prepaid rent	5,146	4,228	4,135
Other liabilities	47	37	81
Total other liabilities and deferred credits	$ 23,984	$ 11,573	$ 13,049

NOTE 7. DEBT

The following is a summary of our total debt outstanding as of June 30, 2010, December 31, 2009 and December 31, 2008 (In thousands):

Description of Debt	Principal Balance as of June 30, 2010 (unaudited)	Principal Balance as of December 31, 2009	Principal Balance as of December 31, 2008	Stated Interest Rate as of June 30, 2010	Stated Maturity Date
Secured Notes Payable					
Alamo Quarry Market [3][8]	$ 98,954	$ 99,886	$101,655	5.670%	January 8, 2014
Carmel Country Plaza[3]	10,271	10,395	10,628	7.365%	January 2, 2013
Carmel Mountain Plaza[3]	63,555	64,195	65,413	5.520%	June 1, 2013
Del Monte Center [5]	82,300	82,300	82,300	4.926%	July 8, 2015
Lomas Santa Fe Plaza[3]	19,850	20,097	20,562	6.934%	May 1, 2013
Rancho Carmel Plaza [3]	8,103	8,156	8,250	5.652%	January 1, 2016
The Shops at Kalakaua [5]	19,000	19,000	19,000	5.449%	May 1, 2015
South Bay Marketplace [5]	23,000	23,000	23,000	5.477%	February 10, 2017
Waikele Center [5]	140,700	140,700	140,700	5.145%	November 1, 2014
160 King Street [1][5]	8,564	8,564	9,764	LIBOR +1.55%	November 1, 2012
160 King Street[6]	33,659	34,367	35,724	5.680%	May 1, 2014
The Landmark at One Market [5][8]	133,000	—	—	5.605%	July 5, 2015
Torrey Reserve Campus:					
ICW Plaza [5]	43,000	43,000	43,000	5.463%	February 1, 2017
North Court [3]	22,281	22,392	16,344	7.220%	June 1, 2019
South Court [3]	13,059	13,223	13,531	6.884%	May 1, 2013
VC I [3]	2,228	1,751	1,777	6.355%	June 1, 2020
VC II [3]	1,852	1,455	1,477	6.355%	June 1, 2020
VC III [3]	3,414	2,683	2,723	6.355%	June 1, 2020
Torrey Daycare [4]	1,673	1,687	848	6.500%	June 1, 2019
Valencia Corporate Center [1][2]	7,798	7,798	7,929	LIBOR +3.00%	November 1, 2010
Valencia Corporate Center[3]	15,783	15,925	16,193	6.520%	October 1, 2012
Imperial Beach Gardens [5]	20,000	20,000	20,000	6.163%	September 1, 2016
Loma Palisades [5]	73,744	73,744	73,744	6.090%	July 1, 2018
Mariner's Point [5]	7,700	7,700	7,700	6.092%	September 1, 2016
Santa Fe Park RV Resort[3]	1,880	1,902	1,944	7.365%	January 2, 2013
	855,368	723,920	724,206		
Unsecured Notes Payable					
Waikele Center Notes [1][5]	10,482	12,864	21,143	LIBOR +3.75%	February 15, 2011
Landmark Note [1][5]	23,000	—	—	LIBOR +2.00%	July 1, 2013
	33,482	12,864	21,143		
Notes Payable to Affiliates					
Del Monte Center Affiliate Notes[7]	6,496	7,667	9,840	10.000%	March 1, 2013
Total Debt Outstanding	$ 895,346	$744,451	$755,189		

American Assets Trust, Inc. Predecessor

Notes to Combined Financial Statements—(Continued)
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(1) Loan is fully or partially guaranteed by owners or affiliates.
(2) Interest rate has floor of 4.50%
(3) Principal payments based on a 30-year amortization schedule.
(4) Principal payments based on a 25-year amortization schedule. The interest rate will be reset to the greater of 6.5% or LIBOR plus 4.00% on June 1, 2014.
(5) Interest only.
(6) Principal payments based on a 20-year amortization schedule.
(7) Principal payments based on a 5-year amortization schedule.
(8) Maturity Date is the earlier of the loan maturity date under the loan agreement, or the "Anticipated Repayment Date" as specifically defined in the loan agreement, which is the date after which substantial economic penalties apply if the loan has not been paid off.

On June 30, 2010, we obtained a $23.0 million unsecured loan related to our acquisition of the third party's interests in Landmark. The loan bears interest at LIBOR plus 2.0% through July 1, 2011 with increases of 0.50% on July 2, 2011 and July 2, 2012. The loan matures on July 1, 2013 and requires interest only payments through maturity, except for a one time repayment of $4.0 million due on or before December 31, 2010.

On June 1, 2010, we closed on a $7.5 million ten year loan secured by a deed of trust on the property owned by Torrey Reserve—VC I, Torrey Reserve—VC II, and Torrey Reserve—VC III in San Diego, California. The loan bears interest at 6.355% and matures on June 1, 2020. The proceeds from the loan were used to repay the outstanding loans on Torrey Reserve—VC I, Torrey Reserve—VC II, and Torrey Reserve—VC III, which had outstanding balances of $5.8 million at the time of repayment.

On March 18, 2010, the Waikele Center unsecured loans were modified to extend their maturity to February 15, 2011. The previous maturity date was February 15, 2010, which had been extended during 2009 from the original maturity date of January 1, 2009.

On May 31, 2009, we refinanced the then-existing loan on the Torrey Reserve—North Court property of $16.2 million with a new $22.5 million loan that bears interest at 7.220% and matures on June 1, 2019.

On May 31, 2009, we refinanced the then existing loan on the Torrey Reserve—Daycare property of $0.9 million with a new $1.7 million loan which bears interest at 6.500%, until the interest adjustment date of June 1, 2014 at which time the interest rate will adjust to the greater of 6.500% or LIBOR plus 4%. The loan matures on June 1, 2019.

On January 20, 2009, the Valencia Corporate Center construction loan was modified, and the loan commitment of $11.7 million was reduced to $10.0 million. On November 5, 2009, the loan was further modified to reduce the loan commitment to $9.2 million and extend the maturity through November 1, 2010. At modification, a principal payment of $0.8 million was made to reduce the outstanding principal balance to $7.8 million.

On June 30, 2008, we refinanced the then existing loan on the Loma Palisades property of $35.8 million with a new $73.7 loan which bears interest at 6.090% and matures on July 1, 2018.

On January 15, 2008, we entered into unsecured loans with certain of the entities that own Del Monte Center pursuant to which they lent us $12.0 million, the proceeds of which were used to fund construction at the property. The notes bear interest at 10.000% and require monthly principal and interest payments. The notes mature on March 1, 2013.

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Certain loans require us to comply with various financial covenants, including the maintenance of minimum debt coverage ratios. As of June 30, 2010 and December 31, 2009, we were in compliance with all loan covenants.

Scheduled principal payments on notes payable as of December 31, 2009 are as follows (In thousands):

	Secured Notes	Unsecured Notes	Notes to Affiliates	Total Principal
Year Ending December 31,				
2010	$ 12,265	$ 12,864	$ 2,401	$ 27,530
2011	6,773	—	2,616	9,389
2012	38,524	—	2,093	40,617
2013	106,485	—	557	107,042
2014	261,001	—	—	261,001
Thereafter	298,872	—	—	298,872
	$ 723,920	$ 12,864	$ 7,667	$ 744,451

Subsequent to December 31, 2009, of the $12.3 million principal payments on secured notes due in 2010, $5.8 million were refinanced to be due beyond December 31, 2010. Subsequent to December 31, 2009, the $12.9 million principal payments on unsecured notes due in 2010 were extended to be due in 2011.

NOTE 8. FAIR VALUE OF FINANCIAL INSTRUMENTS

A fair value measurement is based on the assumptions that market participants would use in pricing an asset or liability. The hierarchy for inputs used in measuring fair value is as follows:

1. Level 1 Inputs—quoted prices in active markets for identical assets or liabilities

2. Level 2 Inputs—observable inputs other than quoted prices in active markets for identical assets and liabilities

3. Level 3 Inputs—unobservable inputs

In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, for disclosure purposes, the level within which the fair value measurement is categorized is based on the lowest level input that is significant to the fair value measurement.

Except as disclosed below, the carrying amount of our financial instruments approximates their fair value. The fair value of our mortgages payable and notes payable is sensitive to fluctuations in interest rates. Discounted cash flow analysis (Level 2) is generally used to estimate the fair value of our mortgages and notes payable. Considerable judgment is necessary to estimate the fair value of financial instruments. The estimates of fair value presented herein are not necessarily indicative of the amounts that could be realized upon disposition of the financial instruments. A summary of the carrying amount and fair value of our notes payable is as follows (In thousands):

	June 30, 2010 (unaudited)		December 31, 2009		December 31, 2008	
	Carrying Value	Fair Value	Carrying Value	Fair Value	Carrying Value	Fair Value
Secured notes payable	$ 855,368	$ 848,797	$ 723,920	$ 693,284	$ 724,206	$ 703,933
Unsecured notes payable	$ 33,482	$ 33,263	$ 12,864	$ 12,728	$ 21,143	$ 19,925

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Notes to Combined Financial Statements—(Continued)
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Due to related party nature, notes to affiliates cannot be measured at fair value.

NOTE 9. COMMITMENTS AND CONTINGENCIES

Legal

We are sometimes involved in lawsuits, warranty claims and environmental matters arising in the ordinary course of business. Management makes assumptions and estimates concerning the likelihood and amount of any potential loss relating to these matters.

We are currently a party to various legal proceedings. We accrue a liability for litigation if an unfavorable outcome is probable and the amount of loss can be reasonably estimated. If an unfavorable outcome is probable and a reasonable estimate of the loss is a range, we accrue the best estimate within the range; however, if no amount within the range is a better estimate than any other amount, the minimum within the range is accrued. Legal fees related to litigation are expensed as incurred. We do not believe that the ultimate outcome of these matters, either individually or in the aggregate, could have a material adverse effect on our financial position or overall trends in results of operations; however, litigation is subject to inherent uncertainties. Also under our leases, tenants are typically obligated to indemnify us from and against all liabilities, costs and expenses imposed upon or asserted against us as owner of the properties due to certain matters relating to the operation of the properties by the tenant.

Commitments

At the Landmark property acquired on June 30, 2010 (unaudited), we lease as lessee a building adjacent to the property under an operating lease effective through, June 30, 2011, which we have the option to extend until 2026 by way of three five-year extension options. Subsequent to June 30, 2010, we have exercised a renewal option for a renewal term of July 1, 2011 through June 30, 2016. Monthly lease payments during this renewal term will be the greater of current payments or 97.5% of the prevailing rate at the start of the renewal term. Current minimum annual payments under the lease (excluding the renewal term) are as follows, as of June 30, 2010 (In thousands):

2010	$ 702
2011	701
Total	$ 1,403

Our Del Monte Center property has ongoing environmental remediation related to ground water contamination. The environmental issue existed at purchase and remediation is expected to conclude within the next three years. The work performed is financed through an escrow account funded by the seller upon purchase of the property. We believe the funds in the escrow account are sufficient for the remaining work to be performed. However, if further work is required costing more than the remaining escrow funds, we could be required to pay such overage, although we may have a contractual claim for such costs against the prior owner or our environmental remediation consultant.

Concentrations of Credit Risk

Our properties are located in Southern California, Northern California, Hawaii, and Texas. The ability of the tenants to honor the terms of their respective leases is dependent upon the economic, regulatory and social

factors affecting the markets in which the tenants operate. Eleven of our consolidated properties are located in Southern California, which exposes us to greater economic risks than if we owned a more geographically disbursed portfolio. Further, revenues derived from tenants in the retail industry were 66% and 65% of total revenues for the six months ended June 30, 2010 (unaudited) and the year ended December 31, 2009, respectively. This makes us susceptible to demand for retail rental space and subject to the risks associated with an investment in real estate with a concentration of tenants in the retail industry. Additionally, four of our retail properties (Alamo Quarry, Del Monte Center, Carmel Mountain Plaza and Waikele Center) accounted for 52% and 51% of total revenues for the six months ended June 30, 2010 (unaudited) and the year ended December 31, 2009, respectively. Two retail tenants, Lowe's and K-Mart at Waikele Center, comprise 5% and 4%, respectively, of our total annualized base revenue, and one office tenant, DLA Piper at 160 King Street, accounts for 4% of our total annualized base revenue as of December 31, 2009. An additional seven tenants (Foodland Supermarket, Sports Authority, Insurance Company of the West, Ross Dress for Less, Borders, Officemax, and Brown & Toland) account for approximately 13% of our annualized base revenues as of December 31, 2009 when aggregated.

NOTE 10. OPERATING LEASES

At December 31, 2009, our office and retail properties are located in three states. At December 31, 2009, we have approximately 420 leases with office and retail tenants. Our residential properties are located in Southern California, and we have approximately 760 leases with residential tenants at December 31, 2009, excluding Santa Fe Park RV Resort.

Our leases with commercial property (office and retail) and residential tenants are classified as operating leases. Commercial property leases generally range from three to ten years (certain leases with anchor tenants may be longer), and in addition to minimum rents, usually provide for cost recoveries for the tenant's share of certain operating costs and also may include percentage rents based on the tenant's level of sales achieved. Leases on apartments generally range from 7 to 15 months, with a majority having 12 month lease terms.

As of December 31, 2009, minimum future commercial property rentals from noncancelable operating leases, before any reserve for uncollectible amounts and assuming no early lease terminations, at our office and retail properties are as follows (In thousands):

2010	$ 95,186
2011	92,274
2012	84,262
2013	66,881
2014	43,604
Thereafter	139,897
Total	$ 522,104

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Notes to Combined Financial Statements—(Continued)
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NOTE 11. COMPONENTS OF RENTAL INCOME AND EXPENSE

The principal components of rental income are as follows (In thousands):

	Six Months Ended June 30,		Year Ended December 31,		
	2010	2009	2009	2008	2007
	(Unaudited)				
Minimum rents					
Retail	$ 28,566	$ 28,575	$ 57,332	$ 58,401	$ 56,818
Office	11,279	11,726	23,066	22,549	20,469
Residential	6,572	6,747	13,361	13,364	13,005
Cost reimbursement	9,210	7,273	17,206	20,286	20,379
Percentage rent	428	376	1,184	1,476	1,565
Other	454	555	931	1,028	1,088
Total rental income	$ 56,509	$ 55,252	$ 113,080	$ 117,104	$ 113,324

Minimum rents include $1.3 million, $2.5 million and $2.6 million for 2009, 2008 and 2007, respectively, and $0.7 million for the six months ended June 30, 2010 and 2009 (unaudited) to recognize minimum rents on a straight-line basis. In addition, minimum rents include $(1.4) million, $(0.2) million and $0.3 million for 2009, 2008 and 2007, respectively, and $(0.9) million and $(0.7) million for the six months ended June 30, 2010 and 2009 (unaudited), respectively, to recognize income from the amortization of above and below market leases.

The principal components of rental expenses are as follows (In thousands):

	Six Months Ended June 30,		Year Ended December 31,		
	2010	2009	2009	2008	2007
	(Unaudited)				
Repairs and maintenance	$ 2,968	$ 2,909	$ 6,271	$ 7,157	$ 7,594
Facilities services	2,270	2,334	4,586	4,416	4,354
Utilities	1,558	1,544	3,184	2,967	2,860
Payroll	1,166	1,091	2,381	2,730	2,200
Hawaii excise tax	525	516	1,044	1,004	969
Bad debt expense	254	232	273	488	459
Insurance	597	573	1,162	1,481	1,528
Marketing	253	327	780	1,078	1,068
Management fees	52	118	194	258	303
Other operating	221	210	461	450	339
Total rental expenses	$ 9,864	$ 9,854	$20,336	$22,029	$21,674

NOTE 12. DISCONTINUED OPERATIONS

Results of properties sold which meet certain requirements, constitute discontinued operations and as such, the operations of these properties are classified as discontinued operations for all periods presented.

On August 13, 2008, we sold an office property located in Chicago, Illinois for approximately $16.5 million in cash and recorded a net gain on disposal of $2.6 million. The vacant property was acquired on November 30, 2005 for a purchase price of $14.0 million. It was held for investment and was not leased to tenants and had no revenue for the periods held.

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Net expenses and net loss from the property's discontinued operations were as shown in the following table (In thousands).

	Year Ended December 31,		
	2009	2008	2007
Expenses of discontinued operations	$—	$ 2,074	$ 2,974
Results from discontinued operations			
Net loss from discontinued operations	$—	$(2,071)	$(2,874)
Gain on sale of real estate from discontinued operations	—	2,625	—
Total net income (loss) from discontinued operations	$—	$ 554	$(2,874)

NOTE 13. RELATED PARTY TRANSACTIONS

We act as the manager for certain unconsolidated real estate joint ventures and earn fees for these services (excluding the Waikiki Beach Walk Property). Each unconsolidated joint venture (excluding the Waikiki Beach Walk Property) has a master management agreement with additional agreements covering property management, construction management, acquisition, disposition and leasing and asset management. These agreements provide for the following fees to be paid to us by these unconsolidated joint ventures:

- *Property Management Fees*—Property management fees are incurred for the operation and management of the properties. Fees range from 1.25% to 5.5% of gross monthly cash collections each month, with minimum monthly fees ranging from $2,500 to $5,000.

- *Construction Management Fees*—Construction management fees are incurred for the management and supervision of construction projects owned by the unconsolidated joint ventures. Fees range from 3.0% to 5.0% of construction and development costs on buildings and improvements for most properties although certain agreements provide for a flat fee. For tenant improvements, fees are 10% of costs for projects where we directly supervise construction subcontractors or 3% for projects where we manage a general contractor, plus hourly fees for employees directly working on the tenant improvements.

- *Acquisition and Disposition Fees*—Acquisition and disposition fees are incurred for services provided in conjunction with acquisition and disposition of the properties owned by the unconsolidated real estate joint venture. Fees are either 0.5% or 1% of the total value of all the acquisition or disposition.

- *Leasing Fees*—Leasing fees are incurred for services provided to procure tenants for the properties owned by the unconsolidated joint venture. Fees are 1% of the total value of all leases executed for the properties, including new leases, renewals, extensions or other modifications.

- *Asset Management Fees/Financing Fees*—Asset management fees are incurred for evaluating property value, performance, and/or condition, appealing property assessments or tax valuations, recommending ways to enhance value, and procuring financing. The fees are charged at hourly rates ranging from $40 – $125 for asset management services. In addition, financing fees are paid for any permanent financing placed on the properties, with fees of either of 25 – 50 basis points times the financed amount or a flat fee of $50,000.

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In addition to the fees noted above, certain unconsolidated joint ventures also reimburse us for monthly maintenance and facilities management services provided to the properties owned by the unconsolidated joint ventures.

Fees earned by us from the unconsolidated joint ventures are as follows (In thousands):

	Six Months Ended June 30,		Year Ended December 31,		
	2010	2009	2009	2008	2007
	(Unaudited)				
Property management fees	$ 791	$ 805	$1,604	$1,407	$ 943
Construction management fees	5	6	12	24	192
Acquisition and disposition fees	—	—	—	—	1,295
Leasing fees	957	—	—	—	—
Asset management fees/financing fees	130	—	—	—	187
Maintenance reimbursements	60	60	120	107	104
	$ 1,943	$ 871	$1,736	$1,538	$2,721

Fees receivable from the unconsolidated joint ventures of $0.11 million, $0.09 million, and $0.11 million as of June 30, 2010 (unaudited), December 31, 2009 and December 31, 2008, respectively, are included in accounts receivable.

Certain affiliated entities have made loans to affiliates in order to attain a higher return on excess cash balances, and these loans are classified as notes receivable from affiliates. The notes bear interest at LIBOR and are to be repaid upon demand. A summary of the outstanding notes receivable balances and interest income are as follows (In thousands):

	As of and for the six months ended June 30,		As of and for the year ended December		
	2010	2009	2009	2008	2007
	(unaudited)				
Notes receivable	$ 21,769	$ 22,129	$20,969	$22,099	$17,994
Interest income	$ 27	$ 47	$ 76	$ 641	$ 1,675

We received unsecured loans on January 15, 2008 from certain of the entities that own Del Monte Center for $12.0 million, the proceeds of which were used to fund construction at the property. The notes bear interest at 10.000% and require monthly principal and interest payments until maturity on March 1, 2013. These notes have been classified as notes payable to affiliates. Interest expense related to these notes was $0.3 million and $0.5 million for the six months ended June 30, 2010 and 2009 (unaudited), respectively, and $0.9 million and $1.0 million for the years ended December 31, 2009 and 2008, respectively.

At Valencia Corporate Center and ICW Plaza we lease space to Insurance Company of the West, which is under the indirect control of Ernest Rady. At Torrey Reserve—South Court we also leased space to Insurance Company of the West for 2007 through 2009. Rental revenue recognized on the leases of $2.2 million and $2.6 million six months ended June 30, 2010 and 2009 (unaudited), respectively, and $4.7 million, $5.4 million, and $5.1 million for the years ended December 31, 2009, 2008 and 2007, respectively, is included in rental income. Prepaid rent from Insurance Company of the West of $0.4 million, $0.3 million, and $0.3 million are included in other liabilities and deferred credits as of June 30, 2010 (unaudited), December 31, 2009, and December 31, 2008, respectively.

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14. SEGMENT REPORTING

Segment information is prepared on the same basis that our management reviews information for operational decision-making purposes. We operate in three business segments: (i) the acquisition, development, redevelopment, ownership and management of office real estate, (ii) the acquisition, development, redevelopment, ownership and management of retail real estate, and (iii) the acquisition, development, redevelopment, ownership and management of multifamily real estate. The products for our office segment primarily include rental of office space and other tenant services, including parking and storage space rental. The products for our retail segment primarily include rental of the retail space and other tenant services, including tenant reimbursements, parking and storage space rental. The products for our multifamily segment include rental of apartments and other tenant services.

Asset information by segment is not reported because we do not use this measure to assess performance and make decisions to allocate resources. Therefore, depreciation and amortization expense is not allocated among segments. Interest and other income, general and administrative expenses, interest expense, and depreciation and amortization expense are not included in segment profit as our internal reporting addresses these items on a corporate level.

Segment profit is not a measure of operating income or cash flows from operating activities as measured by GAAP, and it is not indicative of cash available to fund cash needs and should not be considered an alternative to cash flows as a measure of liquidity. Not all companies calculate segment profit in the same manner. We consider segment profit to be an appropriate supplemental measure to net income because it assists both investors and management in understanding the core operations of our properties.

The following table represents operating activity within our reportable segments. Results for our office segment have been adjusted for all periods presented to exclude results from our Chicago office property sold during 2008 and classified as discontinued operations (In thousands):

	Six Months Ended June 30,		Year Ended December 31,		
	2010	2009	2009	2008	2007
	(Unaudited)				
Total Office*					
Rental revenue	$ 12,886	$ 13,669	$ 26,635	$ 26,556	$ 25,283
Rental expense	(3,612)	(3,417)	(6,764)	(6,743)	(7,017)
Segment profit	9,274	10,252	19,871	19,813	18,266
Total Retail					
Rental revenue	38,242	35,928	75,895	79,763	77,856
Rental expense	(10,000)	(6,706)	(17,191)	(21,178)	(20,138)
Segment profit	28,242	29,222	58,704	58,585	57,718
Total Multifamily					
Rental revenue	7,091	7,346	14,513	14,624	14,369
Rental expense	(2,200)	(2,194)	(4,687)	(4,998)	(5,397)
Segment profit	4,891	5,152	9,826	9,626	8,972
Total segments' profit	$ 42,407	$ 44,626	$ 88,401	$ 88,024	$ 84,956

* Excludes operations of Landmark, as Landmark was accounted for under the equity method of accounting until June 30, 2010.

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The following table is a reconciliation of segment profit to net loss attributable to Predecessor (In thousands):

	Six Months Ended June 30,		Year Ended December 31,		
	2010	2009	2009	2008	2007
	(Unaudited)				
Total segments' profit	$ 42,407	$ 44,626	$ 88,401	$ 88,024	$ 84,956
General and administrative	(3,408)	(3,756)	(7,058)	(8,690)	(10,471)
Depreciation and amortization	(14,739)	(14,902)	(29,858)	(31,089)	(31,376)
Interest income	31	109	173	1,167	2,462
Interest expense	(21,278)	(21,489)	(43,290)	(43,737)	(42,902)
Fee income from real estate joint ventures	1,943	871	1,736	1,538	2,721
Income (loss) from real estate joint ventures	1,407	(2,503)	(4,865)	(19,272)	(7,191)
Results from discontinued operations	—	—	—	554	(2,874)
Net income (loss)	6,363	2,956	5,239	(11,505)	(4,675)
Net income attributable to noncontrolling interests	(899)	(656)	(1,205)	(4,488)	(2,140)
Net income (loss) attributable to predecessor	$ 7,262	$ 3,612	$ 6,444	$ (7,017)	$ (2,535)

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SCHEDULE III—Combined Real Estate and Accumulated Depreciation
(In thousands)

Description	Encumbrance as of December 31, 2009	Initial Cost		Cost Capitalized Subsequent to Acquisition	Gross Carrying Amount at December 31, 2009		Accumulated Depreciation and Amortization	Year Built/ Renovated	Date Acquired	Life on which depreciation in latest income statements is computed
		Land	Building and Improvements		Land	Building and Improvements				
Alamo Quarry Market	$ 99,886	$ 26,396	$ 109,294	4,382	$ 26,396	$ 113,676	$ (22,844)	1997/1999	12/9/2003	35 years
Carmel Country Plaza	10,395	4,200	—	12,285	4,200	12,285	(6,547)	1991	1/10/1989	35 years
Carmel Mountain Plaza	64,195	22,477	65,217	1,091	22,566	66,219	(15,765)	1994	3/28/2003	35 years
Del Monte Center	82,300	27,412	87,570	19,936	27,412	107,506	(22,432)	1967/1984/2006	4/8/2004	35 years
Lomas Santa Fe Plaza	20,097	8,600	11,282	9,416	8,620	20,678	(10,178)	1972/1997	6/12/1995	35 years
Rancho Carmel Plaza	8,156	3,450	—	3,635	3,487	3,598	(2,039)	1993	4/30/1990	35 years
The Shops at Kalakaua	19,000	13,993	10,919	—	13,993	10,919	(1,697)	1971/2006	3/31/2005	35 years
South Bay Marketplace	23,000	4,401	—	11,113	4,401	11,113	(5,980)	1997	9/16/1995	35 years
Waikele Center	140,700	55,593	126,858	54,842	70,210	167,083	(24,923)	1993/2008	9/16/2004	35 years
160 King Street	42,931	15,104	42,578	694	15,104	43,272	(7,307)	2002	5/2/2005	40 years
Torrey Reserve Campus:										
ICW Plaza	43,000	4,095	—	24,155	4,377	23,873	(8,359)	1996-1997	6/6/1989	40 years
North Court	22,392	3,263	—	26,987	6,092	24,158	(9,419)	1997-1998	6/6/1989	40 years
South Court	13,223	3,285	—	25,490	6,275	22,500	(10,604)	1996-1997	6/6/1989	40 years
VC I	1,751	567	—	2,485	997	2,055	(761)	1998	6/6/1989	40 years
VC II	1,455	457	—	2,229	803	1,883	(634)	1998	6/6/1989	40 years
VC III	2,683	389	—	3,713	706	3,396	(1,316)	2000	6/6/1989	40 years
Torrey Daycare	1,687	715	—	2,001	1,247	1,469	(551)	1996-1997	6/6/1989	40 years
Torrey Reserve	—	229	—	2,388	393	2,224	(297)	N/A	6/6/1989	N/A
Valencia Corporate Center	23,723	7,657	—	30,044	7,812	29,889	(11,238)	1999-2007	7/28/1998	40 years
Imperial Beach Gardens	20,000	1,281	4,820	4,309	1,281	9,129	(6,623)	1959/2008-present	7/31/1985	30 years
Loma Palisades	73,744	14,000	16,570	19,311	14,052	35,829	(20,990)	1958/2001-2008	7/20/1990	30 years
Mariner's Point	7,700	2,744	4,540	587	2,744	5,127	(1,618)	1986	5/9/2001	30 years
Santa Fe Park RV Resort	1,902	401	928	727	401	1,655	(1,281)	1971/ 2007-2008	6/1/1979	30 years
Sorrento Valley Holdings	—	2,073	741	2,413	2,073	3,154	(721)	N/A	5/9/1997	N/A
	$ 723,920	$222,782	$ 481,317	$264,233	$245,642	$ 722,690	$ (194,124)			

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Owners
Novato FF Venture, LLC

We have audited the accompanying balance sheets of Novato FF Venture, LLC (the "Venture") as of December 31, 2009 and 2008, and the related statements of operations, equity, and cash flows for each of the three years in the period ended December 31, 2009. These financial statements are the responsibility of the Venture's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Venture's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Venture's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Novato FF Venture, LLC at December 31, 2009 and 2008, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2009, in conformity with U.S. generally accepted accounting principles.

/s/ ERNST & YOUNG LLP

San Diego, California
September 13, 2010

Novato FF Venture, LLC

Balance Sheets
(In Thousands)

	As of June 30, 2010 (unaudited)	As of December 31, 2009	2008
Assets			
Real estate, at cost			
Operating real estate	$ 233,821	$291,719	$291,719
Construction in progress	—	1,980	1,267
	233,821	293,699	292,986
Accumulated depreciation	—	(18,227)	(11,297)
Net real estate	233,821	275,472	281,689
Cash and cash equivalents	2,525	1,121	1,047
Accounts receivable, net	12	12	416
Prepaid expenses and other assets	26,731	28,338	31,536
Debt issuance costs, net of accumulated amortization	607	665	781
Total assets	$ 263,696	$305,608	$315,469
Liabilities and equity			
Liabilities:			
Secured note payable	$ 174,011	$175,199	$177,944
Accounts payable and accrued expenses	922	76	614
Other liabilities and deferred credits	14,982	15,791	17,410
Total liabilities	189,915	191,066	195,968
Commitments and contingencies			
Equity	73,781	114,542	119,501
Total liabilities and equity	$ 263,696	$305,608	$315,469

See accompanying notes.

Novato FF Venture, LLC

Statements of Operations
(In Thousands)

	For the six months ended June 30,		Year ended December 31,		
	2010	2009	2009	2008	2007
	(unaudited)				
Revenue:					
Rental income	$ 12,501	$12,441	$ 24,942	$ 24,855	$14,635
Expenses:					
Rental expenses	15	24	63	148	53
Real estate taxes	1,646	1,585	3,231	3,144	1,625
General and administrative	151	144	271	286	183
Depreciation and amortization	4,994	4,994	9,987	9,987	6,293
Impairment loss	38,465	—	—	—	—
Total operating expenses	45,271	6,747	13,552	13,565	8,154
Operating (loss) income	(32,770)	5,694	11,390	11,290	6,481
Interest income	—	3	4	22	182
Interest expense	(5,241)	(5,332)	(10,703)	(10,907)	(6,973)
Net income (loss)	$(38,011)	$ 365	$ 691	$ 405	$ (310)

See accompanying notes.

Novato FF Venture, LLC

Statements of Equity
(In Thousands)

For the six months ended June 30, 2010 (unaudited) and the years ended December 31, 2009, 2008 and 2007

Equity, December 31, 2006	$ —
Contributions	127,856
Distributions	(2,900)
Net income (loss)	(310)
Equity, December 31, 2007	124,646
Distributions	(5,550)
Net income	405
Equity, December 31, 2008	119,501
Distributions	(5,650)
Net income	691
Equity, December 31, 2009	114,542
Distributions	(2,750)
Net loss	(38,011)
Equity, June 30, 2010 (unaudited)	$ 73,781

See accompanying notes.

Novato FF Venture, LLC

Statements of Cash Flows
(In Thousands)

	For the six months ended June 30,		Year ended December 31,		
	2010	2009	2009	2008	2007
	(unaudited)				
OPERATING ACTIVITIES					
Net (loss) income	$(38,011)	$ 365	$ 691	$ 405	$ (310)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:					
Impairment loss	38,465	—	—	—	—
Depreciation and amortization	4,994	4,994	9,987	9,987	6,293
Amortization of debt issuance costs	58	58	116	116	77
Net accretion of above and below market lease intangibles	(741)	(741)	(1,483)	(1,483)	(934)
Amortization of debt fair market value adjustments	239	239	479	479	302
Changes in operating assets and liabilities					
Decrease (increase) in accounts receivable	—	404	404	(114)	(302)
Decrease (increase) in prepaid expenses and other assets	10	15	5	(14)	(8)
Increase (decrease) in accounts payable and accrued expenses	813	409	(424)	333	116
Increase in other liabilities	—	—	—	100	1,336
Net cash provided by operating activities	5,827	5,743	9,775	9,809	6,570
INVESTING ACTIVITIES					
Acquisition of real estate	—	—	—	—	(127,735)
Capital expenditures	(246)	(583)	(827)	(1,102)	(15)
Net cash used in investing activities	(246)	(583)	(827)	(1,102)	(127,750)
FINANCING ACTIVITIES					
Repayment of secured note payable	(1,427)	(1,351)	(3,224)	(3,020)	(1,892)
Debt issuance costs	—	—	—	—	(974)
Contributions from members	—	—	—	—	127,856
Distributions to members	(2,750)	(2,650)	(5,650)	(5,550)	(2,900)
Net cash (used in) provided by financing activities	(4,177)	(4,001)	(8,874)	(8,570)	122,090
Net increase in cash and cash equivalents	1,404	1,159	74	137	910
Cash and cash equivalents, beginning of period	1,121	1,047	1,047	910	—
Cash and cash equivalents, end of period	$ 2,525	$ 2,206	$ 1,121	$ 1,047	$ 910
Supplemental cash flow information					
Cash paid for interest	$ 4,128	$ 4,204	$10,108	$10,312	$ 6,594
Supplemental schedule of noncash investing and financing activities					
Accounts payable and accrued expenses for property under development	$ 34	$ (141)	$ (114)	$ 165	$ —
Assumption of debt upon acquisition	—	—	—	—	$ 182,076

See accompanying notes.

Novato FF Venture, LLC

Notes to Financial Statements
June 30, 2010 and 2009 (unaudited) and December 31, 2009, 2008 and 2007

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Business and Organization

Novato FF Venture, LLC ("we," "our" or "us") is a joint venture between an entity controlled by Ernest Rady with a 25% managing member interest and General Electric Pension Trust ("GEPT") with a 75% member interest. We were formed in May 15, 2007 to acquire the Fireman's Fund Headquarters office building (the "Property") in Novato, California. The entire Property is triple-net leased to Fireman's Fund Insurance Company. Under the lease agreement, Fireman's Fund Insurance Company, as the tenant, is directly responsible for the property operating expenses, except for insurance and interest. Property taxes are our responsibility and billed to the tenant.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America, referred to as "GAAP," requires management to make estimates and assumptions that in certain circumstances affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities, and revenues and expenses. These estimates are prepared using management's best judgment, after considering past, current and expected events and economic conditions. Actual results could differ from these estimates.

Subsequent events have been evaluated through the date the financial statements were issued.

Revenue Recognition and Accounts Receivable

Our lease with the tenant is classified as an operating lease. The lease contains contingent increases based on the consumer price index. Base rents are recognized when the tenant controls the space through the term of the related lease, net of valuation adjustments, based on management's assessment of credit, collection and other business risk. Real estate taxes and other cost reimbursements are recognized on an accrual basis over the periods in which the related expenditures are incurred.

We make estimates of the collectability of our accounts receivable related to rents, expense reimbursements and other revenue. Accounts receivable is carried net of this allowance for doubtful accounts. We generally do not require collateral or other security from our tenants, other than letters of credit or security deposits. Our determination as to the collectability of accounts receivable and correspondingly, the adequacy of this allowance, is based primarily upon evaluations of individual receivables, current economic conditions, historical experience and other relevant factors. The allowance for doubtful accounts is increased or decreased through bad debt expense. At June 30, 2010 (unaudited), December 31, 2009 and December 31, 2008, we determined no allowance for doubtful accounts was necessary.

Real Estate

Land, buildings and improvements are recorded at cost. Depreciation is computed using the straight-line method. The estimated useful life is 40 years on buildings and major improvements. Minor improvements, furniture and equipment are capitalized and depreciated over useful lives ranging from 3 to 15 years. Maintenance and repairs that do not improve or extend the useful lives of the related assets are charged to operations as incurred. Tenant improvements are capitalized and depreciated over the life of the related lease or their estimated useful life, whichever is shorter. If a tenant vacates its space prior to contractual termination of its lease, the undepreciated balance of any tenant improvements are written off if they are replaced or have no future

value. In 2009, 2008 and 2007, real estate depreciation expense was $6.9 million, $6.9 million and $4.4 million, respectively. Real estate depreciation expense was $3.5 million for the six months ended June 30, 2010 and 2009.

Acquisitions of properties are accounted for in accordance with the authoritative accounting guidance on acquisitions and business combinations. Our methodology of allocating the cost of acquisitions to assets acquired and liabilities assumed is based on estimated fair values, replacement cost and appraised values. When we acquire operating real estate properties, the purchase price is allocated to land and buildings, intangibles such as in-place leases, and to current assets and liabilities acquired, if any. The value allocated to in-place leases is amortized over the related lease term and reflected as depreciation and amortization in the statement of operations. The value of above and below market leases are amortized over the related lease term and reflected as either an increase (for below-market leases) or a decrease (for above-market leases) to rental income in the statement of operations. If a tenant vacates its space prior to contractual termination of its lease, the unamortized balance of any in-place lease value is written off to rental income and amortization expense.

We capitalize certain costs related to the development and redevelopment of real estate including pre-construction costs, real estate taxes, insurance and construction costs. Additionally, we capitalize interest costs related to development and significant redevelopment activities. Capitalization of these costs begin when the activities and related expenditures commence and cease when the project is substantially complete and ready for its intended use, at which time the project is placed in service and depreciation commences. Additionally, we make estimates as to the probability of certain development and redevelopment projects being completed. If we determine the development or redevelopment is no longer probable of completion, we expense all capitalized costs which are not recoverable.

Impairment of Long Lived Assets

Impairment is recognized on our Property held for use when the expected undiscounted cash flows are less than its carrying amount at which time the Property is written-down to fair value. If the Property becomes held for sale it would be recorded at the lower of the carrying amount or the expected sales price less costs to sell.

As discussed in Note 8, the tenant has a right of first offer to acquire the Property. In anticipation of the potential REIT formation transactions, we, together with GEPT, delivered an offer notice to the tenant in August 2010. The tenant has until September 27, 2010 to respond to the offer. This delivery of the offer notice to the tenant potentially impacts our ability to hold the Property for long term investment. As a result of this potential inability to hold the Property for long term investment, combined with the decline in real estate values since the Property's acquisition, we recorded an impairment loss of $38.5 million during the six months ended June 30, 2010. Based on the significance of unobservable inputs used in estimating the fair value of our Property, we classify this fair value measurement within Level 3 of the valuation hierarchy. (See Note 7 for hierarchy levels).

Cash and Cash Equivalents

We define cash and cash equivalents as cash on hand, demand deposits with financial institutions and short term liquid investments with an initial maturity less than three months. Cash balances in individual banks may exceed the federally insured limit of $250,000 by the Federal Deposit Insurance Corporation (the "FDIC"). At June 30, 2010 (unaudited) and December 31, 2009, we had $1.5 million and $0.4 million, respectively, in excess of the FDIC insured limit. At June 30, 2010 (unaudited) and December 31, 2009, we had $0.5 million and $0.5 million, respectively, in money market funds that are not FDIC insured.

Novato FF Venture, LLC

Notes to Financial Statements—(Continued)
June 30, 2010 and 2009 (unaudited) and December 31, 2009, 2008 and 2007

Prepaid Expenses and Other Assets

Prepaid expenses and other assets consist primarily of lease costs, acquired in place leases and acquired above market leases. Capitalized lease costs are direct costs incurred which were essential to originate a lease and would not have been incurred had the leasing transaction not taken place and include third party commissions and fees paid to American Assets, Inc. ("AAI"), an affiliate. Capitalized lease costs are amortized over the life of the related lease and included in depreciation and amortization expense on the statement of operations. If a tenant vacates its space prior to the contractual termination of its lease, the unamortized balance of any lease costs are written off.

Debt Issuance Costs

Costs related to the issuance of debt instruments are capitalized and are amortized as interest expense over the estimated life of the related issue using the straight-line method which approximates the effective interest method. If a debt instrument is paid off prior to its original maturity date, the unamortized balance of debt issuance costs are written off to interest expense or, if significant, included in "early extinguishment of debt."

Income Taxes

We are a limited liability company. Under applicable federal and state income tax rules, the allocated share of net income or loss from a limited liability company is reportable in the income tax returns of the respective members.

Effective January 1, 2009, we adopted certain accounting guidance within ASC Topic 740, *Income Taxes* ("ASC 740"), with respect to how uncertain tax positions should be recognized, measured, presented and disclosed in the financial statements. The guidance requires the accounting and disclosure of tax positions taken or expected to be taken in the course of preparing our tax returns to determine whether the tax positions are "more-likely-than-not" of being sustained by the applicable tax authority. Tax positions not deemed to meet the more-likely-than-not threshold would be recorded as a tax benefit or expense in the current year. Management is required to analyze all open tax years, as defined by the statute of limitations, for all major jurisdictions, which includes federal and certain states. We have had no examinations in progress and none are expected at this time. As of December 31, 2009, management has reviewed all open tax years and major jurisdictions and concluded the adoption of the new accounting guidance resulted in no impact to our financial position or results of operations. There is no tax liability resulting from unrecognized tax benefits relating to uncertain income tax positions taken or expected to be taken in future tax returns.

FASB Accounting Standards Codification

In June 2009, the Financial Accounting Standards Board ("FASB") issued new accounting requirements, which make the FASB Accounting Standards Codification ("Codification") the single source of authoritative literature for U.S. accounting and reporting standards. The Codification is not meant to change existing GAAP but rather provide a single source for all literature. The standard is effective for all periods ending after September 15, 2009. The standard required our financial statements to reflect Codification or "plain English" references rather than references to FASB Statements, Staff Positions or Emerging Issues Task Force Abstracts. The adoption of this requirement impacted certain disclosures in the financial statement but did not have an impact on our financial position, results of operations, or cash flows.

Recently Adopted Accounting Pronouncements

Effective January 1, 2009, we adopted a new accounting standard that broadens and clarifies the definition of a business, which will result in significantly more of our acquisitions being treated as business

combinations rather than asset acquisitions. The new requirement is effective for business combinations for which the acquisition date is on or after January 1, 2009, and therefore, will only impact prospective acquisitions with no change to the accounting for acquisitions completed prior to or on December 31, 2008. The new standard requires us to expense all acquisition related transaction costs as incurred which could include broker fees, transfer taxes, legal, accounting, valuation, and other professional and consulting fees. For acquisitions prior to January 1, 2009, these costs were capitalized as part of the acquisition cost. While the adoption did not have a material impact on our financial statements for 2009, the impact to our future financial statements will vary significantly depending on the timing and number of acquisitions or potential acquisitions, size of the acquisitions, and location of the acquisitions. The new standard includes several other changes to the accounting for business combinations including requiring contingent consideration to be measured at fair value at acquisition and subsequently remeasured through the income statement if accounted for as a liability as the fair value changes, any adjustments during the purchase price allocation period to be “pushed back” to the acquisition date with prior periods being adjusted for any changes, and the business combination to be accounted for on the acquisition date or the date control is obtained.

Effective January 1, 2009, we adopted a new accounting standard that requires enhanced disclosures about an entity’s derivative instruments and hedging activities. The adoption did not have an impact on our financial statements as we currently have no derivative instruments outstanding.

As of April 1, 2009, we adopted a new accounting standard which establishes general standards of accounting and disclosure of events that occur after the balance sheet date but before the financial statements are issued or available to be issued and requires disclosure of the date through which subsequent events have been evaluated.

In June 2009, the FASB issued a new accounting standard which provides certain changes to the evaluation of a variable interest entity (“VIE”) including requiring a qualitative rather than quantitative analysis to determine the primary beneficiary of a VIE, continuous assessments of whether an enterprise is the primary beneficiary of a VIE, and enhanced disclosures about an enterprise’s involvement with a VIE. The standard is effective January 1, 2010, and is applicable to all entities in which an enterprise has a variable interest. The adoption of this standard did not have a material impact on our financial statements.

In January 2010, the FASB issued a new accounting standard to improve disclosure over fair value measurements. The new standard amends previously issued guidance and clarifies and provides additional disclosure requirements relating to recurring and non-recurring fair value measurements. This standard became effective for us on January 1, 2010. The adoption of the standard did not have a material impact on our financial statements.

Unaudited interim information

The financial statements as of June 30, 2010 and for the six months ended June 30, 2010 and 2009 are unaudited. In the opinion of management, such financial statements reflect all adjustments necessary for a fair presentation of the respective interim periods. All such adjustments are of a normal recurring nature.

Novato FF Venture, LLC

Notes to Financial Statements—(Continued)
June 30, 2010 and 2009 (unaudited) and December 31, 2009, 2008 and 2007

NOTE 2. REAL ESTATE PROPERTY

A summary of our real estate property and related encumbrance is as follows (In thousands):

	June 30, 2010	December 31, 2009	December 31, 2008
Land	$ 34,628	$ 43,203	$ 43,203
Building and improvements	199,193	250,496	249,783
	233,821	293,699	292,986
Accumulated depreciation	—	(18,227)	(11,297)
	$233,821	$ 275,472	$ 281,689
Encumbrance	$176,542[1]	$ 177,970[1]	$ 181,193[1]

(1) Balances do not agree to the balance sheet due to an unamortized fair value adjustment.

On May 15, 2007, we acquired our Property located in Novato, California, known as Fireman's Fund Headquarters. The aggregate net acquisition cost for the Property approximated $313.8 million, including assumption of $186.1 million in debt. We estimated the fair values with the assistance of a third party appraisal firm. The fair values assigned to identifiable intangible assets acquired were based on estimates and assumptions determined by management. Using information available at the time the acquisition closed, we allocated the purchase price to tangible assets and liabilities and identified intangible assets and liabilities. The identified intangible assets and liabilities are being amortized over a weighted average life of 11.5 years.

The allocation of the estimated fair value of this acquired asset and liabilities was as follows:

Land	$ 43,203
Building	234,933
Land improvements	6,089
Tenant improvements	7,478
Total Real Estate	291,703
Prepaid expenses and other assets	36,719
Total assets	$ 328,422
Secured note payable	182,076
Other liabilities and deferred credits	18,612
Total liabilities	$ 200,688

We allocated $31.9 million, $1.6 million, and $3.2 million to acquired in-place leases, acquired above market leases, and lease commissions and other intangible assets, respectively, which are included in prepaid expenses and other assets above. We allocated $18.6 million to acquired below market leases liability, which is included in other liabilities and deferred credits above. We further recorded a $4.0 million adjustment to record the assumed debt at fair value, which is included in secured note payable above. The adjustment is being amortized to interest expense over the life of the related debt.

There were no dispositions in 2009, 2008 and 2007 or 2010 to date.

As discussed in Note 8, the tenant has a right of first offer to acquire the Property. In anticipation of the potential REIT formation transactions, we, together with GEPT, delivered an offer notice to the tenant in August 2010.

Novato FF Venture, LLC

Notes to Financial Statements—(Continued)
June 30, 2010 and 2009 (unaudited) and December 31, 2009, 2008 and 2007

The tenant has until September 27, 2010 to respond to the offer. This delivery of the offer notice to the tenant potentially impacts our ability to hold the Property for long term investment. As a result of this potential inability to hold the Property for long term investment, combined with the decline in real estate values since the Property's acquisition, we recorded an impairment loss of $38.5 million during the six months ended June 30, 2010. Based on the significance of unobservable inputs used in estimating the fair value of our Property, we classify this fair value measurement within Level 3 of the valuation hierarchy. (See Note 7 for hierarchy levels).

NOTE 3. ACQUIRED IN-PLACE LEASES AND ABOVE/BELOW-MARKET LEASES

Acquired in-place leases are included in prepaid expenses and other assets and had a balance of $31.9 million at June 30, 2010 (unaudited), December 31, 2009 and 2008, respectively and accumulated amortization of $8.7 million (unaudited), $7.3 million and $4.5 million at June 30, 2010 (unaudited), December 31, 2009 and 2008, respectively. Acquired above market leases are included in prepaid expenses and other assets and had a balance of $1.6 million at June 30, 2010 (unaudited), December 31, 2009 and 2008, respectively and accumulated amortization of $0.4 million (unaudited), $0.4 million and $0.2 million at June 30, 2010 (unaudited), December 31, 2009 and 2008, respectively. Acquired below market leases are included in other liabilities and deferred credits and had a balance of $18.6 million at June 30, 2010 (unaudited), December 31, 2009 and 2008, respectively and accumulated amortization of $5.1 million (unaudited), $4.3 million and $2.6 million at June 30, 2010 (unaudited), December 31, 2009 and 2008, respectively. The value allocated to in-place leases is amortized over the related lease term as depreciation and amortization expense in the statement of operations. Above and below market leases are amortized over the related lease term as additional rental income for below market leases or a reduction of rental income for above market leases in the statement of operations. Rental income included net amortization from acquired above and below market leases of $1.5 million, $1.5 million and $0.9 million in 2009, 2008 and 2007, respectively and $0.7 million for the six months ended June 30, 2010 and 2009 (unaudited). The remaining weighted-average amortization period as of December 31, 2009, is 8.9 years for in-place leases, above-market leases and below-market leases.

Increases (decreases) in net income as a result of amortization of the in-place leases, above-market leases and below-market leases are as follows (In thousands):

	Six Months Ended June 30,		Year Ended December 31,		
	2010	2009	2009	2008	2007
	(Unaudited)				
Amortization of in-place leases	$(1,385)	$(1,385)	$(2,770)	$(2,770)	$(1,745)
Amortization of above market leases	(68)	(68)	(135)	(135)	(85)
Amortization of below market leases	809	809	1,618	1,618	1,019
	$ (644)	$ (644)	$(1,287)	$(1,287)	$ (811)

Novato FF Venture, LLC

Notes to Financial Statements—(Continued)
June 30, 2010 and 2009 (unaudited) and December 31, 2009, 2008 and 2007

As of December 31, 2010, the amortization for acquired in-place leases during the next five years and thereafter, assuming no early lease terminations, is as follows (In thousands):

	In Place Leases	Above Market Leases	Below Market Leases
Year ending December 31,			
2010	$ 2,770	$ 135	$ 1,618
2011	2,770	135	1,618
2012	2,770	135	1,618
2013	2,770	135	1,618
2014	2,770	135	1,618
Thereafter	10,718	526	6,265
	$ 24,568	$ 1,201	$ 14,355

NOTE 4. PREPAID EXPENSES AND OTHER ASSETS

Prepaid expenses and other assets consist of the following as of (In thousands):

	June 30, 2010 (unaudited)	December 31, 2009	December 31, 2008
Leasing commissions, net of accumulated amortization of $898, $755 and $468, respectively	$ 2,402	$ 2,545	$ 2,833
Acquired above market leases, net	1,134	1,201	1,337
Acquired in place leases, net	23,183	24,568	27,337
Other intangible assets, net of accumulated amortization of $2, $2 and $1, respectively	6	6	7
Prepaid expenses and deposits	6	18	22
Total prepaid expenses and other assets	$ 26,731	$ 28,338	$ 31,536

NOTE 5. OTHER LIABILITIES AND DEFERRED CREDITS

Other liabilities and deferred credits consist of the following as of (In thousands):

	June 30, 2010 (unaudited)	December 31, 2009	December 31, 2008
Acquired below market leases, net	$ 13,546	$ 14,355	$ 15,974
Prepaid rent	1,436	1,436	1,436
Total other liabilities and deferred credits	$ 14,982	$ 15,791	$ 17,410

Novato FF Venture, LLC

Notes to Financial Statements—(Continued)
June 30, 2010 and 2009 (unaudited) and December 31, 2009, 2008 and 2007

NOTE 6. SECURED NOTE PAYABLE

The following is a summary of our secured note payable outstanding as of June 30, 2010 (unaudited), December 31, 2009 and December 31, 2008 (In thousands):

	Balance as of				
	June 30, 2010 (unaudited)	December 31, 2009	December 31, 2008	Stated Interest Rate as of June 30, 2010	Stated Maturity Date
Secured Note	$ 176,542	$ 177,970	$ 181,193	5.548%	October 1, 2015[1]
Unamortized fair value adjustment	(2,531)	(2,771)	(3,249)		
	$ 174,011	$ 175,199	$ 177,944		

(1) Anticipated maturity date is October 1, 2015, which is the date that if the loan is not paid the interest rate increases to 10.548%. Extended maturity date is October 15, 2018.

Scheduled principal payments as of December 31, 2009 are as follows (In thousands):

	Total Principal
Year Ending December 31,	
2010	$ 3,134
2011	3,590
2012	3,770
2013	4,015
2014	4,246
Thereafter	159,215
	177,970
Unamortized fair value adjustment	(2,771)
	$ 175,199

NOTE 7. FAIR VALUE OF FINANCIAL INSTRUMENTS

A fair value measurement is based on the assumptions that market participants would use in pricing an asset or liability. The hierarchies for inputs used in measuring fair value are as follows:

1. Level 1 Inputs—quoted prices in active markets for identical assets or liabilities

2. Level 2 Inputs—observable inputs other than quoted prices in active markets for identical assets and liabilities

3. Level 3 Inputs—unobservable inputs

In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, for disclosure purposes, the level within which the fair value measurement is categorized is based on the lowest level input that is significant to the fair value measurement.

Except as disclosed below, the carrying amount of our financial instruments approximates their fair value. The fair value of our note payable is sensitive to fluctuations in interest rates. Discounted cash flow

analysis (Level 2) is generally used to estimate the fair value of our note payable. Considerable judgment is necessary to estimate the fair value of financial instruments. The estimates of fair value presented herein are not necessarily indicative of the amounts that could be realized upon disposition of the financial instruments. A summary of the carrying amount and fair value of our note payable is as follows (In thousands):

	June 30, 2010		December 31, 2009		December 31, 2008	
	Carrying Value	Fair Value	Carrying Value	Fair Value	Carrying Value	Fair Value
Note payable	$ 174,011	$ 176,542	$ 175,199	$ 174,445	$ 177,944	$ 177,809

NOTE 8. COMMITMENTS AND CONTINGENCIES

Legal

We are sometimes involved in lawsuits, warranty claims and environmental matters arising in the ordinary course of business. Management makes assumptions and estimates concerning the likelihood and amount of any potential loss relating to these matters. We accrue a liability for litigation if an unfavorable outcome is probable and the amount of loss can be reasonably estimated. If an unfavorable outcome is probable and a reasonable estimate of the loss is a range, we accrue the best estimate within the range; however, if no amount within the range is a better estimate than any other amount, the minimum within the range is accrued. Legal fees related to litigation are expensed as incurred. We do not believe that the ultimate outcome of any legal matters, either individually or in the aggregate, could have a material adverse effect on our financial position or overall trends in results of operations; however, litigation is subject to inherent uncertainties. Also under our lease, the tenant is obligated to indemnify us from and against all liabilities, costs and expenses imposed upon or asserted against us as owner of the property due to certain matters relating to the operation of the property by the tenant.

Concentrations of Credit Risk

Fireman's Fund Insurance Company is the only tenant in the Fireman's Fund Headquarters building. The audited financial statements of Fireman's Fund Insurance Company, presented on a statutory basis, are available to the public on the company's website. Our lease with Fireman's Fund Insurance Company expires in November 2018.

Tenant Right of First Offer

Pursuant to the terms of our lease agreement, the tenant, Fireman's Fund Insurance Company, has a right of first offer to purchase the Property if we propose to sell all or a portion of the Property. In the event that we choose to dispose of this Property, we would be required to notify Fireman's Fund Insurance Company, prior to offering this Property to any other potential buyer, of the price at which we would be willing to sell the Property and Fireman's Fund Insurance Company would have the right, within 30 days of receiving such notice, to agree to purchase the Property at that price. The existence of this right of first offer could adversely impact our ability to obtain the highest possible price for this Property during the term of the lease as we would not be able to offer this Property to potential purchasers through a competitive bid process or in a similar manner designed to maximize the value obtained for the Property without first offering to sell this Property to Fireman's Fund Insurance Company. As part of an anticipated REIT formation transaction we delivered an offer notice to the tenant on August 27, 2010. If the tenant accepts the offer, it would be binding, and we could be forced to sell the Property to the tenant.

Novato FF Venture, LLC

Notes to Financial Statements—(Continued)
June 30, 2010 and 2009 (unaudited) and December 31, 2009, 2008 and 2007

NOTE 9. OPERATING LEASES

Our lease with Fireman's Fund Insurance Company is classified as an operating lease.

As of December 31, 2009, minimum future rents from Fireman's Fund Insurance Company's noncancelable operating lease, before any reserve for uncollectible amounts and assuming no early lease termination, is as follows (In thousands):

2010	$ 20,228
2011	20,228
2012	20,228
2013	20,228
2014	20,228
Thereafter	77,877
Total	$ 179,017

NOTE 10. COMPONENTS OF RENTAL INCOME

The principal components of rental income are as follows (In thousands):

	Six Months Ended June 30,		Year Ended December 31,		
	2010	2009	2009	2008	2007
	(Unaudited)				
Minimum rents	$ 10,855	$ 10,855	$21,711	$21,711	$13,010
Cost reimbursement	1,646	1,586	3,231	3,144	1,625
Total rental income	$ 12,501	$ 12,441	$24,942	$24,855	$14,635

Minimum rents include $1.5 million, $1.5 million and $0.9 million for 2009, 2008 and 2007, respectively, and $0.7 million for the six months ended June 30, 2010 and 2009 (unaudited) to recognize income from the amortization of above and below market leases.

NOTE 11. RELATED PARTY TRANSACTIONS

Our property is managed by the property management business of AAI, an affiliate. The on-site property management of the Property is performed by the tenant. These agreements provide for the following fees to be paid to AAI:

- *Property Management Fees*—Property management fees are incurred for the operation and management of the property. Fees are 1.25% of gross monthly cash collections each month. Property management fees are included general and administrative expenses on the statement of operations.

- *Acquisition and Disposition Fees*—Acquisition and disposition fees are incurred for services provided in conjunction with acquisition and disposition of the property. Fees are 1% of the total value of acquisition or disposition. Acquisition fees are capitalized to the related real estate asset for acquisitions prior to January 1, 2009 and expensed thereafter. Disposition fees are recorded as a reduction to the gain/loss on disposition.

Novato FF Venture, LLC

Notes to Financial Statements—(Continued)
June 30, 2010 and 2009 (unaudited) and December 31, 2009, 2008 and 2007

The AAI fees incurred are as follows (In thousands):

	Six Months Ended June 30,		Year Ended December 31,		
	2010	2009	2009	2008	2007
	(Unaudited)				
Property management fees	$ 126	$ 126	$ 253	$ 256	$ 148
Acquisition and Disposition fees	—	—	—	—	1,560
	$ 126	$ 126	$ 253	$ 256	$ 1,708

Fees payable to AAI of $0.02 million, $0.02 million, and $0.02 million are included in accounts payable and accrued expenses as of June 30, 2010 (unaudited), December 31, 2009, and December 31, 2008, respectively.

ABW Lewers LLC

Consolidated Financial Statements

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ABW Lewers LLC

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Report of Independent Auditors

To the Members of
ABW Lewers LLC

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations and members' deficiency, and cash flows present fairly, in all material respects, the financial position of ABW Lewers LLC and its subsidiaries (the "Company") at December 31, 2009 and 2008 and the results of their operations and their cash flows in the three-year period ended December 31, 2009 in conformity with accounting principles generally accepted in the United States of America. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

The interim financial information for the six-month periods ended June 30, 2010 and 2009 has not been subjected to auditing procedures and accordingly, we express no opinion on it.

/s/ ACCUITY LLP

Honolulu, Hawaii
March 31, 2010

ABW Lewers LLC

Consolidated Balance Sheets
June 30, 2010 (Unaudited) and December 31, 2009 and 2008
(All Dollars in Thousands)

	June 30, 2010 (Unaudited)	December 31, 2009	December 31, 2008
Assets			
Current assets			
Cash	$ 4,222	$ 3,961	$ 2,408
Restricted cash	674	655	416
Investment securities available-for-sale	1,000	900	1,400
Receivables, net	288	461	743
Receivables from affiliates, net	21	—	—
Prepaid expenses	79	1	188
Total current assets	6,284	5,978	5,155
Property and equipment, net	91,037	94,131	100,236
Deferred loan and lease costs, net of accumulated amortization of $2,075 at June 30, 2010, $1,756 at December 31, 2009 and $1,162 at December 31, 2008	3,692	4,009	4,712
Investment in equity method investee	2,991	3,044	3,030
Restricted cash and certificate of deposit	365	357	530
Noncurrent receivables, net	25	101	110
Deferred rent receivable	2,058	2,001	1,751
Total assets	$ 106,452	$ 109,621	$ 115,524
Liabilities and Members' Deficiency			
Current liabilities			
Accounts payable and accrued expenses	$ 348	$ 412	$ 493
Deferred revenue	249	341	329
Payable to affiliates, net	—	156	467
Current portion of notes payable	251	245	232
Total current liabilities	848	1,154	1,521
Deferred rent payable	228	210	153
Security deposits	849	878	957
Notes payable	145,491	145,619	145,864
Total liabilities	147,416	147,861	148,495
Members' deficiency	(40,964)	(38,240)	(32,971)
Total liabilities and members' deficiency	$ 106,452	$ 109,621	$ 115,524

The accompanying notes are an integral part of the consolidated financial statements.

ABW Lewers LLC

Consolidated Statements of Operations and Members' Deficiency
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

	(Unaudited) Six-Month Periods Ended June 30,		Years Ended December 31,		
	2010	2009	2009	2008	2007
Revenue					
Rental	$ 4,667	$ 4,925	$ 9,667	$ 10,887	$ 8,907
Common area recoveries	1,123	1,190	2,409	2,334	1,567
Other tenant recoveries	526	501	1,018	1,277	960
Parking	1,050	1,085	2,166	1,936	1,544
Other	41	24	52	116	82
Total revenues	7,407	7,725	15,312	16,550	13,060
Operating expenses					
Common area expenses	1,208	1,248	2,495	2,472	1,978
Other tenant expenses	577	543	1,111	1,358	1,033
Parking expense	591	567	1,146	990	803
Landlord expense	40	37	89	111	145
Depreciation expense	3,094	3,084	6,208	6,153	5,683
Other	447	672	1,111	1,367	663
Total operating expenses	5,957	6,151	12,160	12,451	10,305
Operating income	1,450	1,574	3,152	4,099	2,755
Other income (expense)					
Interest income	3	10	15	11	17
Interest expense	(4,124)	(4,130)	(8,315)	(8,262)	(7,908)
Equity in net loss of uncombined affiliate	(53)	(53)	(106)	(110)	(107)
Net other expense	(4,174)	(4,173)	(8,406)	(8,361)	(7,998)
Net loss	(2,724)	(2,599)	(5,254)	(4,262)	(5,243)
Members' deficiency					
Beginning of period/year	(38,240)	(32,971)	(32,971)	(12,388)	66,077
Member contributions	—	—	—	—	49,692
Member distributions	—	—	(15)	(16,321)	(122,914)
End of period/year	$ (40,964)	$ (35,570)	$ (38,240)	$ (32,971)	$ (12,388)

The accompanying notes are an integral part of the consolidated financial statements.

ABW Lewers LLC

Consolidated Statements of Cash Flows
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

	(Unaudited) Six-Month Periods Ended June 30,		Years Ended December 31,		
	2010	2009	2009	2008	2007
Cash flows from operating activities					
Net loss	$(2,724)	$(2,599)	$(5,254)	$(4,262)	$ (5,243)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities					
Depreciation	3,094	3,084	6,208	6,153	5,683
Amortization of deferred loan and leasing fees	319	322	661	631	512
Write-off of deferred loan fees	—	—	—	—	271
Write-off of deferred leasing fees	—	27	70	86	—
Equity in net loss of uncombined affiliate	53	53	106	110	107
Straight-line effect on rent expense	18	28	57	76	77
Straight-line effect on rental income	(57)	(220)	(250)	(531)	(1,085)
Bad debt expense	104	338	425	673	93
Changes in					
Receivables	145	(208)	(134)	(693)	(541)
Prepaid expenses	(78)	103	187	6	(194)
Accrued leasing fees	(2)	(32)	(28)	(115)	(989)
Accounts payable and accrued expenses	36	147	46	(176)	(68)
Deferred revenue	(92)	73	12	109	170
Payable to affiliates, net	(177)	90	(48)	(196)	580
Security deposits	(29)	(60)	(79)	10	136
Net cash provided by (used in) operating activities	610	1,146	1,979	1,881	(491)
Cash flows from investing activities					
Capital expenditures	(100)	(239)	(230)	(1,132)	(29,841)
Proceeds from sales of investment securities	—	100	1,000	—	—
Purchase of investment securities and certificate of deposit	(100)	—	(500)	(1,400)	—
Change in restricted cash	(27)	65	(66)	34	560
Construction costs recovered from affiliates	—	—	—	—	48,663
Investment in affiliate	—	—	—	—	(194)
Net cash provided by (used in) investing activities	(227)	(74)	204	(2,498)	19,188

The accompanying notes are an integral part of the consolidated financial statements.

ABW Lewers LLC

Consolidated Statements of Cash Flows
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

	(Unaudited) Six-Month Periods Ended June 30,		Years Ended December 31,		
	2010	2009	2009	2008	2007
Cash flows from financing activities					
Member contributions	—	—	—	—	49,692
Member distributions	—	—	(398)	(16,622)	(122,190)
Loan costs paid	—	—	—	(89)	(3,390)
Repayments of note payable	(122)	(116)	(232)	(214)	(90,937)
Proceeds from note payable	—	—	—	16,000	150,000
Net cash used in financing activities	(122)	(116)	(630)	(925)	(16,825)
Net increase (decrease) in cash	261	956	1,553	(1,542)	1,872
Cash					
Beginning of period/year	3,961	2,408	2,408	3,950	2,078
End of period/year	$4,222	$3,364	$3,961	$ 2,408	$ 3,950
Supplemental cash flow information					
Interest paid	$3,946	$3,953	$7,960	$ 7,909	$ 7,355
Noncash investing and financing activities					
Capital contributions payable to equity method investee	$ —	$ —	$ 110	$ —	$ —
Accrued member distribution	31	423	31	423	724

The accompanying notes are an integral part of the consolidated financial statements.

ABW Lewers LLC

Notes to Consolidated Financial Statements
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

1. Operations and Ownership

ABW Lewers LLC, a Hawaii limited liability company (the "Company"), was formed on October 11, 2005 pursuant to an operating agreement (the "Agreement") between Beach Walk Holdings, LP, which holds an 80% membership interest, and WBW Retail LLC ("WBW"), which holds a 20% membership interest. Under the terms of the operating agreement WBW agreed to develop and guarantee lien-free completion of a retail and entertainment center known as Waikiki Beach Walk (the "Center"). Construction of the Center was completed and operations commenced in December of 2006. As a limited liability company, the owners' liability is limited to the amount of their investment in the Company.

The Center, consisting of 96,569 leasable square feet of retail, restaurant and storage space and 377 parking stalls for public and valet parking is owned by two subsidiaries, ABW Holdings LLC and ABW 2181 Holdings LLC. At June 30, 2010, the Center was 96.5% leased and occupied.

The Center is managed and operated by Retail Resort Properties LLC ("RRP"), a limited liability company wholly owned by Outrigger Hotels Hawaii ("OHH"), pursuant to the provisions of a management agreement. OHH is indirectly affiliated with WBW.

The Company incurred a net loss of $2,724, with net cash provided by operating activities of $610 for the six-month period ended June 30, 2010. As of June 30, 2010, the Company had a members' deficiency of $40,964, which resulted from approximately $139,000 in member distributions made in connection with the long-term mortgage financing in 2008 and 2007. Although the Company had liabilities in excess of assets at June 30, 2010, management believes that the Company will be able to meet current obligations and debt service requirements with future cash flows from operations and cash balances on hand.

2. Summary of Significant Accounting Policies

Basis of Presentation

In the opinion of management, the accompanying consolidated financial statements of the Company include all adjustments necessary to present fairly its financial position as of June 30, 2010 and December 31, 2009 and 2008 and the results of operations and members' deficiency and cash flows for the six-month period ended June 30, 2010 and 2009 and the years ended December 31, 2009, 2008, and 2007. The results of operations for the period ended June 30, 2010 are not necessarily indicative of the results to be expected for the full year or for any future period.

Principles of Consolidation

The consolidated financial statements of the Company include two wholly-owned single-purpose subsidiaries, ABW Holdings LLC ("ABWH") and ABW 2181 Holdings LLC ("ABW 2181"). These two entities own the Center and all other operating assets of the Company. The consolidated financial statements include the accounts and transactions of these subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions for the reporting period and as of the financial

statement date. These estimates and assumptions affect the reported amounts of assets and liabilities, and the reported amounts of revenue and expenses. Actual results could differ from those estimates.

Cash Equivalents

The Company considers all highly liquid debt instruments with an original maturity of three months or less to be cash equivalents.

Restricted Cash and Certificate of Deposit

At June 30, 2010 and December 31, 2009 and 2008, restricted cash consisted of reserves held by the ABWH mortgage lender for current real estate and property taxes and insurance of $674, $655 and $416, respectively. At June 30, 2010 and December 31, 2009 and 2008, the lender held noncurrent reserves for tenant improvement allowances that amounted to $54, $47 and $220. The balances at June 30, 2010 and December 31, 2009 represents the Company's funding of a tenant improvement allowance reserve as required by the terms of the loan agreement. The balance at December 31, 2008 represented tenant allowances that were subsequently paid to tenants during 2009 after required reimbursement documentation was submitted to the Company. The lender also held $10 in noncurrent reserves for the replacement of property and equipment.

As of February 2008, the Company was also required to maintain a $300 certificate of deposit with the ABW 2181 mortgage loan lender, which is reflected in noncurrent restricted cash at June 30, 2010 and December 31, 2009 and 2008.

The Company received funding from one of the Parent's members for the completion of certain construction in connection with the retail portion on the Waikiki Beach Walk project. The Company used the funds provided to pay the remaining construction costs and distributed substantially all of the remaining amounts to the contributing member during 2009. At June 30, 2010, the Company estimates that approximately $31 is due to one of the Parent's members.

Receivables and Allowance for Doubtful Accounts

Receivables are initially recorded at the amount invoiced or otherwise due and normally do not bear interest. The Company maintains an allowance for doubtful accounts to reduce receivables to their estimated collectible amount. Management estimates the allowance for doubtful accounts based on a specific review of individual customer accounts as well as the overall aging of accounts, historical collection experience and current economic and business conditions. Generally, accounts past due by more than 30 days are considered delinquent. However, delinquent accounts are not written off until, in the judgment of management, they are deemed uncollectible based on an evaluation of the specific circumstances of each customer.

The allowance for doubtful accounts represents management's best estimate of potential uncollectible receivables. However, because of the uncertainties inherent in assessing the collectibility of receivables, it is at least reasonably possible that there will be near-term changes in management's estimate due to actual losses and other factors.

ABW Lewers LLC

Notes to Consolidated Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

Deferred Loan and Lease Costs

Loan fees and origination costs associated with the Company's debt are deferred and amortized using the straight-line method over the term of the debt agreement, which approximates the effective interest method. These amounts are recorded as interest expense in the consolidated financial statements. The initial direct costs of leases, such as legal fees and leasing commissions are deferred and amortized using the straight-line method over the term of the lease agreements. These amounts are recorded as a reduction of rental income in the consolidated financial statements. Amortization expense for the six-month periods ended June 30, 2010 and 2009 and years ended December 31, 2009, 2008 and 2007 approximated $319, $322, $661, $631 and $512, respectively.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation. Maintenance and repairs are charged to expense and betterments and replacements are capitalized. Property retired or otherwise disposed of is removed from the appropriate asset and related accumulated depreciation accounts. Gains and losses on sales of assets are reflected in current operations.

Depreciation is calculated using the straight-line method based upon the shorter of the asset life or lease term using the following useful lives:

Building and improvements	15 – 39 years
Tenant improvements	Lease term
Furniture, fixtures and equipment	5 years

The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The assessment of impairment is based on the estimated future net cash flows from operating activities compared with the carrying value of the asset. If the future net cash flows of an asset are less than the carrying value, a write-down is recorded and measured by the amount of the difference between the carrying value of the asset and the fair value of the asset. No impairment losses were recognized in 2010, 2009, 2008 or 2007.

Changes in estimates, based on market conditions and various other factors, may impact the future recoverability of the carrying value.

Investments

Investments in marketable debt securities are classified as available-for-sale and are reported at fair value based on quoted market prices. Realized gains and losses from the sale of investments available-for-sale are determined using the specific identification method.

Investments in minority-owned entities where the Company has the ability to significantly influence the operations of the investee are accounted for using the equity method of accounting. Equity method accounting is discontinued when an investee's accumulated losses equals or exceeds the Company's investment and the Company has no obligation to provide further financial support to the investee.

ABW Lewers LLC

Notes to Consolidated Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

Revenue Recognition

The Company's operating revenue is derived principally from operating leases with retail and restaurant tenants including base minimum rents, percentage rents based on tenants' sales volume, recoveries of substantially all recoverable expenditures, and rents collected from transient patrons of the Center's parking stalls.

Substantially all tenants in the Center are required to pay percentage rents based on sales in excess of agreed levels during the lease year. The Company recognizes percentage rent only when each tenant's sales exceed a negotiated sales threshold.

The Company structures its leases in such a manner as to enable the Company to recover a significant portion of the property's operating, real estate, repairs and maintenance, and advertising and promotion expenses from the tenants. Property operation expenses typically include utilities, insurance, security, janitorial, landscaping, and administrative expenses. Revenues from tenants for recoverable portions of these expenses are recognized in the period the applicable expenditures are incurred.

The Company recognizes rental revenue from leases with scheduled rent escalations on a straight-line basis over the lease term. The difference between rental revenue recognized for financial statement purposes and the actual rent received approximated $2,058, $2,001, and $1,751 at June 30, 2010 and December 31, 2009 and 2008, respectively.

The Company reports revenues net of general excise taxes collected from or passed on to tenants.

Rental Expense

The Company recognizes its long-term land sublease, which contains scheduled rent escalations on a straight-line basis over the sublease term. The difference between rental expense recognized for financial statement purposes and the actual rent paid or currently due is reported as noncurrent deferred rent payable and approximated $228, $210, and $153 at June 30, 2010 and December 31, 2009 and 2008, respectively.

Advertising

Advertising costs are expensed as incurred. Advertising expense for the six-month periods ended June 30, 2010 and 2009 and years ended December 31, 2009, 2008 and 2007 approximated $174, $179, $348, $374 and $280, respectively. Substantially all advertising costs were funded through tenant contributions as required by the provisions of the lease agreements.

Income Taxes

The Company is considered to be a flow through entity for federal and state income tax purposes. Income or loss for tax purposes accrues to the members and accordingly, no provision or credit for income taxes is reflected in the consolidated financial statements.

ABW Lewers LLC

Notes to Consolidated Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

Concentrations of Credit Risk

Financial instruments that potentially expose the Company to concentrations of credit risk consist principally of cash, the restricted certificate of deposit, and receivables.

All of the Company's cash, with the exception of the restricted cash held by the ABWH lender's servicer, and the certificate of deposit are held with financial institutions in the State of Hawaii. At times, balances are in excess of depository insurance limits, however, the Company does not believe that this concentration of credit risk represents a material risk of loss with respect to its financial position.

The Company extends credit to customers in the normal course of business. To control credit risk, the Company performs ongoing credit evaluations and normally requires security in the form of cash deposits.

The Company's operations are primarily dependent on Hawaii's tourism industry. A significant portion of the Center's business is derived from tourists from the mainland United States and Japan.

Fair Value Measurements

For financial and nonfinancial assets and liabilities reported at fair value, the Company defines fair value as the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market in an orderly transaction between market participants. The Company measures fair value using observable and unobservable inputs based on the following hierarchy:

- **Level 1:** Quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date.
- **Level 2:** Inputs other than quoted market prices included within Level 1 that are observable for an asset or liability, either directly or indirectly.
- **Level 3:** Unobservable inputs for an asset or liability reflecting the reporting entity's own assumptions. Level 3 inputs should be used to measure fair value to the extent that observable Level 1 or 2 inputs are not available.

ABW Lewers LLC

Notes to Consolidated Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

Segment Information

The Company has two reportable segments, the rental segment and parking segment, which are organized on the basis of revenues and assets. The rental segment primarily derives its revenues from operating leases with retail and restaurant tenants. The parking segment derives its revenues from rents collected from transient users of the Center's parking spaces. The performance of each segment is evaluated on the basis of operating income. The following is a summary of each reportable segment's operating income and the segment's assets as of and for the years ended December 31, 2009, 2008, and 2007:

	Year Ended December 31, 2009		
	Rental	Parking	Total
Revenues	$ 13,146	$2,166	$ 15,312
Operating income	2,442	710	3,152
Depreciation expense	5,898	310	6,208
Segment assets	104,914	4,707	109,621
Expenditures for property and equipment	103	—	103

	Year Ended December 31, 2008		
	Rental	Parking	Total
Revenues	$ 14,614	$1,936	$ 16,550
Operating income	3,461	638	4,099
Depreciation expense	5,845	308	6,153
Segment assets	110,512	5,012	115,524
Expenditures for property and equipment	850	—	850

	Year Ended December 31, 2007		
	Rental	Parking	Total
Revenues	$ 11,516	$1,544	$ 13,060
Operating income	2,298	457	2,755
Depreciation expense	5,399	284	5,683
Segment assets	115,804	5,277	121,081
Expenditures for property and equipment	29,841	—	29,841

3. Receivables

Current receivables consisted of the following:

	June 30, 2010	December 31,	
		2009	2008
	(Unaudited)		
Trade receivables	$ 650	$720	$1,086
Notes receivable	175	182	—
Other receivables	88	60	83
	913	962	1,169
Less: Allowance for doubtful accounts	625	501	426
	$ 288	$461	$ 743

ABW Lewers LLC

Notes to Consolidated Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

At June 30, 2010 and December 31, 2009 and 2008, noncurrent notes receivable amounted to $25, $101 and $110, net of an allowance for doubtful accounts of $255, $267 and $75, respectively.

4. Property and Equipment

Property and equipment consisted of the following:

	June 30, 2010 (Unaudited)	December 31, 2009	December 31, 2008
Land	$ 22,447	$ 22,447	$ 22,447
Building and improvements	75,123	75,123	75,098
Furniture, fixtures and equipment	14,773	14,773	14,767
	112,343	112,343	112,312
Less: Accumulated depreciation	(21,306)	(18,212)	(12,076)
	$ 91,037	$ 94,131	$100,236

5. Investments

At June 30, 2010 and December 31, 2009 and 2008, the cost and fair values of investment securities available-for-sale (municipal obligations) were $1,000, $900 and $1,400, respectively. These securities are classified as Level 2 (significant other observable inputs) under the fair value hierarchy as the fair value of the securities are estimated by extrapolated data and proprietary pricing models that use observable inputs, such as prices in active markets. There were no realized gains (losses) or unrealized holding gains (losses) associated with the securities during 2010, 2009 or 2008.

The Company has an 18.55% interest in WBW CHP LLC (“WBW CHP”), an entity that was formed to construct a chill water plant to provide air conditioning to the Center and other adjacent facilities. As of June 30, 2010 and December 31, 2009, and 2008, the Company’s investment in the uncombined affiliate approximated $2,991, $3,044, and $3,030, respectively. The operating expenses of WBW CHP, other than depreciation, are recovered through reimbursements from its members.

Condensed financial information of the investment is as follows:

	Six-Month Period Ended June 30, 2010 (Unaudited)	Years Ended December 31, 2009	Years Ended December 31, 2008
Assets	$ 16,303	$16,507	$16,837
Liabilities	176	95	502
	$ 16,127	$16,412	$16,335
Revenue	$ —	$ —	$ —
Expenses	285	569	590
	$ (285)	$ (569)	$ (590)

ABW Lewers LLC

Notes to Consolidated Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

6. Notes Payable

Long-term debt consisted of the following:

	June 30, 2010 (Unaudited)	December 31, 2009	December 31, 2008
Mortgage note payable in monthly interest-only payments at 5.387%. Outstanding principal and interest is due in July 2017. The loan is collateralized by all assets of ABWH and its operations.	$ 130,310	$ 130,310	$ 130,310
Mortgage note payable in monthly installments of principal and interest of $90 with an interest rate of 5.375%, based on a 30-year amortization. Outstanding principal and interest is due in February 2013. The loan is collateralized by all assets of ABW 2181 and its operations.	15,432	15,554	15,786
Total long-term debt	145,742	145,864	146,096
Current portion	251	245	232
Noncurrent portion	$ 145,491	$ 145,619	$ 145,864

In February 2007, the Company entered into a 10-year $150,000 mortgage loan agreement with a financial institution. The mortgage loan, which matures in July 2017, requires monthly interest-only payments at 5.387%. The mortgage is collateralized by all of the assets and operations of the Company. In October 2007, the principal balance of the mortgage loan was reduced to $130,310 through a prepayment without penalty. The mortgage loan proceeds were used to repay a construction loan and pay $123,000 in distributions to the Parent's members.

The mortgage loan agreement requires that ABWH maintain a minimum quarterly debt coverage ratio of 1.10:1, as defined. Should ABWH not meet the minimum debt coverage ratio, ABWH must deposit all cash receipts from operations into a restricted trust account controlled by the lender and the funds will be used to fund debt service payments and pay operating expenses pursuant to the approved annual operating budget. Any residual funds remaining in the account after the foregoing disbursements are then distributed to ABWH. The restriction can be removed when the debt service coverage exceeds 1.15:1 for three consecutive calendar months on a trailing 12-month basis. ABWH was in compliance with all debt covenants as of June 30, 2010 and December 31, 2009 and 2008.

In February 2008, the Company, through ABW 2181, entered into a $16,000 mortgage loan agreement with a financial institution. The mortgage loan agreement has a five-year term, with two one-year extension options. The Company is required to comply with various annual debt covenants, including maintenance of a minimum annual debt coverage ratio of 1.20:1, as defined. The Company was in compliance with all debt covenants as of December 31, 2009 and 2008. Management distributed substantially all of the loan proceeds to the members during 2008.

ABW Lewers LLC

Notes to Consolidated Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

Maturities of notes payable subsequent to June 30, 2010 are as follows:

Years ending December 31,	
2010 (remainder of year)	$ 123
2011	259
2012	273
2013	14,777
2014	—
Thereafter	130,310
	$ 145,742

7. Lease Arrangements

As Lessor

The Company leases retail and restaurant space under noncancelable agreements that expire at various dates through 2022. Total rental income recognized was as follows:

	(Unaudited) Six-Month Periods Ended June 30,		Years Ended December 31,		
	2010	2009	2009	2008	2007
Base rent	$ 4,499	$ 4,648	$ 9,049	$ 9,915	$ 7,710
Straight-line effect	57	220	250	531	1,085
Percentage and other	111	57	368	441	112
	$ 4,667	$ 4,925	$ 9,667	$ 10,887	$ 8,907

Future minimum lease rental income subsequent to June 30, 2010 is summarized below:

Years ending December 31,	
2010 (remainder of year)	$ 4,819
2011	9,580
2012	9,197
2013	8,261
2014	7,464
Thereafter	21,147
	$ 60,468

As Lessee

The Company has an agreement to sublease the land underlying a portion of the Center under a noncancelable lease agreement expiring in December 2021. The sublease agreement provides for the Company to pay monthly base rent of $47 through February 2009. Thereafter, the base rent increases annually by approximately 3.4% for the next eight successive one-year periods. For the remaining period through December

ABW Lewers LLC

Notes to Consolidated Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
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2021, base rent shall equal Fair Rental Value, as defined in the sublease agreement. The sublease agreement also provides for additional rent charges for landscaping and property taxes. Additionally, the Company has the option to extend the term of the sublease should the Lessor and Sublessor agree to extend the term of the master lease beyond December 31, 2021 such that the termination dates of the master lease and sublease shall be the same.

Total rent expense was as follows:

	(Unaudited) Six-Month Periods Ended June 30,		Years Ended December 31,		
	2010	2009	2009	2008	2007
Base rent	$ 302	$ 290	$584	$565	$458
Common area and other charges	20	15	42	42	36
Straight-line effect	18	28	57	76	77
	$ 340	$ 333	$683	$683	$571

Future minimum lease payments subsequent to June 30, 2010 are summarized below:

Years ending December 31,	
2010 (remainder of year)	$ 302
2011	624
2012	645
2013	667
2014	689
Thereafter	1,572
	$ 4,499

8. Related Party Transactions

Amounts receivable (payable) to affiliates consisted of the following:

	June 30, 2010	December 31,	
	(Unaudited)	2009	2008
Receivable from Waikiki Beach Walk – Hotel, an affiliate of OHH, for reimbursable common operating costs	$ 164	$ 116	$ 76
Receivable from OHH for construction costs	—	—	316
Payable to Member for construction and reimbursable costs	(40)	(40)	(438)
Payable to OHH for reimbursable costs	(18)	(36)	(156)
Payable to WBW CHP for reimbursable costs and capital contributions	(53)	(162)	(237)
Payable to RRP for management fees	(32)	(34)	(28)
	$ 21	$(156)	$(467)

ABW Lewers LLC

Notes to Consolidated Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

The Company entered into an amended management agreement (the "Management Agreement") with RRP to provide management services to the Center. The Management Agreement entitled RRP to management fees of 3% of net revenues, as defined. Management fees paid to RRP for the six-month periods ended June 30, 2010 and 2009 and years ended December 31, 2009, 2008 and 2007 approximated $184, $187, $377, $401 and $307, respectively.

9. Fair Value of Financial Instruments

The following methods and assumptions were used by the Company in estimating the fair value of financial instruments:

- **Cash, restricted cash and certificate of deposit, receivables and payables, receivables and payables to affiliates:** At June 30, 2010 and December 31, 2009 and 2008, the Company believes that the carrying amounts of cash, restricted cash and certificate of deposit, trade receivables and payables, and receivables and payables to affiliates approximate fair value due to the short-term nature of these financial instruments.

- **Investment securities:** The fair value of investment securities is based upon market prices with observable inputs.

- **Notes payable:** At June 30, 2010 and December 31, 2009 and 2008, the Company believes that it is not practicable to estimate the fair value of the ABWH note payable as a loan with similar terms is no longer available in the current credit market. The fair value of the ABW 2181 note payable outstanding at June 30, 2010 and December 31, 2009 and 2008 was estimated using a discounted cash flow analysis, which utilizes interest rates currently being offered for loans with similar terms to borrowers of similar credit quality.

	Carrying Amount	Fair Value
June 30, 2010 (Unaudited)		
ABWH note payable	$ 130,310	N/A
ABW 2181 note payable	15,432	$ 15,491
December 31, 2009		
ABWH note payable	$ 130,310	N/A
ABW 2181 note payable	15,554	$ 15,622
December 31, 2008		
ABWH note payable	$ 130,310	N/A
ABW 2181 note payable	15,786	$ 15,733

Waikiki Beach Walk—Hotel
(A Combination of Tenant-in-Common Interests)

Combined Financial Statements

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Waikiki Beach Walk—Hotel
(A Combination of Tenant-in-Common Interests)

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Report of Independent Auditors

To the Tenants-In-Common of
Waikiki Beach Walk—Hotel

We have audited the accompanying combined statements of assets, liabilities and equity of the Waikiki Beach Walk—Hotel (the "Hotel") at December 31, 2009 and 2008 and the related combined statements of revenues, expenses and changes in equity, and cash flows for the three-year period ended December 31, 2009. These combined financial statements are the responsibility of the Hotel's management. Our responsibility is to express an opinion on these combined financial statements based on our audits.

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

The accompanying combined financial statements were prepared for the purpose of presenting the Hotel's ownership and operations to the tenant-in-common owners as discussed in Note 1.

In our opinion, the combined financial statements referred to above present fairly, in all material respects, the assets, liabilities and equity of the Waikiki Beach Walk—Hotel at December 31, 2009 and 2008 and its revenues, expenses and changes in equity, and its cash flows in the three-year period ended December 31, 2009 in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 3, the Hotel revised its 2007 financial statements to retroactively apply a change in its interpretation of the tenant-in-common agreement, which resulted in a reclassification between equity and liabilities.

The interim financial information for the six-month periods ended June 30, 2010 and 2009 has not been subjected to auditing procedures and accordingly, we express no opinion on it.

/s/ ACCUITY LLP

Honolulu, Hawaii
April 21, 2010, except for Note 3 and Note 6 which is as of September 13, 2010

Waikiki Beach Walk—Hotel
(A Combination of Tenant-in-Common Interests)

Combined Statements of Assets, Liabilities and Equity
June 30, 2010 (Unaudited) and December 31, 2009 and 2008
(All Dollars in Thousands)

	June 30, 2010 (Unaudited)	December 31, 2009	December 31, 2008
Assets			
Current assets			
Cash	$ 2,499	$ 3,050	$ 2,787
Trade receivables, net of allowance for doubtful accounts of $122 at June 30, 2010, $97 at December 31, 2009, and $100 at December 31, 2008	1,083	1,377	1,511
Prepaid expenses and other	197	6	438
Total current assets	3,779	4,433	4,736
Property and equipment, net	86,194	89,367	95,701
Deferred loan costs, net of accumulated amortization of $5 at June 30, 2010, $947 at December 31, 2009, and $841 at December 31, 2008	327	28	67
Investment in equity method investee	4,703	4,786	4,763
Restricted cash	3,545	3,036	1,940
Other assets	67	71	76
Total assets	$ 98,615	$ 101,721	$ 107,283
Liabilities and Equity			
Current liabilities			
Accounts payable	$ 463	$ 523	$ 645
Accrued expenses	1,520	1,423	1,341
Advance deposits	175	168	175
Payable to affiliates, net	266	367	438
Total current liabilities	2,424	2,481	2,599
Noncurrent payable to affiliate	14,874	14,874	14,888
Note payable	53,000	53,000	53,000
Total liabilities	70,298	70,355	70,487
Equity	28,317	31,366	36,796
Total liabilities and equity	$ 98,615	$ 101,721	$ 107,283

The accompanying notes are an integral part of the combined financial statements.

Waikiki Beach Walk—Hotel
(A Combination of Tenant-in-Common Interests)

Combined Statements of Revenues, Expenses and Changes in Equity
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

	(Unaudited) Six-Month Periods Ended June 30,		Years Ended December 31,		
	2010	2009	2009	2008	Revised 2007
Revenue					
Rooms	$12,274	$13,135	$25,840	$30,028	$24,132
Food and beverage	167	178	354	492	483
Other	105	106	208	308	215
Total revenues	12,546	13,419	26,402	30,828	24,830
Operating expenses					
Operating costs and expenses	5,900	6,204	12,025	13,196	11,070
Depreciation expense	3,173	3,172	6,340	6,209	6,110
Selling, general and administrative	2,964	3,078	6,018	7,071	5,685
Rental, real property taxes and property insurance	826	814	1,639	1,569	1,095
Total operating expenses	12,863	13,268	26,022	28,045	23,960
Operating income (loss)	(317)	151	380	2,783	870
Other expenses					
Interest expense	(625)	(578)	(1,086)	(2,747)	(3,671)
Other	(107)	(108)	(224)	(217)	(177)
Net other expenses	(732)	(686)	(1,310)	(2,964)	(3,848)
Net loss	(1,049)	(535)	(930)	(181)	(2,978)
Equity					
Beginning of period/year	31,366	36,796	36,796	42,977	46,955
Owner distributions	(2,000)	(2,500)	(4,500)	(6,000)	(1,000)
End of period/year	$28,317	$33,761	$31,366	$36,796	$42,977

The accompanying notes are an integral part of the combined financial statements.

Waikiki Beach Walk—Hotel
(A Combination of Tenant-in-Common Interests)

Combined Statements of Cash Flows
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

	(Unaudited) Six-Month Periods Ended June 30,		Years Ended December 31,		
	2010	2009	2009	2008	Revised 2007
Cash flows from operating activities					
Net loss	$(1,049)	$ (535)	$ (930)	$ (181)	$ (2,978)
Adjustments to reconcile net loss to net cash provided by operating activities					
Depreciation	3,173	3,172	6,340	6,209	6,110
Amortization of deferred loan costs	33	73	106	414	413
Bad debt expense	25	26	3	4	101
Equity in net loss of equity method investee	83	83	166	172	168
Changes in					
Receivables	269	423	131	347	(1,757)
Prepaid expenses and other	(191)	233	432	53	(202)
Other assets	4	3	5	6	5
Accounts payable	(60)	(3)	(122)	(197)	352
Accrued expenses	97	202	82	(36)	867
Advance deposits	7	8	(7)	105	68
Payable to affiliates, net	(101)	(241)	(85)	233	1,629
Net cash provided by operating activities	2,290	3,444	6,121	7,129	4,776
Cash flows used in investing activities					
Capital expenditures	—	(20)	(6)	(206)	(47,756)
Change in restricted cash	(509)	(578)	(1,096)	(1,064)	(876)
Investment in affiliate	—	—	(189)	—	(5,103)
Net cash used in investing activities	(509)	(598)	(1,291)	(1,270)	(53,735)
Cash flows from financing activities					
Owner distributions	(2,000)	(2,500)	(4,500)	(6,000)	(1,000)
Proceeds from notes payable	—	—	—	—	51,958
Loan costs paid	(332)	(67)	(67)	—	—
Net cash provided by (used in) financing activities	(2,332)	(2,567)	(4,567)	(6,000)	50,958
Net increase (decrease) in cash	(551)	279	263	(141)	1,999
Cash					
Beginning of period/year	3,050	2,787	2,787	2,928	929
End of period/year	$ 2,499	$ 3,066	$ 3,050	$ 2,787	$ 2,928
Supplemental cash flow information					
Interest paid	$ 593	$ 505	$ 980	$ 2,333	$ 3,258
Noncash investing and financing activities					
Construction costs funded by accounts payable and payable to affiliates	$ —	$ —	$ —	$ —	$ 227

The accompanying notes are an integral part of the combined financial statements.

Waikiki Beach Walk—Hotel
(A Combination of Tenant-in-Common Interests)

Notes to the Combined Financial Statements
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

1. Operations and Ownership

On January 10, 2006, EBW Hotels LLC, Waikele Venture Holdings LLC, Broadway 225 Sorrento Holdings LLC and Broadway 225 Stonecrest Holdings LLC entered into a tenant-in-common ("TIC") ownership agreement (the "TIC Agreement") to construct a 421 all suite hotel in Waikiki, Honolulu, Hawaii. In January 2008, the hotel received permission to market the property as a 369-suite hotel. This was accomplished by creating additional two bedroom suites within the existing physical configuration. The hotel is operated pursuant to a franchise agreement (the "Franchise Agreement") as the Waikiki Beach Walk – Hotel (the "Hotel"). The Hotel is managed by Outrigger Hotels Hawaii ("OHH") pursuant to a Hotel Management Agreement. The Hotel personnel are employees of OHH.

TIC interests in the assets, liabilities and earnings of the Hotel are in the following proportions:

Tenants in common	Ownership	Type of Entity
EBW Hotels LLC	41.00%	Hawaii Limited Liability Company
Waikele Venture Holdings LLC	34.27%	Delaware Limited Liability Company
Broadway 225 Sorrento Holdings LLC	15.33%	Delaware Limited Liability Company
Broadway 225 Stonecrest Holdings LLC	9.40%	Delaware Limited Liability Company

EBW Hotels LLC is owned by BWH Holdings LLC and ESW LLC, the latter a wholly owned subsidiary of OHH, with ownership percentages of 51% and 49%, respectively.

Profits and losses are allocated among the TIC members on a priority basis, with certain TIC members being entitled to an 8% priority return based on their respective capital account balances.

2. Summary of Significant Accounting Policies

Basis of Presentation

In the opinion of management, the accompanying combined financial statements of the Hotel include all adjustments necessary to present fairly its financial position as of June 30, 2010 and December 31, 2009 and 2008 and the results of operations, changes in equity and cash flows for the annual and six-month periods ended June 30, 2010 and 2009 and the years ended December 31, 2009, 2008, and 2007. The results of operations for the period ended June 30, 2010 are not necessarily indicative of the results to be expected for the full year or for any future period.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions for the reporting period and as of the financial statement date. These estimates and assumptions affect the reported amounts of assets and liabilities, and the reported amounts of revenue and expenses. Actual results could differ from those estimates.

Waikiki Beach Walk—Hotel
(A Combination of Tenant-in-Common Interests)

Notes to Combined Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
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Cash Equivalents

The Hotel considers all highly liquid debt instruments with an original maturity of three months or less to be cash equivalents.

Restricted Cash

At June 30, 2010 and December 31, 2009 and 2008, restricted cash consisted of reserves for furniture, equipment and capital improvements pursuant to the Hotel's management agreement. The reserve balance is not to exceed $500, unless approved by the TIC members. At June 30, 2010 and December 31, 2009 and 2008, the reserve balance in excess of $500 was approved by all TIC members.

Accounts Receivable and Allowance for Doubtful Accounts

Receivables are initially recorded at the amount invoiced or otherwise due and normally do not bear interest. The Hotel maintains an allowance for doubtful accounts to reduce receivables to their estimated collectible amount. Management estimates the allowance for doubtful accounts based on a specific review of individual customer accounts as well as the overall aging of accounts, historical collection experience and current economic and business conditions. Generally, accounts past due by more than 30 days are considered delinquent. However, delinquent accounts are not written off until, in the judgment of management, they are deemed uncollectible based on an evaluation of the specific circumstances of each customer.

The allowance for doubtful accounts represents management's best estimate of potential uncollectible receivables. However, because of the uncertainties inherent in assessing the collectibility of receivables, it is at least reasonably possible that there will be near-term changes in management's estimate due to actual losses and other factors.

Equity Method Investment

Investments in minority-owned entities where the Hotel has the ability to significantly influence the operations of the investee are accounted for using the equity method of accounting. Equity method accounting is discontinued when an investee's accumulated losses equals or exceeds the Hotel's investment and the Hotel has no obligation to provide further financial support to the investee.

Deferred Loan Costs

Loan fees and origination costs associated with the Hotel's debt are deferred and amortized using the straight-line method over the term of the debt agreement, which approximates the effective interest method. These amounts are recorded as interest expense in the combined financial statements. Amortization expense for the six-month periods ended June 30, 2010 and 2009 and years ended December 31, 2009, 2008 and 2007, approximated $33, $73, $106, $414 and $413, respectively.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation. Maintenance and repairs are charged to expense and betterments and replacements are capitalized. Property retired or otherwise disposed of is removed from the appropriate asset and related accumulated depreciation accounts. Gains and losses on sales of assets are reflected in current operations.

Waikiki Beach Walk—Hotel
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Notes to Combined Financial Statements—(Continued)
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Depreciation is calculated using the straight-line method based upon the shorter of the asset life or lease term using the following useful lives:

Building and land improvements	15 – 39 years
Furniture, fixtures and equipment	3 – 10 years

The Hotel reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The assessment of impairment is based on the estimated future net cash flows from operating activities compared with the carrying value of the asset. If the future net cash flows of an asset are less than the carrying value, a write-down is recorded and measured by the amount of the difference between the carrying value of the asset and the fair value of the asset. No impairment losses were recognized in 2010, 2009, 2008 or 2007.

Changes in estimates, based on market conditions and various other factors, may impact the future recoverability of the carrying value.

Revenue Recognition

The Hotel recognizes revenues from the rental of hotel rooms and guest services when the rooms are occupied and services have been provided. Food and beverage sales are recognized when the customer has been served or at the time the transaction occurs. The Hotel reports revenues net of sales, rooms and general excise taxes collected from or passed on to customers.

Advertising

Advertising costs are expensed as incurred and are included in selling, general and administrative expenses. Advertising expense for the six-month periods ended June 30, 2010 and 2009 and years ended December 31, 2009, 2008 and 2007, approximated $208, $321, $644, $937 and $908, respectively.

Income Taxes

The Hotel is not a taxable entity and the results of its operations are included in the tax returns of the TIC members. Accordingly, income taxes are not reflected in the accompanying combined financial statements. The TIC members file federal and state tax returns based upon their proportionate share of income and expenses, which are subject to examination by taxing authorities.

Concentrations of Credit Risk

Financial instruments that potentially expose the Hotel to concentrations of credit risk consist principally of cash and accounts receivable.

All of the Hotel’s cash is held with financial institutions in the State of Hawaii. At times, cash balances are in excess of depository insurance limits, however, the Hotel does not believe that this concentration of credit risk represents a material risk of loss with respect to its financial position.

Waikiki Beach Walk—Hotel
(A Combination of Tenant-in-Common Interests)

Notes to Combined Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
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The Hotel extends credit to customers in the normal course of business. To control credit risk, the Hotel performs ongoing credit evaluations of major customers and as a result may require security from certain customers, in the form of letters of credit, guarantees or cash deposits.

The Hotel's operations are primarily dependent on Hawaii's tourism industry. A significant portion of the Hotel's business is derived from tourists from the mainland United States and Japan.

Fair Value Measurements

For financial and nonfinancial assets and liabilities reported at fair value, the Hotel defines fair value as the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market in an orderly transaction between market participants. The Hotel measures fair value using observable and unobservable inputs based on the following hierarchy:

- **Level 1**: Quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date.
- **Level 2**: Inputs other than quoted market prices included within Level 1 that are observable for an asset or liability, either directly or indirectly.
- **Level 3**: Unobservable inputs for an asset or liability reflecting the reporting entity's own assumptions. Level 3 inputs should be used to measure fair value to the extent that observable Level 1 or 2 inputs are not available.

3. Revision

In 2009, the Hotel revised its interpretation of the tenant-in-common agreement, noting that certain balances previously classified as capital contributions were more appropriately classified as a noncurrent payable to one of the tenant-in-common owners, which will be settled when permanent financing is obtained. Accordingly, the Hotel revised its 2007 combined financial statements from amounts previously reported, as follows:

	As Previously Reported	Adjustments	As Revised
Noncurrent payable to affiliate	$ —	$ 14,795	$ 14,795
Total liabilities	55,498	14,795	70,293
Equity			
Beginning of year	60,125	(13,170)	46,955
Contributions	1,625	(1,625)	—
End of year	57,772	(14,795)	42,977
Total liabilities and equity	113,270	—	113,270

Waikiki Beach Walk—Hotel
(A Combination of Tenant-in-Common Interests)

Notes to Combined Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

4. Equity Method Investment

The Hotel has a 29.16% interest in WBW CHP LLC, an entity that was formed to construct a chilled water plant to provide air conditioning to the Hotel and other adjacent facilities. As of June 30, 2010 and December 31, 2009 and 2008, the Company's investment in the uncombined affiliate approximated $4,703, $4,786, and $4,763, respectively. The operating expenses of WBW CHP, other than depreciation, are recovered through reimbursements from its members.

Condensed financial information of the investment is as follows:

	Six-Month Period Ended June 30, 2010 (Unaudited)	Years Ended December 31, 2009	2008
Assets	$ 16,303	$16,507	$16,837
Liabilities	176	95	502
	$ 16,127	$16,412	$16,335
Revenue	$ —	$ —	$ —
Expenses	285	569	590
	$ (285)	$ (569)	$ (590)

5. Property and Equipment

Property and equipment consisted of the following:

	June 30, 2010 (Unaudited)	December 31, 2009	2008
Land	$ 16,373	$ 16,373	$ 16,373
Building and improvements	69,319	69,319	69,319
Furniture, fixtures and equipment	22,535	22,535	22,528
	108,227	108,227	108,220
Less: Accumulated depreciation	(22,033)	(18,860)	(12,519)
	86,194	89,367	95,701
Construction in progress	—	—	—
	$ 86,194	$ 89,367	$ 95,701

6. Note Payable

On May 9, 2006, the TIC members entered into a $53,000 interest-only construction loan agreement with a bank group (severally and collectively, the "Lenders") for the development and construction of the Hotel. The loan, collateralized by a first mortgage on the property, was scheduled to mature during May 2010. The loan agreement required monthly interest-only payments at LIBOR plus 1.50%. The effective interest rates at

Waikiki Beach Walk—Hotel
(A Combination of Tenant-in-Common Interests)

Notes to Combined Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

December 31, 2009 and 2008 were 1.73%, and 1.97%, respectively. Beginning in March 2008, the Hotel was required to maintain a minimum monthly debt service coverage ratio of 1:1. The Hotel was in compliance with this covenant since its effective date through May 31, 2010.

The loan agreement was amended and restated on June 1, 2010 and the maturity date was extended to June 1, 2015. The amended loan agreement requires monthly interest-only payments at LIBOR plus 3.75%. The effective interest rate at June 30, 2010 was 4.10%. The Hotel is required to maintain a minimum monthly debt service coverage ratio of 1.1 to 1 until December 31, 2010 and 1.35 to 1 thereafter. The Hotel was in compliance with this covenant at June 30, 2010.

The amended loan agreement also required certain TIC members to jointly and severally guarantee the repayment of $10,000 of the loan amount. The guarantee shall be released when the Hotel achieves a monthly debt service coverage ratio of 1.5 to 1.

7. Franchise Agreement

The Hotel operates subject to a Franchise Agreement with its brand which expires in December 2021. The Franchise Agreement further provides that the Company may access the brand's reservation services, advertising and other marketing programs, training programs and materials, and operating standards.

The Franchise Agreement provides for a program fee equal to 3% of the Hotel's gross room revenue, as defined, during 2007 and 4% of gross room revenue thereafter. During 2009, the Hotel's brand implemented a fee relief program which reduced the program fee to 3.5%. This fee relief program was extended through 2010, provided the Hotel meets all brand standard requirements. The Franchise Agreement also provides for a royalty fee equal to 2% of gross room revenue during 2007, 3% of gross room revenue during 2008 and 2009, and 4% of gross room revenue thereafter. Program and royalty fees for the six-month periods ended June 30, 2010 and 2009 and years ended December 31, 2009, 2008 and 2007, approximated $968, $895, $1,761, $2,202 and $1,260, respectively.

8. Related Party Transactions

Amounts currently receivable (payable) to affiliates consisted of the following:

	June 30, 2010 (Unaudited)	December 31, 2009	2008
Receivable (payable) from WBW CHP LLC for reimbursable costs	$ 17	$ (4)	$ 51
Receivable from IRL LLC, a wholly-owned subsidiary of OHH, for reimbursable costs	—	3	14
Payable to ABW Holdings LLC, a wholly-owned subsidiary of ABW Lewers LLC, for reimbursable costs	(139)	(116)	(76)
Payable to OHH for construction costs and reimbursable costs	(144)	(250)	(427)
	$ (266)	$(367)	$(438)

Waikiki Beach Walk—Hotel
(A Combination of Tenant-in-Common Interests)

Notes to Combined Financial Statements—(Continued)
Six-Month Periods Ended June 30, 2010 and 2009 (Unaudited) and
Years Ended December 31, 2009, 2008 and 2007
(All Dollars in Thousands)

At June 30, 2010 and December 31, 2009 and December 31, 2008, the Hotel had a noncurrent payable of $14,874 and $14,888, respectively, to ESW LLC for the contribution of certain operating assets. The intention of the TIC members is to settle the payable when permanent financing is obtained.

In accordance with the Hotel Management Agreement, OHH is entitled to a management fee equal to 3% of gross revenues and 6% of gross operating profit, as defined, not to exceed 3.5% of gross revenues in the aggregate. The management fee for the six-month periods ended June 30, 2010 and 2009 and years ended December 31, 2009, 2008 and 2007, approximated $439, $470, $924, $1,077 and $860, respectively Under the terms of the Hotel Management Agreement, OHH may make available to the Hotel certain specialized services including services for marketing, reservations, information technology, accounting, human resources and purchasing. During the six-month periods ended June 30, 2010 and 2009 and years ended December 31, 2009, 2008 and 2007, the Hotel paid OHH $234, $225, $473, $564 and $463, respectively, for such services.

9. Fair Value of Financial Instruments

The following methods and assumptions were used by the Hotel in estimating the fair value of financial instruments:

- **Cash, restricted cash, trade receivables and payables, current receivables and payables to affiliates**: At June 30, 2010 and December 31, 2009 and 2008, the Hotel believes that the carrying amounts of cash, restricted cash, trade receivables and payables, and current receivables and payables to affiliates approximate fair value due to the short-term nature of these financial instruments.

- **Noncurrent payable to affiliate**: At June 30, 2010 and December 31, 2009 and 2008, the Hotel believes it is not practicable to determine the fair value of the noncurrent payable to affiliate due to the relationship between the Hotel and its affiliate.

- **Note payable**: The fair value of the loan outstanding at December 31, 2009 and 2008 was estimated using a discounted cash flow analysis, which utilizes interest rates currently being offered for loans with similar terms to borrowers of similar credit quality. At June 30, 2010, the Hotel believes that the carrying amount of note payable approximates fair value as the terms of the note were modified in close proximity to the reporting period end.

	Carrying Amount	Fair Value
December 31, 2009		
Note payable	$ 53,000	$ 50,260
December 31, 2008		
Note payable	$ 53,000	$ 51,525

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholder
American Assets Trust, Inc.

We have audited the accompanying statements of revenues and certain operating expenses (as defined in Note 2) of The Landmark at One Market (the "Company") for the years ending December 31, 2009, 2008 and 2007. These statements of revenues and certain operating expenses are the responsibility of the Company's management. Our responsibility is to express an opinion on these statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statements of revenues and certain operating expenses are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall statement presentation. We believe that our audits provide a reasonable basis for our opinion.

The accompanying statements of revenues and certain operating expenses of the Company were prepared for the purpose of complying with the rules and regulations of the Securities and Exchange Commission for inclusion in the Registration Statement on Form S-11 of American Assets Trust, Inc. as described in Note 2, and are not intended to be a complete presentation of the revenues and certain operating expenses of the Company.

In our opinion, the statements of revenues and certain operating expenses referred to above presents fairly, in all material respects, the revenues and certain operating expenses, as defined above of The Landmark at One Market for the years ended December 31, 2009, 2008 and 2007, in conformity with U.S. generally accepted accounting principles.

/s/ ERNST & YOUNG LLP

San Diego, California
September 13, 2010

The Landmark at One Market

Statements of Revenues and Certain Operating Expenses
(In Thousands)

	For the six months ended June 30, 2010 (unaudited)	Year ended December 31, 2009	2008	2007
Revenue:				
Rental income	$ 10,337	$20,896	$20,893	$20,791
Tenant reimbursements	807	1,292	1,207	1,372
Total revenue	11,144	22,188	22,100	22,163
Certain operating expenses:				
Rental operating	701	1,340	1,385	1,345
Utilities	438	836	749	754
Repairs and maintenance	282	597	632	637
Payroll	65	144	125	133
Rent expense	1,238	2,409	2,438	2,418
Insurance	44	90	113	129
Real estate taxes	1,204	2,382	2,298	2,257
Management fees	344	685	681	650
General and administrative	31	51	92	56
Total expenses	4,347	8,534	8,513	8,379
Revenues in excess of certain operating expenses	$ 6,797	$13,654	$13,587	$13,784

See accompanying notes.

The Landmark at One Market

Notes to Statement of Revenues and Certain Operating Expenses
June 30, 2010 (unaudited) and December 31, 2009, 2008 and 2007

NOTE 1. ORGANIZATION AND DESCRIPTION OF BUSINESS

The accompanying statements of revenues and certain operating expenses include the operations of The Landmark at One Market (the "Property"), which was acquired by the Predecessor on June 30, 2010. The Predecessor previously had a 34.51% noncontrolling interest in the Property through a tenant-in-common interest. The outside tenant-in-common ownership interest of 65.49% was owned by an unrelated third party. On June 30, 2010, the Predecessor acquired the third party's ownership interest in the Property for $23.0 million in cash and the assumption of debt of $133.0 million (of which $87.1 million was attributable to the outside owners interest). Subsequent to the acquisition, the Predecessor owns 100% of the entities that own the Property. The Property includes two buildings (one of which is leased from a third-party landlord) located in San Francisco, California that have approximately 421,993 (unaudited) of leasable square feet.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying statements of revenue and certain operating expenses have been prepared for the purpose of complying with Rule 3-14 of Regulation S-X promulgated under the Securities Act of 1933, as amended. Accordingly, the statements are not representative of the actual results of operations of the Property for the years ended December 31, 2009, 2008 and 2007 and the six months ended June 30, 2010 due to the exclusion of the following expenses, which may not be comparable to the proposed future operations of the Property:

- Depreciation and amortization
- Interest expense
- Interest income
- Amortization of above and below market leases

Revenue Recognition

Base rents are recognized on a straight-line basis from when the tenant controls the space through the term of the related lease, net of valuation adjustments, based on management's assessment of credit, collection and other business risk. Real estate taxes and other cost reimbursements are recognized on an accrual basis over the periods in which the related expenditures are incurred. For a tenant to terminate its lease agreement prior to the end of the agreed term, we may require that they pay a fee to cancel the lease agreement. Lease termination fees for which the tenant has relinquished control of the space are generally recognized on the termination date and it is determined that such fees are earned. When a lease is terminated early but the tenant continues to control the space under a modified lease agreement, the lease termination fee is generally recognized on a straight line basis over the remaining term of the modified lease agreement.

Accounting estimates

The preparation of the financial statements requires management to use estimates and assumptions that affect the reported amounts of revenue and certain operating expenses during the reporting period. Actual results could materially differ from these estimates in the near term.

The Landmark at One Market

Notes to Statement of Revenues and Certain Operating Expenses—(Continued)
June 30, 2010 (unaudited) and December 31, 2009, 2008 and 2007

Unaudited interim statement

The statement of revenues and certain operating expenses for the six months ended June 30, 2010 is unaudited. In the opinion of management, the statement reflects all adjustments necessary for a fair presentation of the results of the interim period. All such adjustments are of a normal recurring nature.

NOTE 3. MINIMUM FUTURE LEASE RENTALS

Office space at the Property is leased to tenants under various lease agreements. All leases are accounted for as operating leases. The leases include provisions under which the entities owning the Property are reimbursed for common area, real estate, and insurance costs. Revenue related to these reimbursed costs is recognized in the period the applicable costs are incurred and billed to tenants pursuant to the lease agreements. Certain leases contain renewal options at various periods at various rental rates.

At December 31, 2009, the following future minimum rentals on the non-cancelable tenant leases are as follows (In thousands):

2010	$ 21,362
2011	10,187
2012	9,337
2013	4,631
2014	1,194
Thereafter	7,764
Total	$ 54,475

NOTE 4. CERTAIN OPERATING EXPENSES

Certain operating expenses include only those costs expected to be comparable to the proposed future operations of the Property. Repairs and maintenance expense are charged to operations as incurred. Costs such as depreciation, amortization and interest expense are excluded from the statements of revenues and certain operating expenses.

NOTE 5. RELATED PARTY TRANSACTIONS

The Property is managed by the property management business of American Assets Inc. (“AAI”), which is controlled by the Predecessor. There is a master management agreement with AAI with respect to the Property, with additional agreements covering property management, construction management, acquisition, disposition and leasing, and asset management. The fees incurred for the periods presented include:

- *Property Management Fees*—Property management fees are incurred for the operation and management of the property. Fees are 3.0% of gross monthly cash collections each month, with minimum monthly fees of $5,000.

- *Leasing Fees*—Leasing fees are incurred for services provided to procure tenants for the properties. Fees are 1% of the total value of all leases executed for the properties, including new leases, renewals, extensions or other modifications. Leasing fees are capitalized to leasing commissions and amortized over the life of the leases, and are therefore not including in the operating expenses in this statement.

The Landmark at One Market

Notes to Statement of Revenues and Certain Operating Expenses—(Continued)
June 30, 2010 (unaudited) and December 31, 2009, 2008 and 2007

The AAI fees incurred are as follows (In thousands):

	Six Months Ended June 30, 2010 (Unaudited)	Year Ended December 31, 2009	2008	2007
Property management fees	$ 344	$ 685	$ 495	$ 217
Leasing fees	957	—	—	—
	$ 1,301	$ 685	$ 495	$ 217

NOTE 6. CONCENTRATION OF CREDIT RISK

The Property had four tenants that accounted for more than approximately 80% of the revenues in 2009, 2008, and 2007 and the six months ended June 30, 2010 (unaudited). These tenants were salesforce.com, Del Monte Corporation, Autodesk, and Microsoft. The tenants represented approximately 83%, 85%, and 86% of total revenue for the years ended 2009, 2008, and 2007 and 83% of total revenue for the six months ended June 30, 2010 (unaudited).

NOTE 7. COMMITMENTS AND CONTINGENCIES

The Property is not subject to any material litigation nor to management's knowledge is any material litigation currently threatened against the Property other than routine litigation, claims and administrative proceedings arising in the ordinary course of business. Management believes that such routine litigation, claims and administrative proceedings will not have a material adverse impact on the Property's financial position or results of operations.

One of the buildings at the Property is leased from a landlord under an operating lease and is adjacent to the building owned. The lease expires June 30, 2011, and we have the option to extend until 2026 by way of three five-year extension options. Subsequent to June 30, 2010, we have exercised a renewal option for a renewal term of July 1, 2011 through June 30, 2016. Monthly lease payments during this renewal term will be the greater of current payments or 97.5% of the prevailing rate at the start of the renewal term. Minimum annual payments under the lease (excluding the renewal term) are as follows, as of December 31, 2009 (In thousands):

	(In thousands)
2010	$ 1,403
2011	701
Total	$ 2,104

NOTE 8. SUBSEQUENT EVENTS

The entities owning the Property evaluate subsequent events until the date the financial statements are issued.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholder
American Assets Trust, Inc.

We have audited the accompanying combined statements of revenues and certain operating expenses (as defined in Note 2) of Solana Beach Centre (the "Properties") for the years ending December 31, 2009, 2008 and 2007. This combined statements of revenues and certain operating expenses are the responsibility of the management of the Properties. Our responsibility is to express an opinion on these statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statements of revenues and certain operating expenses are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Properties' internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall statement presentation. We believe that our audits provide a reasonable basis for our opinion.

The accompanying statements of revenues and certain operating expenses of the Properties were prepared for the purpose of complying with the rules and regulations of the Securities and Exchange Commission for inclusion in the Registration Statement on Form S-11 of American Assets Trust, Inc. as described in Note 2, and are not intended to be a complete presentation of the revenues and certain operating expenses of the Properties.

In our opinion, the combined statements of revenues and certain operating expenses referred to above presents fairly, in all material respects, the combined revenues and certain operating expenses, as defined above, of Solana Beach Centre for the years ended December 31, 2009, 2008 and 2007, in conformity with U.S. generally accepted accounting principles.

/s/ ERNST & YOUNG LLP

San Diego, California
September 13, 2010

Solana Beach Centre

Combined Statements of Revenues and Certain Expenses
(In Thousands)

	For the six months ended June 30, 2010 (unaudited)	Year ended December 31, 2009	2008	2007
Revenue:				
Rental income	$ 6,552	$12,953	$13,154	$11,876
Other property income	1	24	5	12
Total revenue	6,553	12,977	13,159	11,888
Certain expenses:				
Rental operating	274	543	637	639
Utilities	132	264	197	283
Repairs and maintenance	313	708	778	866
Insurance	38	76	81	103
Real estate taxes	427	843	840	828
Management fees	353	733	721	636
General and administrative	72	61	73	88
Total expenses	1,609	3,228	3,327	3,443
Revenues in excess of certain expenses	$ 4,944	$ 9,749	$ 9,832	$ 8,445

See accompanying notes.

Solana Beach Centre

Notes to Combined Statements of Revenues and Certain Operating Expenses
June 30, 2010 (unaudited) and December 31, 2009, 2008 and 2007

NOTE 1. ORGANIZATION AND DESCRIPTION OF BUSINESS

The accompanying combined statements of revenues and certain operating expenses include the operations of Solana Beach Towne Centre and Solana Beach Corporate Centre, a retail and an office property, respectively, and one parcel of land held for development (collectively "Solana Beach Centre" or the "Properties"), each located in San Diego, California. The Predecessor has a noncontrolling 50% co-general partner interest, and the Properties are managed by the property management business of American Assets, Inc. ("AAI").

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying statements of revenues and certain operating expenses have been prepared for the purpose of complying with Rule 3-14 of Regulation S-X promulgated under the Securities Act of 1933, as amended. Accordingly, the statements are not representative of the actual results of operations for the years ended December 31, 2009, 2008 and 2007 and the six months ended June 30, 2010 due to the exclusion of the following expenses, which may not be comparable to the proposed future operations of the Properties:

- Depreciation and amortization
- Interest expense
- Interest income

Revenue Recognition

Base rents are recognized on a straight-line basis from when the tenant controls the space through the term of the related lease, net of valuation adjustments, based on management's assessment of credit, collection and other business risk. Real estate taxes and other cost reimbursements are recognized on an accrual basis over the periods in which the related expenditures are incurred. For a tenant to terminate its lease agreement prior to the end of the agreed term, we may require that they pay a fee to cancel the lease agreement. Lease termination fees for which the tenant has relinquished control of the space are generally recognized on the termination date and it is determined that such fees are earned. When a lease is terminated early but the tenant continues to control the space under a modified lease agreement, the lease termination fee is generally recognized on a straight line basis over the remaining term of the modified lease agreement.

Accounting estimates

The preparation of the financial statements requires management to use estimates and assumptions that affect the reported amounts of revenues and certain operating expenses during the reporting period. Actual results could materially differ from these estimates in the near term.

Unaudited interim statement

The statement of revenues and certain operating expenses for the six months ended June 30, 2010 is unaudited. In the opinion of management, the statement reflects all adjustments necessary for a fair presentation of the results of the interim period. All such adjustments are of a normal recurring nature.

Solana Beach Centre

Notes to Statement of Revenues and Certain Operating Expenses—(Continued)
June 30, 2010 (unaudited) and December 31, 2009, 2008, and 2007

NOTE 3. MINIMUM FUTURE LEASE RENTALS

Retail and office space is leased to tenants under various lease agreements. All leases are accounted for as operating leases. The leases include provisions under which the entities owning the property are reimbursed for common area, real estate, and insurance costs. Revenue related to these reimbursed costs is recognized in the period the applicable costs are incurred and billed to tenants pursuant to the lease agreements. Certain leases contain renewal options at various periods at various rental rates.

At December 31, 2009, the following future minimum rentals on the non-cancelable tenant leases are as follows (In thousands):

2010	$ 10,714
2011	9,105
2012	7,004
2013	5,153
2014	3,645
Thereafter	7,180
Total	$ 42,801

NOTE 4. CERTAIN OPERATING EXPENSES

Certain operating expenses include only those costs expected to be comparable to the proposed future operations of the Properties. Repairs and maintenance expense are charged to operations as incurred. Costs such as depreciation, amortization and interest expense are excluded from the statements of revenues and certain operating expenses.

NOTE 5. RELATED PARTY TRANSACTIONS

The Properties are managed by the property management business of AAI, which is controlled by the Predecessor. There is a master management agreement with AAI with respect to the properties, with additional agreements covering property management, construction management, acquisition, disposition and leasing, and asset management. The fees incurred for the periods presented include:

- *Property Management Fees*—Property management fees are incurred for the operation and management of the properties. Fees range from 3.0% to 5.5% of gross monthly cash collections each month, including minimum monthly fees of $5,000.

- *Construction Management Fees*—Construction management fees are incurred for the management and supervision of construction projects. Fees range from 3.0% to 5.0% of construction and development costs on buildings and improvements properties or a flat fee may be defined in the agreement. For tenant improvements, fees are 10% of costs for projects where AAI directly supervises construction subcontractors or 3% for projects where AAI manages a general contractor, plus hourly fees for employees of AAI directly working on the tenant improvements. Construction management fees are capitalized to the related real estate asset.

- *Asset Management Fees/Financing Fees*—Asset management fees are incurred for evaluating property value, performance, and/or condition, appealing property assessments or tax valuations, recommending ways to enhance value, and procuring financing. The fees are charged at hourly

Solana Beach Centre

Notes to Statement of Revenues and Certain Operating Expenses—(Continued)
June 30, 2010 (unaudited) and December 31, 2009, 2008, and 2007

rates ranging from $40 to $125 for asset management services. In addition, financing fees are paid for any permanent financing placed on the properties, with fees of either of 25 - 50 basis points times the financed mount or flat fees of $50,000. Asset management fees are expensed as incurred. Financing fees are capitalized to debt issuance costs and amortized over the life of the related loan.

In addition to the fees noted above, the Properties also reimburse AAI for monthly maintenance and facilities management services provided to the properties by AAI employees.

The AAI fees incurred are as follows (In thousands):

	Six Months Ended June 30, 2010 (Unaudited)	Year Ended December 31,		
		2009	2008	2007
Property management fees	$ 321	$ 666	$ 656	$ 578
Construction management fees	7	9	24	192
Asset management/Financing fees	130	—	—	—
Maintenance reimbursements	60	120	107	104
	$ 518	$ 795	$ 787	$ 874

The Properties also pays management fees of 0.50% of gross monthly cash collections each month to the Lomas Group, an affiliate of owners of the Properties. Management fees incurred were $32,000 for the six months ended June 30, 2010 and $67,000, $65,000 and $58,000 for the years ended December 31, 2009, 2008, and 2007, respectively.

NOTE 6. CONCENTRATION OF CREDIT RISK

No individual tenant represented more than 10% of revenue for the years ended 2009, 2008, and 2007 and the six months ended June 30, 2010.

NOTE 7. COMMITMENTS AND CONTINGENCIES

The Properties are not subject to any material litigation nor to management’s knowledge is any material litigation currently threatened against the Properties other than routine litigation, claims and administrative proceedings arising in the ordinary course of business. Management believes that such routine litigation, claims and administrative proceedings will not have a material adverse impact on the Properties’ financial position or results of operations.

NOTE 8. SUBSEQUENT EVENTS

The entities owning the Properties evaluate subsequent events until the date the statements are issued.

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Until , 2010 (25 days after the date of this prospectus), all dealers that effect transactions in our common shares, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Shares

American Assets Trust, Inc.

Common Stock

PROSPECTUS

BofA Merrill Lynch

Wells Fargo Securities

Morgan Stanley

, 2010

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 31. ***Other Expenses of Issuance and Distribution.***

The following table itemizes the expenses incurred by us in connection with the issuance and registration of the securities being registered hereunder. All amounts shown are estimates except for the Securities and Exchange Commission registration fee.

SEC Registration Fee	$ 35,650
NYSE Listing Fee	*
FINRA Filing Fee	50,500
Printing and Engraving Expenses	*
Legal Fees and Expenses (other than Blue Sky)	*
Accounting and Fees and Expenses	*
Transfer Agent and Registrar Fees	*
Total	*

* To be completed by amendment.

Item 32. ***Sales to Special Parties.***

None.

Item 33. ***Recent Sales of Unregistered Securities.***

On July 16, 2010 we issued 1,000 shares of our common stock to the Ernest Rady Trust U/D/T March 10, 1983 in connection with the initial capitalization of our company for an aggregate purchase price of $1,000. The issuance of such shares was effected in reliance upon an exemption from registration provided by Section 4(2) of the Securities Act.

In connection with the formation transactions, an aggregate of shares of common stock and common units with an aggregate value of $ million, based on the mid-point of the range of prices on the cover of the prospectus, will be issued to certain persons owning interests in the entities that own the properties comprising our portfolio as consideration in the formation transactions. All such persons had a substantive, pre-existing relationship with us and made irrevocable elections to receive such securities in the formation transactions prior to the filing of this registration statement with the SEC. Prior to the filing of this registration statement, each such person consented to the contribution or merger of the entity or entities in which he or she holds an investment either to or with and into us or our operating partnership or with and into a wholly owned subsidiary of our operating partnership (or, in the case of reverse mergers, certain subsidiaries of our operating partnership will merge with and into such entities). All of such persons are “accredited investors” as defined under Regulation D of the Securities Act. The issuance of such shares and units will be effected in reliance upon exemptions from registration provided by Section 4(2) of the Securities Act and Regulation D of the Securities Act.

Item 34. ***Indemnification of Directors and Officers.***

Maryland law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and

deliberate dishonesty that is established by a final judgment and is material to the cause of action. Our charter contains a provision which eliminates our directors' and officers' liability to the maximum extent permitted by Maryland law.

Maryland law requires a Maryland corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. Maryland law permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that: (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty; (b) the director or officer actually received an improper personal benefit in money, property or services; or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, under Maryland law, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, Maryland law permits a Maryland corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

Our charter authorizes us, to the maximum extent permitted by Maryland law, to obligate ourselves and our bylaws obligate us, to indemnify any present or former director or officer or any individual who, while a director or officer of our company and at our request, serves or has served as a director, officer, partner, trustee, member or manager of another corporation, real estate investment trust, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity from and against any claim or liability to which that individual may become subject or which that individual may incur by reason of his or her service in any of the foregoing capacities and to pay or reimburse his or her reasonable expenses in advance of final disposition of a proceeding. Our charter and bylaws also permit us to indemnify and advance expenses to any individual who served a predecessor of our company in any of the capacities described above and any employees or agents of our company or a predecessor of our company. Furthermore, our officers and directors are indemnified against specified liabilities by the underwriters, and the underwriters are indemnified against certain liabilities by us, under the underwriting agreement relating to this offering. See "Underwriting."

We intend to enter into indemnification agreements with each of our executive officers and directors whereby we indemnify such executive officers and directors to the fullest extent permitted by Maryland law against all expenses and liabilities, subject to limited exceptions. These indemnification agreements also provide that upon an application for indemnity by an executive officer or director to a court of appropriate jurisdiction, such court may order us to indemnify such executive officer or director.

In addition, our directors and officers are indemnified for specified liabilities and expenses pursuant to the partnership agreement of American Assets Trust, L.P., the partnership of which we serve as sole general partner.

Item 35. ***Treatment of Proceeds from Stock Being Registered.***

None.

Item 36. ***Financial Statements and Exhibits.***

(A) *Financial Statements.* See Index to Consolidated Financial Statements and the related notes thereto.

(B) *Exhibits*. The attached Exhibit Index is incorporated herein by reference.

Item 37. ***Undertakings.***

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

The undersigned registrant hereby further undertakes to provide to the underwriters at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that the registrant meets all of the requirements for filing on Form S-11 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on this 13th day of September, 2010.

AMERICAN ASSETS TRUST, INC.

By: /s/ John W. Chamberlain
John W. Chamberlain
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below does hereby constitute and appoint John W. Chamberlain and Robert F. Barton, and each of them, with full power of substitution and full power to act without the other, such person's true and lawful attorney-in-fact and agent to act for such person in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement and any related registration statement filed pursuant to Rule 462(b) under the Securities Act, and to file this registration statement, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in order to effectuate the same as fully, to all intents and purposes, as such person might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Ernest S. Rady **Ernest S. Rady**	Executive Chairman of the Board of Directors (Principal Executive Officer)	September 13, 2010
/s/ John W. Chamberlain **John W. Chamberlain**	Chief Executive Officer and Director	September 13, 2010
/s/ Robert F. Barton **Robert F. Barton**	Chief Financial Officer (Principal Financial and Accounting Officer)	September 13, 2010

EXHIBIT INDEX

Exhibit	
1.1*	Form of Underwriting Agreement
3.1*	Articles of Amendment and Restatement of American Assets Trust, Inc.
3.2*	Amended and Restated Bylaws of American Assets Trust, Inc.
4.1*	Form of Certificate of Common Stock of American Assets Trust, Inc.
5.1*	Opinion of Venable LLP
8.1*	Opinion of Latham & Watkins LLP with respect to tax matters
10.1	Form of Amended and Restated Agreement of Limited Partnership of American Assets Trust, L.P.
10.2	Form of Registration Rights Agreement among American Assets Trust, Inc. and the persons named therein
10.3*	American Assets Trust, Inc. and American Assets Trust, L.P. 2010 Equity Incentive Award Plan
10.4*	Form of American Assets Trust, Inc. Restricted Stock Award Agreement
10.5	Form of Indemnification Agreement between American Assets Trust, Inc. and its directors and officers
10.6	Representation, Warranty and Indemnity Agreement by and among American Assets Trust, Inc., American Assets Trust, L.P. and Ernest Rady Trust U/D/T March 10, 1983, dated as of September [ ], 2010
10.7	Indemnity Escrow Agreement by and among American Assets Trust, Inc., American Assets Trust, L.P. and the Ernest Rady Trust U/D/T March 10, 1983, dated as of September 13, 2010
10.8	Form of Tax Protection Agreement by and among American Assets Trust, Inc., American Assets Trust, L.P., and each partner set forth in Schedule I, Schedule II and Schedule III thereto
10.9	Agreement and Plan of Merger by and among American Assets Trust, L.P. and the entities set forth on Schedule I thereto, dated as of September 13, 2010
10.10	Agreement and Plan of Merger by and among American Assets Trust, Inc. and the entities set forth on Schedule I thereto, dated as of September 13, 2010
10.11	Form of Agreement and Plan of Merger by and among American Assets Trust, L.P. and the OP sub forward merger entities named therein
10.12	Form of Agreement and Plan of Merger by and among American Assets Trust, L.P. and the OP sub reverse merger entities named therein
10.13	Form of Agreement and Plan of Merger by and among American Assets Trust, Inc. and the REIT sub forward merger entities named therein
10.14	OP Contribution Agreement by and among American Assets Trust, L.P., American Assets Trust, Inc., and the contributors set forth on Schedule I thereto, dated as of September 13, 2010
10.15	Form of OP Sub Contribution Agreement by and among American Assets Trust, L.P., the subsidiary entity named therein, American Assets Trust, Inc. and the contributors set forth on Schedule I thereto
10.16	Management Business Contribution Agreement by and between American Assets, Inc. and American Assets Trust Management, LLC, dated as of September 13, 2010

Exhibit	
10.17	Deed of Trust and Security Agreement by Alamo Stonecrest Holdings, LLC and Alamo Vista Holdings, LLC, as trustor, in favor of Heritage Title Company of Austin, Inc., as trustee, for the benefit of Morgan Stanley Mortgage Capital Inc., as beneficiary, dated as of December 31, 2003
10.18	Form of Promissory Note by the borrower named therein to Morgan Stanley Mortgage Capital Inc.
10.19	Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing by Waikele Reserve West Holdings, LLC and Waikele Venture Holdings, LLC, as mortgagor, to Bear Stearns Commercial Mortgage, Inc., as mortgagee, dated as of October 28, 2004
10.20	First Amendment to Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing by and among Waikele Reserve West Holdings, LLC, Waikele Venture Holdings, LLC and Bear Stearns Commercial Mortgage, Inc., dated as of January 5, 2005
10.21	Note Severance and Loan Document Modification Agreement by and between Bear Stearns Commercial Mortgage, Inc., Waikele Reserve West Holdings, LLC and Waikele Venture Holdings, LLC, dated as of November 3, 2004
10.22	Form of Substitute Note by the borrower named therein to Bear Stearns Commercial Mortgage, Inc.
10.23	Deed of Trust and Security Agreement by Landmark Venture Holdings, LLC and Landmark Firehill Holdings, LLC, as trustor, in favor of Chicago Title Company, as trustee, for the benefit of Morgan Stanley Mortgage Capital Inc., as beneficiary, dated as of June 13, 2005
10.24	Form of Promissory Note by the borrower named therein to Morgan Stanley Mortgage Capital Inc.
10.25	Deed of Trust and Security Agreement by Del Monte—POH, LLC, Del Monte—DMSJH, LLC, Del Monte—KMBC, LLC and Del Monte—DMCH, LLC, as trustor, in favor of First American Title Insurance Company, as trustee, for the benefit of Column Financial, Inc., as beneficiary, dated as of June 30, 2005
10.26	Form of Promissory Note by the borrower named therein to Column Financial, Inc.
10.27	Loan Agreement between Bank of America, N.A. and First States Investors 239, LLC, dated as of August 5, 2005
10.28	First Amendment to Loan Agreement between Bank of America, N.A., as original lender, and Bank of America, N.A., as Master Servicer for Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-5, and First States Investors 239, LLC, dated as of December 6, 2005
10.29	Loan Assumption Agreement by and between First States Investors 239, LLC, First States Group, L.P., Novato FF Property, LLC, American Assets, Inc., Bank of America, N.A., as Master Servicer for LaSalle Bank National Association, as Trustee for the registered holders of Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-5 and Wells Fargo Bank, N.A., as Trustee for the benefit of holders of GE Commercial Mortgage Corporation, Mortgage Pass-Through Certificates, Series 2005-C4 and Mortgage Electronic Registration Systems, Inc., dated as of May 15, 2007
10.30	Form of Amended and Restated Promissory Note by and between First States Investors 239, LLC and Bank of America, N.A.
10.31	Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing by First States Investors 239, LLC, as grantor, to First American Title Insurance Company, as trustee, for the benefit of Mortgage Electronic Registration Systems, Inc., as beneficiary, dated as of August 5, 2005
10.32	Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing by ABW Holdings LLC, as mortgagor, to Column Financial, Inc., as mortgagee, dated as of February 15, 2007

Exhibit	
10.33	First Amendment to Mortgage and Other Loan Documents by and among ABW Holdings LLC, American Assets, Inc. Outrigger Enterprises, Inc. and Column Financial, Inc., dated as of October 31, 2007
10.34	Promissory Note by ABW Holdings LLC, as maker, to Column Financial, Inc., dated as of February 15, 2007
10.35	Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing by Loma Palisades, a California general partnership, as trustor, to First American Title Insurance Company, as trustee, for the benefit of Wells Fargo Bank, National Association, as beneficiary, dated as of June 30, 2008
10.36	Multifamily Note by Loma Palisades, a California general partnership, to Wells Fargo Bank, National Association, dated as of June 30, 2008
10.37	Amended and Restated Limited Liability Company Agreement of Novato FF Venture, LLC by and between Novato FF PT Investor, LLC and Pacific Novato Holdings, LP, dated as of May 15, 2007
10.38*	Transition Services Agreement between American Assets, Inc. and American Assets Trust, Inc., dated as of , 2010
10.39*	Sublease Agreement between American Assets, Inc. and American Assets Trust, Inc., dated as of , 2010
21.1*	List of Subsidiaries of the Registrant
23.1*	Consent of Venable LLP (included in Exhibit 5.1)
23.2*	Consent of Latham & Watkins LLP (included in Exhibit 8.1)
23.3	Consent of Ernst & Young LLP
23.4	Consent of Accuity LLP
23.5	Consent of Rosen Consulting Group
24.1	Power of Attorney (included on the Signature Page)
99.1*	Rosen Consulting Group Market Study

* To be filed by amendment.

AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

AMERICAN ASSETS TRUST, L.P.

a Maryland limited partnership

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "*SECURITIES ACT*"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS IN THE OPINION OF COUNSEL SATISFACTORY TO THE PARTNERSHIP THE PROPOSED SALE, TRANSFER OR OTHER DISPOSITION MAY BE EFFECTED WITHOUT REGISTRATION UNDER THE SECURITIES ACT AND UNDER APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

dated as of [_____], 2010

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AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF AMERICAN ASSETS TRUST, L.P.

THIS AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF AMERICAN ASSETS TRUST, L.P., dated as of [_____], 2010, is made and entered into by and among AMERICAN ASSETS TRUST, INC., a Maryland corporation, as the General Partner and the Persons whose names are set forth on Exhibit A attached hereto, as limited partners, and any Additional Limited Partner that is admitted from time to time to the Partnership and listed on Exhibit A attached hereto.

WHEREAS, a Certificate of Limited Partnership of the Partnership was filed with the State Department of Assessments and Taxation of Maryland on [_____], 2010 (the "*Formation Date*"), and the initial general partner and limited partners of the Partnership entered into an original agreement of limited partnership of the Partnership effective as of the Formation Date (the "*Original Partnership Agreement*"); and

WHEREAS, the Partners (as hereinafter defined) now desire to amend and restate the Original Partnership Agreement and admit the Persons whose names are set forth on Exhibit A attached hereto as limited partners of the Partnership by entering into this Agreement (as hereinafter defined);

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1
DEFINED TERMS

The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement:

"*Act*" means the Maryland Revised Uniform Limited Partnership Act, Title 10 of the Corporations and Associations Article of the Annotated Code of Maryland, as it may be amended from time to time, and any successor to such statute.

"*Actions*" has the meaning set forth in Section 7.7 hereof.

"*Additional Funds*" has the meaning set forth in Section 4.3.A hereof.

"*Additional Limited Partner*" means a Person who is admitted to the Partnership as a limited partner pursuant to the Act and Section 4.2 and Section 12.2 hereof and who is shown as such on the books and records of the Partnership.

"*Adjusted Capital Account*" means, with respect to any Partner, the balance in such Partner's Capital Account as of the end of the relevant Partnership Year or other applicable period, after giving effect to the following adjustments:

(i) increase such Capital Account by any amounts that such Partner is obligated to restore pursuant to this Agreement upon liquidation of such Partner's Partnership Interest or that such Person is deemed to be obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) or the penultimate sentence of each of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) decrease such Capital Account by the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of "Adjusted Capital Account" is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"*Adjusted Capital Account Deficit*" means, with respect to any Partner, the deficit balance, if any, in such Partner's Adjusted Capital Account as of the end of the relevant Partnership Year or other applicable period.

"*Adjustment Event*" has the meaning set forth in Section 16.3 hereof.

"*Adjustment Factor*" means 1.0; *provided, however*, that in the event that:

(i) the General Partner (a) declares or pays a dividend on its outstanding REIT Shares wholly or partly in REIT Shares or makes a distribution to all holders of its outstanding REIT Shares wholly or partly in REIT Shares, (b) splits or subdivides its outstanding REIT Shares or (c) effects a reverse stock split or otherwise combines its outstanding REIT Shares into a smaller number of REIT Shares, the Adjustment Factor shall be adjusted by multiplying the Adjustment Factor previously in effect by a fraction, (i) the numerator of which shall be the number of REIT Shares issued and outstanding on the record date for such dividend, distribution, split, subdivision, reverse split or combination (assuming for such purposes that such dividend, distribution, split, subdivision, reverse split or combination has occurred as of such time) and (ii) the denominator of which shall be the actual number of REIT Shares (determined without the above assumption) issued and outstanding on the record date for such dividend, distribution, split, subdivision, reverse split or combination;

(ii) the General Partner distributes any rights, options or warrants to all holders of its REIT Shares to subscribe for or to purchase or to otherwise acquire REIT Shares, or other securities or rights convertible into, exchangeable for or exercisable for REIT Shares (other than REIT Shares issuable pursuant to a Qualified DRIP/COPP), at a price per share less than the Value of a REIT Share on the record date for such distribution (each a "*Distributed Right*"), then, as of the distribution date of such Distributed Rights or, if later, the time such Distributed Rights become exercisable, the Adjustment Factor shall be adjusted by multiplying the Adjustment Factor previously in effect by a fraction (a) the numerator of which shall be the number of REIT Shares issued and outstanding on the record date (or, if later, the date such Distributed Rights become exercisable) plus the maximum number of REIT Shares purchasable under such Distributed Rights and (b) the denominator of which shall be the number of REIT Shares

issued and outstanding on the record date (or, if later, the date such Distributed Rights become exercisable) plus a fraction (1) the numerator of which is the maximum number of REIT Shares purchasable under such Distributed Rights times the minimum purchase price per REIT Share under such Distributed Rights and (2) the denominator of which is the Value of a REIT Share as of the record date (or, if later, the date such Distributed Rights become exercisable); *provided*, *however*, that, if any such Distributed Rights expire or become no longer exercisable, then the Adjustment Factor shall be adjusted, effective retroactive to the date of distribution of the Distributed Rights, to reflect a reduced maximum number of REIT Shares or any change in the minimum purchase price for the purposes of the above fraction; and

(iii) the General Partner shall, by dividend or otherwise, distribute to all holders of its REIT Shares evidences of its indebtedness or assets (including securities, but excluding any dividend or distribution referred to in subsection (i) or (ii) above), which evidences of indebtedness or assets relate to assets not received by the General Partner pursuant to a pro rata distribution by the Partnership, then the Adjustment Factor shall be adjusted to equal the amount determined by multiplying the Adjustment Factor in effect immediately prior to the close of business as of the record date by a fraction (a) the numerator of which shall be such Value of a REIT Share as of the record date and (b) the denominator of which shall be the Value of a REIT Share as of the record date less the then fair market value (as determined by the General Partner, whose determination shall be conclusive) of the portion of the evidences of indebtedness or assets so distributed applicable to one REIT Share.

Notwithstanding the foregoing, no adjustments to the Adjustment Factor will be made for any class or series of Partnership Interests to the extent that the Partnership makes or effects any correlative distribution or payment to all of the Partners holding Partnership Interests of such class or series, or effects any correlative split or reverse split in respect of the Partnership Interests of such class or series. Any adjustments to the Adjustment Factor shall become effective immediately after such event, retroactive to the record date, if any, for such event. For illustrative purposes, examples of adjustments to the Adjustment Factor are set forth on Exhibit B attached hereto.

"*Affiliate*" means, with respect to any Person, any Person directly or indirectly controlling or controlled by or under common control with such Person. For the purposes of this definition, "control" when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Agreement*" means this Amended and Restated Limited Partnership Agreement of American Assets Trust, L.P., as now or hereafter amended, restated, modified, supplemented or replaced.

"*Applicable Percentage*" has the meaning set forth in Section 15.1.B hereof.

"*Appraisal*" means, with respect to any assets, the written opinion of an independent third party experienced in the valuation of similar assets, selected by the General Partner. Such opinion may be in the form of an opinion by such independent third party that the value for such property or asset as set by the General Partner is fair, from a financial point of view, to the Partnership.

"*Assignee*" means a Person to whom a Partnership Interest has been Transferred in a manner permitted under this Agreement, but who has not become a Substituted Limited Partner, and who has the rights set forth in Section 11.5 hereof.

"*Available Cash*" means, with respect to any period for which such calculation is being made,

(i) the sum, without duplication, of:

(1) the Partnership's Net Income or Net Loss (as the case may be) for such period,

(2) Depreciation and all other noncash charges to the extent deducted in determining Net Income or Net Loss for such period,

(3) the amount of any reduction in reserves of the Partnership referred to in clause (ii)(6) below (including, without limitation, reductions resulting because the General Partner determines such amounts are no longer necessary),

(4) the excess, if any, of the net cash proceeds from the sale, exchange, disposition, financing or refinancing of Partnership property for such period over the gain (or loss, as the case may be) recognized from such sale, exchange, disposition, financing or refinancing during such period (excluding Terminating Capital Transactions), and

(5) all other cash received (including amounts previously accrued as Net Income and amounts of deferred income) or any net amounts borrowed by the Partnership for such period that was not included in determining Net Income or Net Loss for such period;

(ii) less the sum, without duplication, of:

(1) all principal debt payments made during such period by the Partnership,

(2) capital expenditures made by the Partnership during such period,

(3) investments in any entity (including loans made thereto) to the extent that such investments are not otherwise described in clause (ii)(1) or clause (ii)(2) above,

(4) all other expenditures and payments not deducted in determining Net Income or Net Loss for such period (including amounts paid in respect of expenses previously accrued),

(5) any amount included in determining Net Income or Net Loss for such period that was not received by the Partnership during such period,

(6) the amount of any increase in reserves (including, without limitation, working capital reserves) established during such period that the General Partner determines are necessary or appropriate in its sole and absolute discretion,

(7) any amount distributed or paid in redemption of any Limited Partner Interest or Partnership Units, including, without limitation, any Cash Amount paid, and

(8) the amount of any working capital accounts and other cash or similar balances which the General Partner determines to be necessary or appropriate in its sole and absolute discretion.

Notwithstanding the foregoing, Available Cash shall not include (a) any cash received or reductions in reserves, or take into account any disbursements made, or reserves established, after dissolution and the commencement of the liquidation and winding up of the Partnership or (b) any Capital Contributions, whenever received or any payments, expenditures or investments made with such Capital Contributions.

"*Business Day*" means any day except a Saturday, Sunday or other day on which commercial banks in San Diego, California are authorized by law to close.

"*Capital Account*" means, with respect to any Partner, the capital account maintained by the General Partner for such Partner on the Partnership's books and records in accordance with the following provisions:

(i) To each Partner's Capital Account, there shall be added such Partner's Capital Contributions, such Partner's distributive share of Net Income and any items in the nature of income or gain that are specially allocated pursuant to Section 6.3 or 6.4 hereof, and the amount of any Partnership liabilities assumed by such Partner or that are secured by any property distributed to such Partner.

(ii) From each Partner's Capital Account, there shall be subtracted the amount of cash and the Gross Asset Value of any Partnership property distributed to such Partner pursuant to any provision of this Agreement, such Partner's distributive share of Net Losses and any items in the nature of expenses or losses that are specially allocated pursuant to Section 6.3 or 6.4 hereof, and the amount of any liabilities of such Partner assumed by the Partnership or that are secured by any property contributed by such Partner to the Partnership (except to the extent already reflected in the amount of such Partner's Capital Contribution).

(iii) In the event any interest in the Partnership is Transferred in accordance with the terms of this Agreement (which Transfer does not result in the termination of the Partnership for U.S. federal income tax purposes), the transferee shall succeed to the Capital Account of the transferor to the extent that it relates to the Transferred interest.

(iv) In determining the amount of any liability for purposes of subsections (i) and (ii) hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

(v) The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations promulgated under Section 704 of the Code, and shall be interpreted and applied in a manner consistent with such Regulations. If the General Partner shall determine that it is necessary or prudent to modify the manner in which the Capital Accounts are maintained in order to comply with such Regulations, the General Partner may make such modification, provided that such modification is not likely to have any material effect on the amounts distributable to any Partner pursuant to Article 13 hereof upon the dissolution of the Partnership. The General Partner may, in its sole discretion, (a) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q) and (b) make any appropriate modifications in the event that unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b) or Section 1.704-2.

"*Capital Account Limitation*" has the meaning set forth in Section 16.9.B hereof.

"*Capital Contribution*" means, with respect to any Partner, the amount of money and the initial Gross Asset Value of any Contributed Property that such Partner contributes or is deemed to contribute to the Partnership pursuant to Article 4 hereof.

"*Capital Share*" means a share of any class or series of stock of the General Partner now or hereafter authorized other than a REIT Share.

"*Cash Amount*" means an amount of cash equal to the product of (i) the Value of a REIT Share and (ii) the REIT Shares Amount determined as of the applicable Valuation Date.

"*Certificate*" means the Certificate of Limited Partnership of the Partnership filed with the SDAT, as amended from time to time in accordance with the terms hereof and the Act.

"*Charity*" means an entity described in Section 501(c)(3) of the Code or any trust all the beneficiaries of which are such entities.

"*Charter*" means the charter of the General Partner, within the meaning of Section 1-101(e) of the Maryland General Corporation Law.

"*Closing Price*" has the meaning set forth in the definition of "*Value*."

"*Code*" means the Internal Revenue Code of 1986, as amended and in effect from time to time or any successor statute thereto, as interpreted by the applicable Regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

"*Common Unit Economic Balance*" means (i) the Capital Account balance of the General Partner, plus the amount of the General Partner's share of any Partner Minimum Gain or Partnership Minimum Gain, in either case to the extent attributable to the General Partner's ownership of Partnership Common Units and computed on a hypothetical basis after taking into account all allocations through the date on which any allocation is made under Section 6.2.D hereof, divided by (ii) the number of the General Partner's Partnership Common Units.

"*Consent*" means the consent to, approval of, or vote in favor of a proposed action by a Partner given in accordance with Article 14 hereof. The terms "*Consented*" and "*Consenting*" have correlative meanings.

"*Consent of the General Partner*" means the Consent of the sole General Partner, which Consent, except as otherwise specifically required by this Agreement, may be obtained prior to or after the taking of any action for which it is required by this Agreement and may be given or withheld by the General Partner in its sole and absolute discretion.

"*Consent of the Limited Partners*" means the Consent of a Majority in Interest of the Limited Partners, which Consent shall be obtained prior to the taking of any action for which it is required by this Agreement and, except as otherwise provided in this Agreement, may be given or withheld by each Limited Partner in its sole and absolute discretion.

"*Consent of the Partners*" means the Consent of the General Partner and the Consent of a Majority in Interest of the Partners, which Consent shall be obtained prior to the taking of any action for which it is required by this Agreement and, except as otherwise provided in this Agreement, may be given or withheld by the General Partner or the Limited Partners in their sole and absolute discretion; *provided*, *however*, that, if any such action affects only certain classes or series of Partnership Interests, "Consent of the Partners" means the Consent of the General Partner and the Consent of a Majority in Interest of the Partners of the affected classes or series of Partnership Interests.

"*Constituent Person*" has the meaning set forth in Section 16.9.F hereof.

"*Contributed Property*" means each Property or other asset, in such form as may be permitted by the Act, but excluding cash, contributed or deemed contributed to the Partnership (or deemed contributed by the Partnership to a "new" partnership pursuant to Code Section 708).

"*Controlled Entity*" means, as to any Partner, (a) any corporation more than fifty percent (50%) of the outstanding voting stock of which is owned by such Partner or such Partner's Family Members or Affiliates, (b) any trust, whether or not revocable, of which such Partner or such Partner's Family Members or Affiliates are the sole beneficiaries, (c) any partnership of which such Partner or its Affiliates are the managing partners and in which such Partner, such Partner's Family Members or Affiliates hold partnership interests representing at least twenty-five percent (25%) of such partnership's capital and profits and (d) any limited liability company

of which such Partner or its Affiliates are the managers and in which such Partner, such Partner's Family Members or Affiliates hold membership interests representing at least twenty-five percent (25%) of such limited liability company's capital and profits.

"*Conversion Date*" has the meaning set forth in Section 16.9.B hereof.

"*Conversion Notice*" has the meaning set forth in Section 16.9.B hereof.

"*Conversion Right*" has the meaning set forth in Section 16.9.A hereof.

"*Cut-Off Date*" means the fifth (5th) Business Day after the General Partner's receipt of a Notice of Redemption.

"*Debt*" means, as to any Person, as of any date of determination: (i) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services; (ii) all amounts owed by such Person to banks or other Persons in respect of reimbursement obligations under letters of credit, surety bonds and other similar instruments guaranteeing payment or other performance of obligations by such Person; (iii) all indebtedness for borrowed money or for the deferred purchase price of property or services secured by any lien on any property owned by such Person, to the extent attributable to such Person's interest in such property, even though such Person has not assumed or become liable for the payment thereof; and (iv) lease obligations of such Person that, in accordance with generally accepted accounting principles, should be capitalized.

"*Depreciation*" means, for each Partnership Year or other applicable period, an amount equal to the federal income tax depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; *provided, however*, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the General Partner.

"*Disregarded Entity*" means, with respect to any Person, (i) any "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)) of such Person, (ii) any entity treated as a disregarded entity for Federal income tax purposes with respect to such Person, or (iii) any grantor trust if the sole owner of the assets of such trust for Federal income tax purposes is such Person.

"*Distributed Right*" has the meaning set forth in the definition of "*Adjustment Factor*."

"*Economic Capital Account Balance*" means, with respect to a Holder of LTIP Units, its (a) Capital Account balance plus (b) the amount of its share of any Partner Minimum Gain or Partnership Minimum Gain, in either case to the extent attributable to its ownership of LTIP Units.

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

"*Family Members*" means, as to a Person that is an individual, such Person's spouse, ancestors, descendants (whether by blood or by adoption or step-descendants by marriage), brothers and sisters, nieces and nephews and *inter vivos* or testamentary trusts (whether revocable or irrevocable) of which only such Person and his or her spouse, ancestors, descendants (whether by blood or by adoption or step-descendants by marriage), brothers and sisters and nieces and nephews are beneficiaries.

"*Final Adjustment*" has the meaning set forth in Section 10.3.B(2) hereof.

"*Flow-Through Partners*" has the meaning set forth in Section 3.4.C hereof.

"*Flow-Through Entity*" has the meaning set forth in Section 3.4.C hereof.

"*Forced Conversion*" has the meaning set forth in Section 16.9.C hereof.

"*Forced Conversion Notice*" has the meaning set forth in Section 16.9.C hereof.

"*Fourteen-Month Period*" means (a) as to an Original Limited Partner or any Assignee of an Original Limited Partner that is a Qualifying Party, a fourteen-month period ending on the day before the first fourteen-month anniversary of the date of this Agreement and (b) as to any other Qualifying Party, a fourteen-month period ending on the day before the first fourteen-month anniversary of such Qualifying Party's first becoming: (i) a Holder of Partnership Common Units, or (ii) in the case of Partnership Common Units received upon conversion of Vested LTIP Units pursuant to Section 16.9.B hereof, a Holder of the LTIP Units so converted; *provided*, *however*, that the General Partner may, in its sole and absolute discretion, by written agreement with a Qualifying Party, shorten or lengthen the first Fourteen-Month Period to a period of shorter or longer than fourteen (14) months with respect to a Qualifying Party other than an Original Limited Partner or an Assignee of an Original Limited Partner.

"*Funding Debt*" means any Debt incurred by or on behalf of the General Partner for the purpose of providing funds to the Partnership.

"*General Partner*" means American Assets Trust, Inc. and its successors and assigns as a general partner of the Partnership, in each case, that is admitted from time to time to the Partnership as a general partner pursuant to the Act and this Agreement and is listed as a general partner on Exhibit A, as such Exhibit A may be amended from time to time, in such Person's capacity as a general partner of the Partnership.

"*General Partner Interest*" means the entire Partnership Interest held by a General Partner hereof, which Partnership Interest may be expressed as a number of Partnership Common Units, Partnership Preferred Units or any other Partnership Units.

"*General Partner Interest Transfer*" has the meaning set forth in Section 11.2.D hereof.

"*Gross Asset Value*" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset on the date of contribution, as determined by the General Partner and agreed to by the contributing Person.

(b) The Gross Asset Values of all Partnership assets immediately prior to the occurrence of any event described in clauses (i) through (v) below shall be adjusted to equal their respective gross fair market values, as determined by the General Partner using such reasonable method of valuation as it may adopt, as of the following times:

(i) the acquisition of an additional interest in the Partnership (other than in connection with the execution of this Agreement but including, without limitation, acquisitions pursuant to Section 4.2 hereof or contributions or deemed contributions by the General Partner pursuant to Section 4.2 hereof) by a new or existing Partner in exchange for more than a *de minimis* Capital Contribution, if the General Partner reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;

(ii) the distribution by the Partnership to a Partner of more than a *de minimis* amount of Partnership property as consideration for an interest in the Partnership if the General Partner reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;

(iii) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

(iv) the grant of an interest in the Partnership (other than a *de minimis* interest) as consideration for the provision of services to or for the benefit of the Partnership by an existing Partner acting in a partner capacity, or by a new Partner acting in a partner capacity or in anticipation of becoming a Partner of the Partnership (including the grant of an LTIP Unit), if the General Partner reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership; and

(v) at such other times as the General Partner shall reasonably determine necessary or advisable in order to comply with Regulations Sections 1.704-1(b) and 1.704-2.

(c) The Gross Asset Value of any Partnership asset distributed to a Partner shall be the gross fair market value of such asset on the date of distribution, as determined by the distributee and the General Partner; *provided*, *however*, that if the distributee is the General Partner or if the distributee and the General Partner cannot agree on such a determination, such gross fair market value shall be determined by Appraisal.

(d) The Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); *provided*, *however*, that Gross Asset Values shall not be adjusted pursuant to this subsection (d) to the extent that the General Partner reasonably determines that an adjustment pursuant to subsection (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d).

(e) If the Gross Asset Value of a Partnership asset has been determined or adjusted pursuant to subsection (a), subsection (b) or subsection (d) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Losses.

(f) If any unvested LTIP Units are forfeited, as described in Section 16.2.B, upon such forfeiture, the Gross Asset Value of the Partnership's assets shall be reduced by the amount of any reduction of such Partner's Capital Account attributable to the forfeiture of such LTIP Units.

"*Hart-Scott-Rodino Act*" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"*Holder*" means either (a) a Partner or (b) an Assignee owning a Partnership Interest.

"*Incapacity*" or "*Incapacitated*" means: (i) as to any Partner who is an individual, death, total physical disability or entry by a court of competent jurisdiction adjudicating such Partner incompetent to manage his or her person or his or her estate; (ii) as to any Partner that is a corporation or limited liability company, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; (iii) as to any Partner that is a partnership, the dissolution and commencement of winding up of the partnership; (iv) as to any Partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the Partnership; (v) as to any trustee of a trust that is a Partner, the termination of the trust (but not the substitution of a new trustee); or (vi) as to any Partner, the bankruptcy of such Partner. For purposes of this definition, bankruptcy of a Partner shall be deemed to have occurred when (a) the Partner commences a voluntary proceeding seeking liquidation, reorganization or other relief of or against such Partner under any bankruptcy, insolvency or other similar law now or hereafter in effect, (b) the Partner is adjudged as bankrupt or insolvent, or a final and non-appealable order for relief under any bankruptcy, insolvency or similar law now or hereafter in effect has been entered against the Partner, (c) the Partner executes and delivers a general assignment for the benefit of the Partner's creditors, (d) the Partner files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Partner in any proceeding of the nature described in clause (b) above, (e) the Partner seeks, consents to or acquiesces in the appointment of a trustee, receiver or Liquidator for the Partner or for all or any substantial part of the Partner's properties, (f) any proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or other similar law now or hereafter in effect has not been dismissed within one hundred twenty (120) days after the commencement thereof, (g) the

appointment without the Partner's consent or acquiescence of a trustee, receiver or Liquidator has not been vacated or stayed within ninety (90) days of such appointment, or (h) an appointment referred to in clause (g) above is not vacated within ninety (90) days after the expiration of any such stay.

"*Indemnitee*" means (i) any Person made, or threatened to be made, a party to a proceeding by reason of its status as (a) the General Partner or (b) a director of the General Partner or an officer of the Partnership or the General Partner and (ii) such other Persons (including Affiliates or employees of the General Partner or the Partnership) as the General Partner may designate from time to time (whether before or after the event giving rise to potential liability), in its sole and absolute discretion.

"*IRS*" means the United States Internal Revenue Service.

"*Limited Partner*" means any Person that is admitted from time to time to the Partnership as a limited partner pursuant to the Act and this Agreement and is listed as a limited partner on Exhibit A attached hereto, as such Exhibit A may be amended from time to time, including any Substituted Limited Partner or Additional Limited Partner, in such Person's capacity as a limited partner of the Partnership.

"*Limited Partner Interest*" means a Partnership Interest of a Limited Partner in the Partnership representing a fractional part of the Partnership Interests of all Limited Partners and includes any and all benefits to which the holder of such a Partnership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. A Limited Partner Interest may be expressed as a number of Partnership Common Units, Partnership Preferred Units or other Partnership Units.

"*Liquidating Event*" has the meaning set forth in Section 13.1 hereof.

"*Liquidating Gains*" means any net gain realized in connection with the actual or hypothetical sale of all or substantially all of the assets of the Partnership (including upon the occurrence of any Liquidating Event or Terminating Capital Transaction), including but not limited to net gain realized in connection with an adjustment to the Gross Asset Value of Partnership assets under the definition of Gross Asset Value in Section 1 of this Agreement.

"*Liquidator*" has the meaning set forth in Section 13.2.A hereof.

"*LTIP Unit Distribution Participation Date*" has the meaning set forth in Section 16.4.C hereof.

"*LTIP Unit Limited Partner*" means any Partner holding LTIP Units.

"*LTIP Units*" means the Partnership Units designated as such having the rights, powers, privileges, restrictions, qualifications and limitations set forth herein and in the Plan. LTIP Units can be issued in one or more classes, or one or more series of any such classes bearing such relationship to one another as to allocations, distributions, and other rights as the General Partner shall determine in its sole and absolute discretion subject to Maryland law.

"*Majority in Interest of the Limited Partners*" means Limited Partners (other than any Limited Partner fifty percent (50%) or more of whose equity is owned, directly or indirectly, by the General Partner) holding in the aggregate Percentage Interests that are greater than fifty percent (50%) of the aggregate Percentage Interests of all such Limited Partners entitled to Consent to or withhold Consent from a proposed action.

"*Majority in Interest of the Partners*" means Partners holding in the aggregate Percentage Interests that are greater than fifty percent (50%) of the aggregate Percentage Interests of all Partners entitled to Consent to or withhold Consent from a proposed action.

"*Market Price*" has the meaning set forth in the definition of "*Value*."

"*Maryland Courts*" has the meaning set forth in Section 15.9.B hereof.

"*Net Income*" or "*Net Loss*" means, for each Partnership Year or other applicable period, an amount equal to the Partnership's taxable income or loss for such year or other applicable period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Net Income (or Net Loss) pursuant to this definition of "Net Income" or "Net Loss" shall be added to (or subtracted from, as the case may be) such taxable income (or loss);

(b) Any expenditure of the Partnership described in Code Section 705(a)(2)(B) or treated as a Code Section 705(a)(2)(B) expenditure pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income (or Net Loss) pursuant to this definition of "Net Income" or "Net Loss," shall be subtracted from (or added to, as the case may be) such taxable income (or loss);

(c) In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to subsection (b) or subsection (c) of the definition of "Gross Asset Value," the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss;

(d) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization and other cost recovery deductions that would otherwise be taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Partnership Year or other applicable period;

(f) To the extent that an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Partner's interest in the Partnership, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Income or Net Loss; and

(g) Notwithstanding any other provision of this definition of "Net Income" or "Net Loss," any item that is specially allocated pursuant to Article 6 hereof shall not be taken into account in computing Net Income or Net Loss. The amounts of the items of Partnership income, gain, loss or deduction available to be specially allocated pursuant to Section 6.3 or 6.4 hereof shall be determined by applying rules analogous to those set forth in this definition of "Net Income" or "Net Loss."

"*New Securities*" means (i) any rights, options, warrants or convertible or exchangeable securities having the right to subscribe for or purchase REIT Shares or Preferred Shares, excluding grants under the Stock Option Plans, or (ii) any Debt issued by the General Partner that provides any of the rights described in clause (i).

"*Nonrecourse Deductions*" has the meaning set forth in Regulations Section 1.704-2(b)(1), and the amount of Nonrecourse Deductions for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(c).

"*Nonrecourse Liability*" has the meaning set forth in Regulations Sections 1.704-2(b)(3) and 1.752-1(a)(2).

"*Notice of Redemption*" means the Notice of Redemption substantially in the form of Exhibit C attached to this Agreement.

"*Optionee*" means a Person to whom a stock option is granted under any Stock Option Plan.

"*Original Limited Partner*" means any Person that is a Limited Partner as of the close of business on the date of the closing of the issuance of REIT Shares pursuant to the initial public offering of REIT Shares, and does not include any Assignee or other transferee, including, without limitation, any Substituted Limited Partner succeeding to all or any part of the Partnership Interest of any such Person.

"*Ownership Limit*" means the restriction or restrictions on the ownership and transfer of stock of the General Partner imposed under the Charter.

"*Partner*" means the General Partner or a Limited Partner, and "*Partners*" means the General Partner and the Limited Partners.

"*Partner Minimum Gain*" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

"*Partner Nonrecourse Debt*" has the meaning set forth in Regulations Section 1.704-2(b)(4).

"*Partner Nonrecourse Deductions*" has the meaning set forth in Regulations Section 1.704-2(i)(1), and the amount of Partner Nonrecourse Deductions with respect to a Partner Nonrecourse Debt for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(i)(2).

"*Partnership*" means the limited partnership formed and continued under the Act and pursuant to this Agreement, and any successor thereto.

"*Partnership Common Unit*" means a fractional, undivided share of the Partnership Interests of all Partners issued pursuant to Sections 4.1 and 4.2 hereof, but does not include any Partnership Preferred Unit, LTIP Unit or any other Partnership Unit specified in a Partnership Unit Designation as being other than a Partnership Common Unit.

"*Partnership Approval*" exists, with respect to any General Partner Interest Transfer, when the sum of (i) the Percentage Interest of Limited Partners holding Partnership Common Units and LTIP Units Consenting to the General Partner Interest Transfer, plus (ii) the product of (a) the Percentage Interest of Partnership Common Units held by the General Partner multiplied by (b) the percentage of the votes that were cast in favor of the event constituting such General Partner Interest Transfer by the General Partner's common stockholders out of the total votes entitled to be cast by the General Partner's common stockholders, equals or exceeds the percentage required for the common stockholders of the General Partner to approve the event constituting such General Partner Interest Transfer. In the event that Partnership Approval has not been established within ten (10) Business Days of the record date for the determination of the existence of such Partnership Approval, then Partnership Approval shall be deemed not to exist with respect to the event constituting such General Partner Interest Transfer.

"*Partnership Employee*" means an employee or other service provider of the Partnership or of a Subsidiary of the Partnership, if any, acting in such capacity.

"*Partnership Equivalent Units*" has the meaning set forth in Section 4.7.A hereof.

"*Partnership Interest*" means an ownership interest in the Partnership held by either a Limited Partner or a General Partner and includes any and all benefits to which the holder of such a Partnership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. There may be one or more classes or series of Partnership Interests. A Partnership Interest may be expressed as a number of Partnership Common Units, Partnership Preferred Units or other Partnership Units.

"*Partnership Minimum Gain*" has the meaning set forth in Regulations Section 1.704-2(b)(2), and the amount of Partnership Minimum Gain, as well as any net increase or decrease in Partnership Minimum Gain, for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(d).

"*Partnership Preferred Unit*" means a fractional, undivided share of the Partnership Interests that the General Partner has authorized pursuant to Section 4.2 hereof that has distribution rights, or rights upon liquidation, winding up and dissolution, that are superior or prior to the Partnership Common Units.

"*Partnership Record Date*" means the record date established by the General Partner for a distribution pursuant to Section 5.1 hereof, which record date shall generally be the same as the record date established by the General Partner for a distribution to its stockholders of some or all of its portion of such distribution.

"*Partnership Unit*" means a Partnership Common Unit, a Partnership Preferred Unit, an LTIP Unit or any other unit of the fractional, undivided share of the Partnership Interests that the General Partner has authorized pursuant to Section 4.1, Section 4.2 or Section 4.3 hereof; *provided*, *however*, that Partnership Units comprising a General Partner Interest or a Limited Partner Interest shall have the differences in rights and privileges as specified in this Agreement.

"*Partnership Unit Designation*" shall have the meaning set forth in Section 4.2.A hereof.

"*Partnership Year*" means the fiscal year of the Partnership, which shall be the calendar year.

"*Percentage Interest*" means, with respect to each Partner, the fraction, expressed as a percentage, the numerator of which is the aggregate number of Partnership Units of all classes and series held by such Partner and the denominator of which is the total number of Partnership Units of all classes and series held by all Partners; *provided*, *however*, that, to the extent applicable in context, the term "Percentage Interest" means, with respect to a Partner, the fraction, expressed as a percentage, the numerator of which is the aggregate number of Partnership Units of a specified class or series (or specified group of classes and/or series) held by such Partner and the denominator of which is the total number of Partnership Units of such specified class or series (or specified group of classes and/or series) held by all Partners.

"*Permitted Transfer*" has the meaning set forth in Section 11.3.A hereof.

"*Person*" means an individual or a corporation, partnership, trust, unincorporated organization, association, limited liability company or other entity.

"*Plan*" means the American Assets Trust, Inc. 2010 Incentive Award Plan.

"*Pledge*" has the meaning set forth in Section 11.3.A hereof.

"*Preferred Share*" means a share of stock of the General Partner of any class or series now or hereafter authorized or reclassified that has dividend rights, or rights upon liquidation, winding up and dissolution, that are superior or prior to the REIT Shares.

"*Properties*" means any assets and property of the Partnership such as, but not limited to, interests in real property and personal property, including, without limitation, fee interests, interests in ground leases, easements and rights of way, interests in limited liability companies, joint ventures or partnerships, interests in mortgages, and Debt instruments as the Partnership may hold from time to time and "Property" means any one such asset or property.

"*Proposed Section 83 Safe Harbor Regulation*" has the meaning set forth in Section 16.11.

"*Qualified DRIP/COPP*" means a dividend reinvestment plan or a cash option purchase plan of the General Partner that permits participants to acquire REIT Shares using the proceeds of dividends paid by the General Partner or cash of the participant, respectively; *provided*, *however*, that if such shares are offered at a discount, such discount must (i) be designed to pass along to the stockholders of the General Partner the savings enjoyed by the General Partner in connection with the avoidance of stock issuance costs, and (ii) not exceed 5% of the value of a REIT Share as computed under the terms of such plan.

"*Qualified Transferee*" means an "accredited investor" as defined in Rule 501 promulgated under the Securities Act.

"*Qualifying Party*" means (a) a Limited Partner, (b) an Assignee or (c) a Person, including a lending institution as the pledgee of a Pledge, who is the transferee of a Limited Partner Interest in a Permitted Transfer; *provided*, *however*, that a Qualifying Party shall not include the General Partner.

"*Redemption*" has the meaning set forth in Section 15.1.A hereof.

"*Regulations*" means the income tax regulations under the Code, whether such regulations are in proposed, temporary or final form, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"*Regulatory Allocations*" has the meaning set forth in Section 6.4.A(viii) hereof.

"*REIT*" means a real estate investment trust qualifying under Code Section 856.

"*REIT Partner*" means (a) the General Partner or any Affiliate of the General Partner to the extent such person has in place an election to qualify as a REIT and, (b) any Disregarded Entity with respect to any such Person.

"*REIT Payment*" has the meaning set forth in Section 15.12 hereof.

"*REIT Requirements*" has the meaning set forth in Section 5.1 hereof.

"*REIT Share*" means a share of common stock of the General Partner, $0.01 par value per share, but shall not include any class or series of the General Partner's common stock classified after the date of this Agreement.

"*REIT Shares Amount*" means a number of REIT Shares equal to the product of (a) the number of Tendered Units and (b) the Adjustment Factor; *provided*, *however*, that, in the event that the General Partner issues to all holders of REIT Shares as of a certain record date rights, options, warrants or convertible or exchangeable securities entitling the General Partner's stockholders to subscribe for or purchase REIT Shares, or any other securities or property (collectively, the "*Rights*"), with the record date for such Rights issuance falling within the period starting on the date of the Notice of Redemption and ending on the day immediately preceding the Specified Redemption Date, which Rights will not be distributed before the relevant Specified Redemption Date, then the REIT Shares Amount shall also include such Rights that a holder of that number of REIT Shares would be entitled to receive, expressed, where relevant hereunder, in a number of REIT Shares determined by the General Partner.

"*Related Party*" means, with respect to any Person, any other Person to whom ownership of shares of the General Partner's stock by the first such Person would be attributed under Code Section 544 (as modified by Code Section 856(h)(1)(B)) or Code Section 318(a) (as modified by Code Section 856(d)(5)).

"*Rights*" has the meaning set forth in the definition of "*REIT Shares Amount*."

"*Safe Harbors*" has the meaning set forth in Section 11.3.C hereof.

"*SDAT*" means the State Department of Assessments and Taxation of Maryland.

"*SEC*" means the Securities and Exchange Commission.

"*Section 83 Safe Harbor*" has the meaning set forth in Section 16.11.

"*Securities Act*" means the Securities Act of 1933, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

"*Special Redemption*" has the meaning set forth in Section 15.1.A hereof.

"*Specified Redemption Date*" means the tenth (10th) Business Day after the receipt by the General Partner of a Notice of Redemption; *provided*, *however*, that no Specified Redemption Date shall occur during the first Fourteen-Month Period (except pursuant to a Special Redemption).

"*Stock Option Plans*" means any stock option plan now or hereafter adopted by the Partnership or the General Partner.

"*Subsidiary*" means, with respect to any Person, any corporation or other entity of which a majority of (i) the voting power of the voting equity securities or (ii) the outstanding equity interests is owned, directly or indirectly, by such Person; *provided*, *however*, that, with respect to the Partnership, "Subsidiary" means solely a partnership or limited liability company (taxed, for federal income tax purposes, as a partnership or as a Disregarded Entity and not as an association or publicly traded partnership taxable as a corporation) of which the Partnership is a member or any "taxable REIT subsidiary" of the General Partner in which the Partnership owns shares of stock, unless the ownership of shares of stock of a corporation or other entity (other than a

"taxable REIT subsidiary") will not jeopardize the General Partner's status as a REIT or any General Partner Affiliate's status as a "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)), in which event the term "Subsidiary" shall include such corporation or other entity.

"*Substituted Limited Partner*" means a Person who is admitted as a Limited Partner to the Partnership pursuant to the Act and (i) Section 11.4 hereof or (ii) pursuant to any Partnership Unit Designation.

"*Surviving Partnership*" has the meaning set forth in Section 11.2.B(ii) hereof.

"*Tax Items*" has the meaning set forth in Section 6.5.A hereof.

"*Tendered Units*" has the meaning set forth in Section 15.1.A hereof.

"*Tendering Party*" has the meaning set forth in Section 15.1.A hereof.

"*Termination Transaction*" has the meaning set forth in Section 11.2.B hereof.

"*Terminating Capital Transaction*" means any sale or other disposition of all or substantially all of the assets of the Partnership or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the Partnership, in any case, not in the ordinary course of the Partnership's business.

"*Transaction*" has the meaning set forth in Section 16.9.F hereof.

"*Transfer*" means any sale, assignment, bequest, conveyance, devise, gift (outright or in trust), Pledge, encumbrance, hypothecation, mortgage, exchange, transfer or other disposition or act of alienation, whether voluntary, involuntary or by operation of law; *provided*, *however*, that when the term is used in Article 11 hereof, except as otherwise expressly provided, "Transfer" does not include (a) any Redemption of Partnership Common Units by the Partnership, or acquisition of Tendered Units by the General Partner, pursuant to Section 15.1 hereof, (b) any conversion of LTIP Units into Common Units pursuant to Section 16.9 hereof, or (c) any redemption of Partnership Units pursuant to any Partnership Unit Designation. The terms "Transferred" and "Transferring" have correlative meanings.

"*Unvested LTIP Units*" has the meaning set forth in Section 16.2.A hereof.

"*Valuation Date*" means the date of receipt by the General Partner of a Notice of Redemption pursuant to Section 15.1 herein, or such other date as specified herein, or, if such date is not a Business Day, the immediately preceding Business Day.

"*Value*" means, on any Valuation Date with respect to a REIT Share, the average of the daily Market Prices for ten (10) consecutive trading days immediately preceding the Valuation Date (except that the Market Price for the trading day immediately preceding the date of exercise of a stock option under any Stock Option Plans shall be substituted for such average of daily market prices for purposes of Section 4.4 hereof). The term "*Market Price*" on any date means, with respect to any class or series of outstanding REIT Shares, the Closing Price for such REIT

Shares on such date. The "*Closing Price*" on any date means the last sale price for such REIT Shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such REIT Shares, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if such REIT Shares are not listed or admitted to trading on the New York Stock Exchange, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such REIT Shares are listed or admitted to trading or, if such REIT Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the principal automated quotation system on which REIT Shares are quoted or, if such REIT Shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such REIT Shares selected by the board of directors of the General Partner or, in the event that no trading price is available for such REIT Shares, the fair market value of the REIT Shares, as determined by the board of directors of the General Partner.

In the event that the REIT Shares Amount includes Rights that a holder of REIT Shares would be entitled to receive, then the Value of such Rights shall be determined by the General Partner on the basis of such quotations and other information as it considers appropriate.

"*Vested LTIP Units*" has the meaning set forth in Section 16.2.A hereof.

"*Vesting Agreement*" has the meaning set forth in Section 16.2.A hereof.

ARTICLE 2
ORGANIZATIONAL MATTERS

Section 2.1 Formation. The Partnership is a limited partnership heretofore formed and continued pursuant to the provisions of the Act and upon the terms and subject to the conditions set forth in this Agreement. Except as expressly provided herein to the contrary, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Act. The Partnership Interest of each Partner shall be personal property for all purposes.

Section 2.2 Name. The name of the Partnership is "American Assets Trust, L.P." The Partnership's business may be conducted under any other name or names deemed advisable by the General Partner, including the name of the General Partner or any Affiliate thereof. The words "Limited Partnership," "L.P.," "Ltd." or similar words or letters shall be included in the Partnership's name where necessary for the purposes of complying with the laws of any jurisdiction that so requires. The General Partner in its sole and absolute discretion may change the name of the Partnership at any time and from time to time and shall notify the Partners of such change in the next regular communication to the Partners.

Section 2.3 Principal Office and Resident Agent; Principal Executive Office. The address of the principal office of the Partnership in the State of Maryland is located at c/o The Corporation Trust Incorporated, 351 West Camden Street, Baltimore, Maryland 21201, or such

other place within the State of Maryland as the General Partner may from time to time designate, and the resident agent of the Partnership in the State of Maryland is The Corporation Trust Incorporated, 351 West Camden Street, Baltimore, Maryland 21201, or such other resident of the State of Maryland as the General Partner may from time to time designate. The principal office of the Partnership is located at 11455 El Camino Real, Suite 200 San Diego, California 92130, or such other place as the General Partner may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Maryland as the General Partner deems advisable.

Section 2.4 *Power of Attorney*.

A. Each Limited Partner and Assignee hereby irrevocably constitutes and appoints the General Partner, any Liquidator, and authorized officers and attorneys-in-fact of each, and each of those acting singly, in each case with full power of substitution, as its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead to:

(1) execute, swear to, seal, acknowledge, deliver, file and record in the appropriate public offices: (a) all certificates, documents and other instruments (including, without limitation, this Agreement and the Certificate and all amendments, supplements or restatements thereof) that the General Partner or the Liquidator deems appropriate or necessary to form, qualify or continue the existence or qualification of the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability to the extent provided by applicable law) in the State of Maryland and in all other jurisdictions in which the Partnership may conduct business or own property; (b) all instruments that the General Partner or any Liquidator deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms; (c) all conveyances and other instruments or documents that the General Partner or the Liquidator deems appropriate or necessary to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement, including, without limitation, a certificate of cancellation; (d) all conveyances and other instruments or documents that the General Partner or the Liquidator deems appropriate or necessary to reflect the distribution or exchange of assets of the Partnership pursuant to the terms of this Agreement; (e) all instruments relating to the admission, acceptance, withdrawal, removal or substitution of any Partner pursuant to the terms of this Agreement or the Capital Contribution of any Partner; and (f) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges relating to Partnership Interests; and

(2) execute, swear to, acknowledge and file all ballots, consents, approvals, waivers, certificates and other instruments appropriate or necessary, in the sole and absolute discretion of the General Partner or any Liquidator, to make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action that is made or given by the Partners hereunder or is consistent with the terms of this Agreement.

(3) Nothing contained herein shall be construed as authorizing the General Partner or any Liquidator to amend this Agreement except in accordance with Section 14.2 hereof or as may be otherwise expressly provided for in this Agreement.

B. The foregoing power of attorney is hereby declared to be irrevocable and a special power coupled with an interest, in recognition of the fact that each of the Limited Partners and Assignees will be relying upon the power of the General Partner or the Liquidator to act as contemplated by this Agreement in any filing or other action by it on behalf of the Partnership, and it shall survive and not be affected by the subsequent Incapacity of any Limited Partner or Assignee and the Transfer of all or any portion of such Person's Partnership Interest and shall extend to such Person's heirs, successors, assigns and personal representatives. Each such Limited Partner and Assignee hereby agrees to be bound by any representation made by the General Partner or the Liquidator, acting in good faith pursuant to such power of attorney; and each such Limited Partner and Assignee hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the General Partner or the Liquidator, taken in good faith under such power of attorney. Each Limited Partner and Assignee shall execute and deliver to the General Partner or the Liquidator, within fifteen (15) days after receipt of the General Partner's or the Liquidator's request therefor, such further designation, powers of attorney and other instruments as the General Partner or the Liquidator (as the case may be) deems necessary to effectuate this Agreement and the purposes of the Partnership. Notwithstanding anything else set forth in this Section 2.4.B, no Limited Partner shall incur any personal liability for any action of the General Partner or the Liquidator taken under such power of attorney.

Section 2.5 *Term*. The term of the Partnership commenced on [_____], the date that the original Certificate was filed with the SDAT in accordance with the Act, and shall continue indefinitely unless the Partnership is dissolved sooner pursuant to the provisions of Article 13 hereof or as otherwise provided by law.

Section 2.6 *Partnership Interests Are Securities*. All Partnership Interests shall be securities within the meaning of, and governed by, (i) Article 8 of the Maryland Uniform Commercial Code and (ii) Article 8 of the Uniform Commercial Code of any other applicable jurisdiction.

ARTICLE 3
PURPOSE

Section 3.1 *Purpose and Business*. The purpose and nature of the Partnership is to conduct any business, enterprise or activity permitted by or under the Act, including, without limitation, (i) to conduct the business of ownership, construction, reconstruction, development, redevelopment, alteration, improvement, maintenance, operation, sale, leasing, transfer, encumbrance, conveyance and exchange of the Properties, (ii) to acquire and invest in any securities and/or loans relating to the Properties, (iii) to enter into any partnership, joint venture, business trust arrangement, limited liability company or other similar arrangement to engage in any business permitted by or under the Act, or to own interests in any entity engaged in any business permitted by or under the Act, (iv) to conduct the business of providing property and asset management and brokerage services, whether directly or through one or more partnerships, joint ventures, Subsidiaries, business trusts, limited liability companies or similar arrangements, and (v) to do anything necessary or incidental to the foregoing.

Section 3.2 *Powers*.

A. The Partnership shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described herein and for the protection and benefit of the Partnership including, without limitation, full power and authority, directly or through its ownership interest in other entities, to enter into, perform and carry out contracts of any kind, to borrow and lend money and to issue evidence of indebtedness, whether or not secured by mortgage, deed of trust, pledge or other lien, to acquire, own, manage, improve and develop real property and lease, sell, transfer and dispose of real property.

B. Notwithstanding any other provision in this Agreement, the Partnership shall not take, or refrain from taking, any action that, in the judgment of the General Partner, in its sole and absolute discretion, (i) could adversely affect the ability of the General Partner to continue to qualify as a REIT, (ii) could subject the General Partner to any taxes under Code Section 857 or Code Section 4981 or any other related or successor provision under the Code, or (iii) could violate any law or regulation of any governmental body or agency having jurisdiction over the General Partner, its securities or the Partnership, unless, in any such case, such action (or inaction) under clause (i), clause (ii), or clause (iii) above shall have been specifically Consented to by the General Partner.

Section 3.3 *Partnership Only for Purposes Specified*. The Partnership is a limited partnership formed pursuant to the Act, and this Agreement shall not be deemed to create a company, venture or partnership between or among the Partners or any other Persons with respect to any activities whatsoever other than the activities within the purposes of the Partnership as specified in Section 3.1 hereof; however, to the extent applicable, the Partnership is a "partnership at will" (and is not a partnership formed for a definite term or particular undertaking) within the meaning of the Act. Except as otherwise provided in this Agreement, no Partner shall have any authority to act for, bind, commit or assume any obligation or responsibility on behalf of the Partnership, its properties or any other Partner. No Partner, in its capacity as a Partner under this Agreement, shall be responsible or liable for any indebtedness or obligation of another Partner, nor shall the Partnership be responsible or liable for any indebtedness or obligation of any Partner, incurred either before or after the execution and delivery of this Agreement by such Partner, except as to those responsibilities, liabilities, indebtedness or obligations incurred pursuant to and as limited by the terms of this Agreement and the Act.

Section 3.4 *Representations and Warranties by the Partners*.

A. Each Partner that is an individual (including, without limitation, each Additional Limited Partner or Substituted Limited Partner as a condition to becoming an Additional Limited Partner or a Substituted Limited Partner) represents and warrants to, and covenants with, each other Partner that (i) the consummation of the transactions contemplated by this Agreement to be performed by such Partner will not result in a breach or violation of, or a default under, any material agreement by which such Partner or any of such Partner's property is bound, or any statute, regulation, order or other law to which such Partner is subject, (ii) if five percent (5%) or more (by value) of the Partnership's interests are or will be owned by such Partner within the

meaning of Code Section 7704(d)(3), such Partner does not, and for so long as it is a Partner will not, own, directly or indirectly, (a) stock of any corporation that is a tenant of (I) the General Partner, or any Disregarded Entity with respect to the General Partner, (II) the Partnership or (III) any partnership, venture or limited liability company of which the General Partner, any Disregarded Entity with respect to the General Partner, or the Partnership is a direct or indirect member or (b) an interest in the assets or net profits of any non-corporate tenant of (I) the General Partner or any Disregarded Entity with respect to the General Partner, (II) the Partnership or (III) any partnership, venture, or limited liability company of which the General Partner, any Disregarded Entity with respect to the General Partner, or the Partnership is a direct or indirect member, (iii) such Partner has the legal capacity to enter into this Agreement and perform such Partner's obligations hereunder, and (iv) this Agreement is binding upon, and enforceable against, such Partner in accordance with its terms. Notwithstanding the foregoing, a Partner that is an individual shall not be subject to the ownership restrictions set forth in clause (ii) of the immediately preceding sentence to the extent such Partner obtains the written Consent of the General Partner prior to violating any such restrictions. Each Partner that is an individual shall also represent and warrant to the Partnership that such Partner is neither a "foreign person" within the meaning of Code Section 1445(f) nor a foreign partner within the meaning of Code Section 1446(e).

B. Each Partner that is not an individual (including, without limitation, each Additional Limited Partner or Substituted Limited Partner as a condition to becoming an Additional Limited Partner or a Substituted Limited Partner) represents and warrants to, and covenants with, each other Partner that (i) all transactions contemplated by this Agreement to be performed by it have been duly authorized by all necessary action, including, without limitation, that of its general partner(s), manager(s), committee(s), trustee(s), beneficiaries, directors and/or stockholder(s) (as the case may be) as required, (ii) the consummation of such transactions shall not result in a breach or violation of, or a default under, its partnership or operating agreement, trust agreement, charter or bylaws (as the case may be) any material agreement by which such Partner or any of such Partner's properties or any of its partners, members, beneficiaries, trustees or stockholders (as the case may be) is or are bound, or any statute, regulation, order or other law to which such Partner or any of its partners, members, trustees, beneficiaries or stockholders (as the case may be) is or are subject, (iii) if five percent (5%) or more (by value) of the Partnership's interests are or will be owned by such Partner within the meaning of Code Section 7704(d)(3), such Partner does not, and for so long as it is a Partner will not, own, directly or indirectly, (a) stock of any corporation that is a tenant of (I) the General Partner or any Disregarded Entity with respect to the General Partner, (II) the Partnership or (III) any partnership, venture or limited liability company of which the General Partner, any General Partner, any Disregarded Entity with respect to the General Partner, or the Partnership is a direct or indirect member or (b) an interest in the assets or net profits of any non-corporate tenant of (I) the General Partner, or any Disregarded Entity with respect to the General Partner, (II) the Partnership or (III) any partnership, venture or limited liability company for which the General Partner, any General Partner, any Disregarded Entity with respect to the General Partner, or the Partnership is a direct or indirect member, and (iv) this Agreement is binding upon, and enforceable against, such Partner in accordance with its terms. Notwithstanding the foregoing, a Partner that is not an individual shall not be subject to the ownership restrictions set forth in clause (iii) of the immediately preceding sentence to the extent such Partner obtains the written Consent of the General Partner prior to violating any such restrictions. Each Partner that is not an

individual shall also represent and warrant to the Partnership that such Partner is neither a "foreign person" within the meaning of Code Section 1445(f) nor a foreign partner within the meaning of Code Section 1446(e).

C. Each Partner (including, without limitation, each Additional Limited Partner or Substituted Limited Partner as a condition to becoming an Additional Limited Partner or Substituted Limited Partner) represents, warrants and agrees that (i) it has acquired and continues to hold its interest in the Partnership for its own account for investment purposes only and not for the purpose of, or with a view toward, the resale or distribution of all or any part thereof in violation of applicable laws, and not with a view toward selling or otherwise distributing such interest or any part thereof at any particular time or under any predetermined circumstances in violation of applicable laws; (ii) it is a sophisticated investor, able and accustomed to handling sophisticated financial matters for itself, particularly real estate investments, and that it has a sufficiently high net worth that it does not anticipate a need for the funds that it has invested in the Partnership in what it understands to be a highly speculative and illiquid investment; and (iii) without the Consent of the General Partner, it shall not take any action that would cause (a) the Partnership at any time to have more than 100 partners, including as partners those persons ("*Flow-Through Partners*") indirectly owning an interest in the Partnership through an entity treated as a partnership, Disregarded Entity, S corporation or grantor trust (each such entity, a "*Flow-Through Entity*"), but only if substantially all of the value of such person's interest in the Flow-Through Entity is attributable to the Flow-Through Entity's interest (direct or indirect) in the Partnership; or (b) the Partnership Interest initially issued to such Partner or its predecessors to be held by more than [_____] partners, including as partners any Flow-Through Partners.

D. The representations and warranties contained in Sections 3.4.A, 3.4.B and 3.4.C hereof shall survive the execution and delivery of this Agreement by each Partner (and, in the case of an Additional Limited Partner or a Substituted Limited Partner, the admission of such Additional Limited Partner or Substituted Limited Partner as a Limited Partner in the Partnership) and the dissolution, liquidation and termination of the Partnership.

E. Each Partner (including, without limitation, each Additional Limited Partner or Substituted Limited Partner as a condition to becoming an Additional Limited Partner or Substituted Limited Partner) hereby acknowledges that no representations as to potential profit, cash flows, funds from operations or yield, if any, in respect of the Partnership or the General Partner have been made by any Partner or any employee or representative or Affiliate of any Partner, and that projections and any other information, including, without limitation, financial and descriptive information and documentation, that may have been in any manner submitted to such Partner shall not constitute any representation or warranty of any kind or nature, express or implied.

F. Notwithstanding the foregoing, the General Partner may, in its sole and absolute discretion, permit the modification of any of the representations and warranties contained in Sections 3.4.A, 3.4.B and 3.4.C above as applicable to any Partner (including, without limitation any Additional Limited Partner or Substituted Limited Partner or any transferee of either), provided that such representations and warranties, as modified, shall be set forth in either (i) a Partnership Unit Designation applicable to the Partnership Units held by such Partner or (ii) a separate writing addressed to the Partnership and the General Partner.

ARTICLE 4
CAPITAL CONTRIBUTIONS

Section 4.1 *Capital Contributions of the Partners*. The Partners have heretofore made Capital Contributions to the Partnership. Each Partner owns Partnership Units in the amount set forth for such Partner on Exhibit A, as the same may be amended from time to time by the General Partner to the extent necessary to reflect accurately sales, exchanges or other Transfers, redemptions, Capital Contributions, the issuance of additional Partnership Units, or similar events having an effect on a Partner's ownership of Partnership Units. Except as provided by law or in Section 4.2, 4.3, or 10.4 hereof, the Partners shall have no obligation or, except with the prior Consent of the General Partner, right to make any additional Capital Contributions or loans to the Partnership.

Section 4.2 *Issuances of Additional Partnership Interests*. Subject to the rights of any Holder of any Partnership Interest set forth in a Partnership Unit Designation:

A. *General*. The General Partner is hereby authorized to cause the Partnership to issue additional Partnership Interests, in the form of Partnership Units, for any Partnership purpose, at any time or from time to time, to the Partners (including the General Partner) or to other Persons, and to admit such Persons as Additional Limited Partners, for such consideration and on such terms and conditions as shall be established by the General Partner in its sole and absolute discretion, all without the approval of any Limited Partner or any other Person. Without limiting the foregoing, the General Partner is expressly authorized to cause the Partnership to issue Partnership Units (i) upon the conversion, redemption or exchange of any Debt, Partnership Units, or other securities issued by the Partnership, (ii) for less than fair market value and (iii) in connection with any merger of any other Person into the Partnership. Any additional Partnership Interests may be issued in one or more classes, or one or more series of any of such classes, with such designations, preferences, conversion or other rights, voting powers or rights, restrictions, limitations as to distributions, qualifications or terms or conditions of redemption (including, without limitation, terms that may be senior or otherwise entitled to preference over existing Partnership Units) as shall be determined by the General Partner, in its sole and absolute discretion without the approval of any Limited Partner or any other Person, and set forth in a written document thereafter attached to and made an exhibit to this Agreement, which exhibit shall be an amendment to this Agreement and shall be incorporated herein by this reference (each, a "*Partnership Unit Designation*"). Without limiting the generality of the foregoing, the General Partner shall have authority to specify: (a) the allocations of items of Partnership income, gain, loss, deduction and credit to each such class or series of Partnership Interests; (b) the right of each such class or series of Partnership Interests to share (on a *pari passu*, junior or preferred basis) in Partnership distributions; (c) the rights of each such class or series of Partnership Interests upon dissolution and liquidation of the Partnership; (d) the voting rights, if any, of each such class or series of Partnership Interests; and (e) the conversion, redemption or exchange rights applicable to each such class or series of Partnership Interests. Upon the issuance of any additional Partnership Interest, the General Partner shall amend Exhibit A and the books and records of the Partnership as appropriate to reflect such issuance.

B. *Issuances of LTIP Units*. Without limiting the generality of the foregoing, from time to time, the General Partner is hereby authorized to issue LTIP Units to Persons providing

services to or for the benefit of the Partnership for such consideration or for no consideration as the General Partner may determine to be appropriate and on such terms and conditions as shall be established by the General Partner, and admit such Persons as Limited Partners. Except to the extent a Capital Contribution is made with respect to an LTIP Unit, each LTIP Unit is intended to qualify as a profits interests in the Partnership within the meaning of the Code, the Regulations, and any published guidance by the IRS with respect thereto. Except as may be provided from time to time by the General Partner with respect to one or more series of LTIP Units, LTIP Units shall be have the terms set forth in Article 16.

C. *Issuances to the General Partner*. No additional Partnership Units shall be issued to the General Partner unless (i) the additional Partnership Units are issued to all Partners in proportion to their respective Percentage Interests, (ii) (a) the additional Partnership Units are (x) Partnership Common Units issued in connection with an issuance of REIT Shares, or (y) Partnership Equivalent Units (other than Partnership Common Units) issued in connection with an issuance of Preferred Shares, New Securities or other interests in the General Partner (other than REIT Shares), and (b) the General Partner contributes to the Partnership the cash proceeds or other consideration received in connection with the issuance of such REIT Shares, Preferred Shares, New Securities or other interests in the General Partner, (iii) the additional Partnership Units are issued upon the conversion, redemption or exchange of Debt, Partnership Units or other securities issued by the Partnership or (iv) the additional Partnership Units are issued pursuant to Section 4.3.B, Section 4.3.E, Section 4.4 or Section 4.5.

D. *No Preemptive Rights*. Except as specified in Section 4.2.C(i) hereof, no Person, including, without limitation, any Partner or Assignee, shall have any preemptive, preferential, participation or similar right or rights to subscribe for or acquire any Partnership Interest.

Section 4.3 *Additional Funds and Capital Contributions*.

A. *General*. The General Partner may, at any time and from time to time, determine that the Partnership requires additional funds ("*Additional Funds*") for the acquisition or development of additional Properties, for the redemption of Partnership Units or for such other purposes as the General Partner may determine, in its sole and absolute discretion. Additional Funds may be obtained by the Partnership, at the election of the General Partner, in any manner provided in, and in accordance with, the terms of this Section 4.3 without the approval of any Limited Partner or any other Person.

B. *Additional Capital Contributions*. The General Partner, on behalf of the Partnership, may obtain any Additional Funds by accepting Capital Contributions from any Partners or other Persons. In connection with any such Capital Contribution (of cash or property), the General Partner is hereby authorized to cause the Partnership from time to time to issue additional Partnership Units (as set forth in Section 4.2 above) in consideration therefor and the Percentage Interests of the General Partner and the Limited Partners shall be adjusted to reflect the issuance of such additional Partnership Units.

C. *Loans by Third Parties*. The General Partner, on behalf of the Partnership, may obtain any Additional Funds by causing the Partnership to incur Debt to any Person (other than the General Partner (but, for this purpose, disregarding any Debt that may be deemed incurred to

the General Partner by virtue of clause (iii) of the definition of Debt)) upon such terms as the General Partner determines appropriate, including making such Debt convertible, redeemable or exchangeable for Partnership Units or REIT Shares; *provided*, *however*, that the Partnership shall not incur any such Debt if any Partner would be personally liable for the repayment of such Debt (unless such Partner otherwise agrees).

D. *General Partner Loans*. The General Partner, on behalf of the Partnership, may obtain any Additional Funds by causing the Partnership to incur Debt to the General Partner if (i) such Debt is, to the extent permitted by law, on substantially the same terms and conditions (including interest rate, repayment schedule, and conversion, redemption, repurchase and exchange rights) as Funding Debt incurred by the General Partner, the net proceeds of which are loaned to the Partnership to provide such Additional Funds, or (ii) such Debt is on terms and conditions no less favorable to the Partnership than would be available to the Partnership from any third party; *provided*, *however*, that the Partnership shall not incur any such Debt if any Partner would be personally liable for the repayment of such Debt (unless such Partner otherwise agrees).

E. *Issuance of Securities by the General Partner*. The General Partner shall not issue any additional REIT Shares, Capital Shares or New Securities unless the General Partner contributes the cash proceeds or other consideration received from the issuance of such additional REIT Shares, Capital Shares or New Securities (as the case may be) and from the exercise of the rights contained in any such additional Capital Shares or New Securities to the Partnership in exchange for (x) in the case of an issuance of REIT Shares, Partnership Common Units, or (y) in the case of an issuance of Capital Shares or New Securities, Partnership Equivalent Units; *provided*, *however*, that notwithstanding the foregoing, the General Partner may issue REIT Shares, Capital Shares or New Securities (a) pursuant to Section 4.4 or Section 15.1.B hereof, (b) pursuant to a dividend or distribution (including any stock split) of REIT Shares, Capital Shares or New Securities to all of the holders of REIT Shares, Capital Shares or New Securities (as the case may be), (c) upon a conversion, redemption or exchange of Capital Shares, (d) upon a conversion, redemption, exchange or exercise of New Securities, or (e) in connection with an acquisition of Partnership Units or a property or other asset to be owned, directly or indirectly, by the General Partner. In the event of any issuance of additional REIT Shares, Capital Shares or New Securities by the General Partner, and the contribution to the Partnership, by the General Partner, of the cash proceeds or other consideration received from such issuance (or property acquired with such proceeds), if any, if the cash proceeds actually received by the General Partner are less than the gross proceeds of such issuance as a result of any underwriter's discount or other expenses paid or incurred in connection with such issuance, then the General Partner shall be deemed to have made a Capital Contribution to the Partnership in the amount equal to the sum of the cash proceeds of such issuance plus the amount of such underwriter's discount and other expenses paid by the General Partner (which discount and expense shall be treated as an expense for the benefit of the Partnership for purposes of Section 7.4). In the event that the General Partner issues any additional REIT Shares, Capital Shares or New Securities and contributes the cash proceeds or other consideration received from the issuance thereof to the Partnership, the Partnership is expressly authorized to issue a number of Partnership Common Units or Partnership Equivalent Units to the General Partner equal to the number of REIT Shares, Capital Shares or New Securities so issued, divided by the Adjustment Factor then in effect, in accordance with this Section 4.3.E without any further act, approval or vote of any Partner or any other Persons.

Section 4.4 *Stock Option Plans*.

A. *Options Granted to Persons other than Partnership Employees*. If at any time or from time to time, in connection with any Stock Option Plan, a stock option granted for REIT Shares to a Person other than a Partnership Employee is duly exercised:

(1) The General Partner, shall, as soon as practicable after such exercise, make a Capital Contribution to the Partnership in an amount equal to the exercise price paid to the General Partner by such exercising party in connection with the exercise of such stock option.

(2) Notwithstanding the amount of the Capital Contribution actually made pursuant to Section 4.4.A(1) hereof, the General Partner shall be deemed to have contributed to the Partnership as a Capital Contribution, in lieu of the Capital Contribution actually made and in consideration of an additional Limited Partner Interest (expressed in and as additional Partnership Common Units), an amount equal to the Value of a REIT Share as of the date of exercise multiplied by the number of REIT Shares then being issued in connection with the exercise of such stock option.

(3) An equitable Percentage Interest adjustment shall be made in which the General Partner shall be treated as having made a cash contribution equal to the amount described in Section 4.4.A(2) hereof.

B. *Options Granted to Partnership Employees*. If at any time or from time to time, in connection with any Stock Option Plan, a stock option granted for REIT Shares to a Partnership Employee is duly exercised:

(1) The General Partner shall sell to the Optionee, and the Optionee shall purchase from the General Partner, for a cash price per share equal to the Value of a REIT Share at the time of the exercise, the number of REIT Shares equal to (a) the exercise price payable by the Optionee in connection with the exercise of such stock option divided by (b) the Value of a REIT Share at the time of such exercise.

(2) The General Partner shall sell to the Partnership (or if the Optionee is an employee or other service provider of a Partnership Subsidiary, the General Partner shall sell to such Partnership Subsidiary), and the Partnership (or such subsidiary, as applicable) shall purchase from the General Partner, a number of REIT Shares equal to (a) the number of REIT Shares as to which such stock option is being exercised less (b) the number of REIT Shares sold pursuant to Section 4.4.B(1) hereof. The purchase price per REIT Share for such sale of REIT Shares to the Partnership (or such subsidiary) shall be the Value of a REIT Share as of the date of exercise of such stock option.

(3) The Partnership shall transfer to the Optionee (or if the Optionee is an employee or other service provider of a Partnership Subsidiary, the Partnership Subsidiary shall transfer to the Optionee) at no additional cost, as additional compensation, the number of REIT Shares described in Section 4.4.B(2) hereof.

(4) The General Partner shall, as soon as practicable after such exercise, make a Capital Contribution to the Partnership of an amount equal to all proceeds received (from whatever source, but excluding any payment in respect of payroll taxes or other withholdings) by the General Partner in connection with the exercise of such stock option. An equitable Percentage Interest adjustment shall be made as a result of such contribution.

C. *Future Stock Incentive Plans*. Nothing in this Agreement shall be construed or applied to preclude or restrain the General Partner from adopting, modifying or terminating stock incentive plans for the benefit of employees, directors or other business associates of the General Partner, the Partnership or any of their Affiliates. The Partners acknowledge and agree that, in the event that any such plan is adopted, modified or terminated by the General Partner, amendments to this Section 4.4 may become necessary or advisable and that any approval or Consent to any such amendments requested by the General Partner shall be deemed granted by the Limited Partners.

D. *Issuance of Partnership Common Units*. The Partnership is expressly authorized to issue Partnership Common Units in accordance with any Stock Option Plan pursuant to this Section 4.4 without any further act, approval or vote of any Partner or any other Persons.

Section 4.5 *Dividend Reinvestment Plan, Cash Option Purchase Plan, Stock Incentive Plan or Other Plan*. Except as may otherwise be provided in this Article 4, all amounts received or deemed received by the General Partner in respect of any dividend reinvestment plan, cash option purchase plan, stock incentive or other stock or subscription plan or agreement, either (a) shall be utilized by the General Partner to effect open market purchases of REIT Shares, or (b) if the General Partner elects instead to issue new REIT Shares with respect to such amounts, shall be contributed by the General Partner to the Partnership in exchange for additional Partnership Common Units. Upon such contribution, the Partnership will issue to the General Partner a number of Partnership Common Units equal to the quotient of (i) the new REIT Shares so issued, divided by (ii) the Adjustment Factor then in effect.

Section 4.6 *No Interest; No Return*. No Partner shall be entitled to interest on its Capital Contribution or on such Partner's Capital Account. Except as provided herein or by law, no Partner shall have any right to demand or receive the return of its Capital Contribution from the Partnership.

Section 4.7 *Conversion or Redemption of Capital Shares*.

A. *Conversion of Capital Shares*. If, at any time, any of the Capital Shares are converted into REIT Shares, in whole or in part, then a number of Partnership Units with preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption that are substantially the same as the preferences, conversion and other rights, voting powers, restrictions, limitations as to distributions, qualifications and terms and conditions of redemption of such Capital Shares ("*Partnership Equivalent Units*") equal to the number of Capital Shares so converted shall automatically be converted into a number of Partnership Common Units equal to the quotient of (i) the number of REIT Shares issued upon such conversion divided by (ii) the Adjustment Factor then in effect, and the Percentage Interests of the General Partner and the Limited Partners shall be adjusted to reflect such conversion.

B. *Redemption of Capital Shares or REIT Shares*. Except as otherwise provided in Section 7.4.C., if, at any time, any Capital Shares are redeemed or otherwise repurchased (whether by exercise of a put or call, automatically or by means of another arrangement) by the General Partner for cash, the Partnership shall, immediately prior to such redemption or repurchase of Capital Shares, redeem or repurchase an equal number of Partnership Equivalent Units held by the General Partner upon the same terms and for the same price per Partnership Equivalent Unit as such Capital Shares are redeemed. If, at any time, any REIT Shares are redeemed or otherwise repurchased by the General Partner, the Partnership shall, immediately prior to such redemption or repurchase of REIT Shares, redeem or repurchase a number of Partnership Common Units held by the General Partner equal to the quotient of (i) the REIT Shares so redeemed or repurchased, divided by (ii) the Adjustment Factor then in effect, such redemption or repurchase to be upon the same terms and for the same price per Partnership Common Unit (after giving effect to application of the Adjustment Factor) as such REIT Shares are redeemed or repurchased.

Section 4.8 *Other Contribution Provisions*. In the event that any Partner is admitted to the Partnership and is given a Capital Account in exchange for services rendered to the Partnership, such transaction shall be treated by the Partnership and the affected Partner as if the Partnership had compensated such partner in cash and such Partner had contributed the cash that the Partner would have received to the capital of the Partnership. In addition, with the Consent of the General Partner, one or more Partners may enter into contribution agreements with the Partnership which have the effect of providing a guarantee of certain obligations of the Partnership (and/or a wholly-owned Subsidiary of the Partnership).

ARTICLE 5
DISTRIBUTIONS

Section 5.1 *Requirement and Characterization of Distributions*. Subject to the rights of any Holder of any Partnership Interest set forth in a Partnership Unit Designation, the General Partner may cause the Partnership to distribute such amounts, at such times, as the General Partner may, in its sole and absolute discretion, determine, to the Holders as of any Partnership Record Date: (i) first, with respect to any Partnership Units that are entitled to any preference in distribution, in accordance with the rights of Holders of such class(es) of Partnership Units (and, within each such class, among the Holders of each such class, pro rata in proportion to their respective Percentage Interests of such class on such Partnership Record Date); and (ii) second, with respect to any Partnership Units that are not entitled to any preference in distribution, in accordance with the rights of Holders of such class(es) of Partnership Units, as applicable (and, within each such class, among the Holders of each such class, pro rata in proportion to their respective Percentage Interests of such class on such Partnership Record Date). Distributions payable with respect to any Partnership Units, other than any Partnership Units issued to the General Partner in connection with the issuance of REIT Shares by the General Partner, that were not outstanding during the entire quarterly period in respect of which any distribution is made shall be prorated based on the portion of the period that such Partnership Units were outstanding. The General Partner shall make such reasonable efforts, as determined by it in its

sole and absolute discretion and consistent with the General Partner's qualification as a REIT, to cause the Partnership to distribute sufficient amounts to enable the General Partner, for so long as the General Partner has determined to qualify as a REIT, to pay stockholder dividends that will (a) satisfy the requirements for qualifying as a REIT under the Code and Regulations (the "*REIT Requirements*") and (b) except to the extent otherwise determined by the General Partner, eliminate any U.S. federal income or excise tax liability of the General Partner. Notwithstanding anything in the forgoing to the contrary, a Holder of LTIP Units will only be entitled to distributions with respect to an LTIP Unit as set forth in Article 16 hereof and in making distributions pursuant to this Section 5.1, the General Partner of the Partnership shall take into account the provisions of Section 16.4 hereof.

Section 5.2 *Distributions in Kind*. Except as expressly provided herein, no right is given to any Holder to demand and receive property other than cash as provided in this Agreement. The General Partner may determine, in its sole and absolute discretion, to make a distribution in kind of Partnership assets to the Holders, and such assets shall be distributed in such a fashion as to ensure that the fair market value is distributed and allocated in accordance with Articles 5, 6 and 13 hereof; *provided*, *however*, that the General Partner shall not make a distribution in kind to any Holder unless the Holder has been given 90 days prior written notice of such distribution.

Section 5.3 *Amounts Withheld*. All amounts withheld pursuant to the Code or any provisions of any state, local or non-United States tax law and Section 10.4 hereof with respect to any allocation, payment or distribution to any Holder shall be treated as amounts paid or distributed to such Holder pursuant to Section 5.1 hereof for all purposes under this Agreement.

Section 5.4 *Distributions upon Liquidation*. Notwithstanding the other provisions of this Article 5, net proceeds from a Terminating Capital Transaction, and any other amounts distributed after the occurrence of a Liquidating Event, shall be distributed to the Holders in accordance with Section 13.2 hereof.

Section 5.5 *Distributions to Reflect Additional Partnership Units*. In the event that the Partnership issues additional Partnership Units pursuant to the provisions of Article 4 hereof, subject to the rights of any Holder of any Partnership Interest set forth in a Partnership Unit Designation, the General Partner is hereby authorized to make such revisions to this Article 5 and to Articles 6, 11 and 12 hereof as it determines are necessary or desirable to reflect the issuance of such additional Partnership Units, including, without limitation, making preferential distributions to Holders of certain classes of Partnership Units.

Section 5.6 *Restricted Distributions*. Notwithstanding any provision to the contrary contained in this Agreement, neither the Partnership nor the General Partner, on behalf of the Partnership, shall make a distribution to any Holder if such distribution would violate the Act or other applicable law.

ARTICLE 6
ALLOCATIONS

Section 6.1 *Timing and Amount of Allocations of Net Income and Net Loss*. Net Income and Net Loss of the Partnership shall be determined and allocated with respect to each Partnership Year as of the end of each such year, provided that the General Partner may in its discretion allocate Net Income and Net Loss for a shorter period as of the end of such period (and, for purposes of this Article 6, references to the term "Partnership Year" may include such shorter periods). Except as otherwise provided in this Article 6, and subject to Section 11.6.C hereof, an allocation to a Holder of a share of Net Income or Net Loss shall be treated as an allocation of the same share of each item of income, gain, loss or deduction that is taken into account in computing Net Income or Net Loss.

Section 6.2 *General Allocations*. Except as otherwise provided in this Article 6, Section 11.6.C and Section 16.5 hereof, Net Income and Net Loss for any Partnership Year shall be allocated to each of the Holders as follows:

A. *Net Income*.

(i) First, 100% to the General Partner in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to the General Partner pursuant to clause (iii) in Section 6.2.B for all prior Partnership Years minus the cumulative Net Income allocated to the General Partner pursuant to this clause (i) for all prior Partnership Years;

(ii) Second, 100% to each Holder in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to each such Holder pursuant to clause (ii) in Section 6.2.B for all prior Partnership Years minus the cumulative Net Income allocated to such Holder pursuant to this clause (ii) for all prior Partnership Years; and

(iii) Third, 100% to the Holders of Partnership Common Units in accordance with their respective Percentage Interests in the Partnership Common Units.

To the extent the allocations of Net Income set forth above in any paragraph of this Section 6.2.A are not sufficient to entirely satisfy the allocation set forth in such paragraph, such allocation shall be made in proportion to the total amount that would have been allocated pursuant to such paragraph without regard to such shortfall.

B. *Net Losses*.

(i) First, 100% to the Holders of Partnership Common Units in accordance with their respective Percentage Interests in the Partnership Common Units (to the extent consistent with this clause (i)) until the Adjusted Capital Account (ignoring for this purpose any amounts a Holder is obligated to contribute to the capital of the Partnership or is deemed obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c)(2)) of all such Holders is zero;

(ii) Second, 100% to the Holders (other than the General Partner) to the extent of, and in proportion to, the positive balance (if any) in their Adjusted Capital Accounts; and

(iii) Third, 100% to the General Partner.

C. *Allocations to Reflect Issuance of Additional Partnership Interests*. In the event that the Partnership issues additional Partnership Interests to the General Partner or any Additional Limited Partner pursuant to Section 4.2 or 4.3, the General Partner shall make such revisions to this Section 6.2 or to Section 12.2.C or 13.2.A as it determines are necessary to reflect the terms of the issuance of such additional Partnership Interests, including making preferential allocations to certain classes of Partnership Interests, subject to the terms of any Partnership Unit Designation with respect to Partnership Interests then outstanding.

D. *Special Allocations with Respect to LTIP Units*. After giving effect to the special allocations set forth in Section 6.4.A hereof, and notwithstanding the provisions of Sections 6.2.A and 6.2.B above, any Liquidating Gains shall first be allocated to Holders of LTIP Units until the Economic Capital Account Balances of such Holders, to the extent attributable to their ownership of LTIP Units, are equal to (i) the Common Unit Economic Balance, multiplied by (ii) the number of their LTIP Units. Any such allocations shall be made among the Holders of LTIP Units in proportion to the amounts required to be allocated to each under this Section 6.2.D. The parties agree that the intent of this Section 6.2.D is to make the Capital Account balances of the Holders of LTIP Units with respect to their LTIP Units economically equivalent to the Capital Account balance of the General Partner with respect to its Partnership Common Units. In the event that Liquidating Gains are allocated under this Section 6.2.D, Net Income allocable under Section 6.2.A and any Net Losses allocable under Section 6.2.B shall be recomputed without regard to the Liquidating Gains so allocated.

Section 6.3 *Additional Allocation Provisions*. Notwithstanding the foregoing provisions of this Article 6:

A. *Special Allocations Upon Liquidation*. Notwithstanding any provision in this Article 6 to the contrary, in the event that the Partnership disposes of all or substantially all of its assets in a transaction that will lead to a liquidation of the Partnership pursuant to Article 13 hereof, then any Net Income or Net Loss realized in connection with such transaction and thereafter (and, if necessary, constituent items of income, gain, loss and deduction) shall be specially allocated for such Partnership Year (and to the extent permitted by Section 761(c) of the Code, for the immediately preceding Partnership Year) among the Holders as required so as to cause liquidating distributions pursuant to Section 13.2.A(4) hereof to be made in the same amounts and proportions as would have resulted had such distributions instead been made pursuant to Article 5 hereof. In addition, if there is an adjustment to the Gross Asset Value of the assets of the Partnership pursuant to paragraph (b) of the definition of Gross Asset Value, allocations of Net Income or Net Loss arising from such adjustment shall be allocated in the same manner as described in the prior sentence.

B. *Offsetting Allocations*. Notwithstanding the provisions of Sections 6.1, 6.2.A and 6.2.B, but subject to Sections 6.3 and 6.4, in the event Net Income or items thereof are being

allocated to a Partner to offset prior Net Loss or items thereof which have been allocated to such Partner, the General Partner shall attempt to allocate such offsetting Net Income or items thereof which are of the same or similar character (including without limitation Section 704(b) book items versus tax items) to the original allocations with respect to such Partner.

C. *CODI Allocations*. Notwithstanding anything to the contrary contained herein, if any indebtedness of the Partnership encumbering the Properties contributed to the Partnership in connection with the General Partner's initial public offering is settled or paid off at a discount, any resulting COD Income of the Partnership shall be specially allocated proportionately (as determined by the General Partner) to those Holders that were partners in entities that contributed, or were deemed to contribute, the applicable Property to the Partnership in connection with such initial public offering to the extent the number of Partnership Units received by such Holders in exchange for their interests in such entities was determined, in part, by taking into account the anticipated discounted settlement or pay-off of such indebtedness. For purposes of the foregoing, "COD Income" shall mean income recognized by the Partnership pursuant to Code Section 61(a)(12).

Section 6.4 *Regulatory Allocation Provisions*. Notwithstanding the foregoing provisions of this Article 6:

A. *Regulatory Allocations.*

(i) *Minimum Gain Chargeback*. Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding the provisions of Section 6.2 hereof, or any other provision of this Article 6, if there is a net decrease in Partnership Minimum Gain during any Partnership Year, each Holder shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Holder's share of the net decrease in Partnership Minimum Gain, as determined under Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Holder pursuant thereto. The items to be allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 6.4.A(i) is intended to qualify as a "minimum gain chargeback" within the meaning of Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) *Partner Minimum Gain Chargeback*. Except as otherwise provided in Regulations Section 1.704-2(i)(4) or in Section 6.4.A(i) hereof, if there is a net decrease in Partner Minimum Gain attributable to a Partner Nonrecourse Debt during any Partnership Year, each Holder who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Holder's share of the net decrease in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4)

and 1.704-2(j)(2). This Section 6.4.A(ii) is intended to qualify as a "chargeback of partner nonrecourse debt minimum gain" within the meaning of Regulations Section 1.704-2(i) and shall be interpreted consistently therewith.

(iii) *Nonrecourse Deductions and Partner Nonrecourse Deductions*. Any Nonrecourse Deductions for any Partnership Year shall be specially allocated to the Holders in accordance with their respective Percentage Interests. Any Partner Nonrecourse Deductions for any Partnership Year shall be specially allocated to the Holder(s) who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable, in accordance with Regulations Section 1.704-2(i).

(iv) *Qualified Income Offset*. If any Holder unexpectedly receives an adjustment, allocation or distribution described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Partnership income and gain shall be specially allocated, in accordance with Regulations Section 1.704-1(b)(2)(ii)(d), to such Holder in an amount and manner sufficient to eliminate, to the extent required by such Regulations, the Adjusted Capital Account Deficit of such Holder as quickly as possible, provided that an allocation pursuant to this Section 6.4.A(iv) shall be made if and only to the extent that such Holder would have an Adjusted Capital Account Deficit after all other allocations provided in this Article 6 have been tentatively made as if this Section 6.4.A(iv) were not in the Agreement. It is intended that this Section 6.4.A(iv) qualify and be construed as a "qualified income offset" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(v) *Gross Income Allocation*. In the event that any Holder has a deficit Capital Account at the end of any Partnership Year that is in excess of the sum of (1) the amount (if any) that such Holder is obligated to restore to the Partnership upon complete liquidation of such Holder's Partnership Interest (including, the Holder's interest in outstanding Partnership Preferred Units and other Partnership Units) and (2) the amount that such Holder is deemed to be obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) or the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Holder shall be specially allocated items of Partnership income and gain in the amount of such excess to eliminate such deficit as quickly as possible, provided that an allocation pursuant to this Section 6.4.A(v) shall be made if and only to the extent that such Holder would have a deficit Capital Account in excess of such sum after all other allocations provided in this Article 6 have been tentatively made as if this Section 6.4.A(v) and Section 6.4.A(iv) hereof were not in the Agreement.

(vi) *Limitation on Allocation of Net Loss*. To the extent that any allocation of Net Loss would cause or increase an Adjusted Capital Account Deficit as to any Holder, such allocation of Net Loss shall be reallocated (x) first, among the other Holders of Partnership Common Units in accordance with their respective Percentage Interests with respect to Partnership Common Units and (y) thereafter, among the Holders of other classes of Partnership Units as determined by the General Partner, subject to the limitations of this Section 6.4.A(vi).

(vii) *Section 754 Adjustment*. To the extent that an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Holder in complete liquidation of its interest in the Partnership, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Holders in accordance with their respective Percentage Interests in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Holder(s) to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(viii) *Curative Allocations*. The allocations set forth in Sections 6.4.A(i), (ii), (iii), (iv), (v), (vi) and (vii) hereof (the "*Regulatory Allocations*") are intended to comply with certain regulatory requirements, including the requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding the provisions of Sections 6.1 and 6.2 hereof, the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Holders so that to the extent possible without violating the requirements giving rise to the Regulatory Allocations, the net amount of such allocations of other items and the Regulatory Allocations to each Holder shall be equal to the net amount that would have been allocated to each such Holder if the Regulatory Allocations had not occurred.

(ix) *Forfeiture Allocations*. Upon a forfeiture of any Unvested LTIP Units by any Partner, gross items of income, gain, loss or deduction shall be allocated to such Partner if and to the extent required by final Regulations promulgated after the Effective Date to ensure that allocations made with respect to all unvested Partnership Interests are recognized under Code Section 704(b).

(x) *LTIP Units*. For purposes of the allocations set forth in this Section 6.4, including, without limitation, Sections 6.4.A(iii) and (vi), each issued and outstanding LTIP Unit will be treated as one outstanding Partnership Common Unit.

B. *Allocation of Excess Nonrecourse Liabilities*. For purposes of determining a Holder's proportional share of the "excess nonrecourse liabilities" of the Partnership within the meaning of Regulations Section 1.752-3(a)(3), each Holder's respective interest in Partnership profits shall be equal to such Holder's Percentage Interest with respect to Partnership Common Units, except as otherwise determined by the General Partner.

Section 6.5 *Tax Allocations*.

A. *In General*. Except as otherwise provided in this Section 6.5, for income tax purposes under the Code and the Regulations, each Partnership item of income, gain, loss and deduction (collectively, "*Tax Items*") shall be allocated among the Holders in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Sections 6.2 and 6.3 hereof.

B. *Section 704(c) Allocations*. Notwithstanding Section 6.5.A hereof, Tax Items with respect to Property that is contributed to the Partnership with an initial Gross Asset Value that varies from its basis in the hands of the contributing Partner immediately preceding the date of contribution shall be allocated among the Holders for income tax purposes pursuant to Regulations promulgated under Code Section 704(c) so as to take into account such variation. With respect to Partnership Property that is contributed to the Partnership in connection with the General Partner's initial public offering, such variation between basis and initial Gross Asset Value shall be taken into account under the "traditional method" as described in Regulations Section 1.704-3(b). With respect to other Properties, the Partnership shall account for such variation under any method approved under Code Section 704(c) and the applicable Regulations as chosen by the General Partner. In the event that the Gross Asset Value of any Partnership asset is adjusted pursuant to subsection (b) of the definition of "Gross Asset Value" (provided in Article 1 hereof), subsequent allocations of Tax Items with respect to such asset shall take account of the variation, if any, between the adjusted basis of such asset and its Gross Asset Value in the same manner as under Code Section 704(c) and the applicable Regulations and using the method chosen by the General Partner; *provided*, *however*, that the "traditional method" as described in Regulations Section 1.704-3(b) shall be used with respect to Partnership Property that is contributed to the Partnership in connection with the General Partner's initial public offering. Allocations pursuant to this Section 6.5.B are solely for purposes of Federal, state and local income taxes and shall not affect, or in any way be taken into account in computing, any Partner's Capital Account or share of Net Income, Net Loss, or any other items or distributions pursuant to any provision of this Agreement.

ARTICLE 7
MANAGEMENT AND OPERATIONS OF BUSINESS

Section 7.1 *Management*.

A. Except as otherwise expressly provided in this Agreement, including any Partnership Unit Designation, all management powers over the business and affairs of the Partnership are and shall be exclusively vested in the General Partner, and no Limited Partner shall have any right to participate in or exercise control or management power over the business and affairs of the Partnership. No General Partner may be removed by the Partners, with or without cause, except with the Consent of the General Partner. In addition to the powers now or hereafter granted a general partner of a limited partnership under applicable law or that are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to the other provisions hereof including, without limitation, Section 3.2 and Section 7.3, and the rights of any Holder of any Partnership Interest set forth in a Partnership Unit Designation, shall have full and exclusive power and authority, without the consent or approval of any Limited Partner, to do or authorize all things deemed necessary or desirable by it to conduct the business and affairs of the Partnership, to exercise or direct the exercise of all of the powers of the Partnership and the General Partner under the Act and this Agreement and to effectuate the purposes of the Partnership including, without limitation:

(1) the making of any expenditures, the lending or borrowing of money or selling of assets (including, without limitation, making prepayments on loans and borrowing money to permit the Partnership to make distributions to the Holders in such amounts as will permit

the General Partner to prevent the imposition of any federal income tax on the General Partner (including, for this purpose, any excise tax pursuant to Code Section 4981), to make distributions to its stockholders and payments to any taxing authority sufficient to permit the General Partner to maintain REIT status or otherwise to satisfy the REIT Requirements), the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness (including the securing of same by deed to secure debt, mortgage, deed of trust or other lien or encumbrance on the Partnership's assets) and the incurring of any obligations that the General Partner deems necessary for the conduct of the activities of the Partnership;

(2) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership;

(3) the taking of any and all acts necessary or prudent to ensure that the Partnership will not be classified as a "publicly traded partnership" under Code Section 7704;

(4) subject to Section 11.2 hereof, the acquisition, sale, transfer, exchange or other disposition of any, all or substantially all of the assets (including the goodwill) of the Partnership (including, but not limited to, the exercise or grant of any conversion, option, privilege or subscription right or any other right available in connection with any assets at any time held by the Partnership) or the merger, consolidation, reorganization or other combination of the Partnership with or into another entity;

(5) the mortgage, pledge, encumbrance or hypothecation of any assets of the Partnership, the assignment of any assets of the Partnership in trust for creditors or on the promise of the assignee to pay the debts of the Partnership, the use of the assets of the Partnership (including, without limitation, cash on hand) for any purpose consistent with the terms of this Agreement and on any terms that the General Partner sees fit, including, without limitation, the financing of the operations and activities of the General Partner, the Partnership or any of the Partnership's Subsidiaries, the lending of funds to other Persons (including, without limitation, the General Partner and/or the Partnership's Subsidiaries) and the repayment of obligations of the Partnership, its Subsidiaries and any other Person in which the Partnership has an equity investment, and the making of capital contributions to and equity investments in the Partnership's Subsidiaries;

(6) the management, operation, leasing, landscaping, repair, alteration, demolition, replacement or improvement of any Property;

(7) the negotiation, execution and performance of any contracts, including leases (including ground leases), easements, management agreements, rights of way and other property-related agreements, conveyances or other instruments that the General Partner considers useful or necessary to the conduct of the Partnership's operations or the implementation of the General Partner's powers under this Agreement, including contracting with contractors, developers, consultants, governmental authorities, accountants, legal counsel, other professional advisors and other agents and the payment of their expenses and compensation, as applicable, out of the Partnership's assets;

(8) the distribution of Partnership cash or other Partnership assets in accordance with this Agreement, the holding, management, investment and reinvestment of cash and other assets of the Partnership, and the collection and receipt of revenues, rents and income of the Partnership;

(9) the selection and dismissal of employees of the Partnership (if any) or the General Partner (including, without limitation, employees having titles or offices such as "president," "vice president," "secretary" and "treasurer"), and agents, outside attorneys, accountants, consultants and contractors of the Partnership or the General Partner and the determination of their compensation and other terms of employment or hiring;

(10) the maintenance of such insurance (including, without limitation, directors and officers insurance) for the benefit of the Partnership and the Partners (including, without limitation, the General Partner) as the General Partner deems necessary or appropriate;

(11) the formation of, or acquisition of an interest in, and the contribution of property to, any further limited or general partnerships, limited liability companies, joint ventures or other relationships that it deems desirable (including, without limitation, the acquisition of interests in, and the contributions of property to, any Subsidiary and any other Person in which the General Partner has an equity investment from time to time); *provided*, *however*, that, as long as the General Partner has determined to continue to qualify as a REIT, the Partnership will not engage in any such formation, acquisition or contribution that would cause the General Partner to fail to qualify as a REIT;

(12) the control of any matters affecting the rights and obligations of the Partnership, including the settlement, compromise, submission to arbitration or any other form of dispute resolution, or abandonment, of any claim, cause of action, liability, debt or damages, due or owing to or from the Partnership, the commencement or defense of suits, legal proceedings, administrative proceedings, arbitrations or other forms of dispute resolution, and the representation of the Partnership in all suits or legal proceedings, administrative proceedings, arbitrations or other forms of dispute resolution, the incurring of legal expense, and the indemnification of any Person against liabilities and contingencies to the extent permitted by law;

(13) the undertaking of any action in connection with the Partnership's direct or indirect investment in any Subsidiary or any other Person (including, without limitation, the contribution or loan of funds by the Partnership to such Persons);

(14) the determination of the fair market value of any Partnership property distributed in kind using such reasonable method of valuation as the General Partner may adopt; *provided*, *however*, that such methods are otherwise consistent with the requirements of this Agreement;

(15) the enforcement of any rights against any Partner pursuant to representations, warranties, covenants and indemnities relating to such Partner's contribution of property or assets to the Partnership;

(16) the exercise, directly or indirectly, through any attorney-in-fact acting under a general or limited power of attorney, of any right, including the right to vote, appurtenant to any asset or investment held by the Partnership;

(17) the exercise of any of the powers of the General Partner enumerated in this Agreement on behalf of or in connection with any Subsidiary of the Partnership or any other Person in which the Partnership has a direct or indirect interest, or jointly with any such Subsidiary or other Person;

(18) the exercise of any of the powers of the General Partner enumerated in this Agreement on behalf of any Person in which the Partnership does not have an interest, pursuant to contractual or other arrangements with such Person;

(19) the making, execution and delivery of any and all deeds, leases, notes, deeds to secure debt, mortgages, deeds of trust, security agreements, conveyances, contracts, guarantees, warranties, indemnities, waivers, releases, confessions of judgment or any other legal instruments or agreements in writing necessary or appropriate in the judgment of the General Partner for the accomplishment of any of the powers of the General Partner enumerated in this Agreement;

(20) the issuance of additional Partnership Units in connection with Capital Contributions by Additional Limited Partners and additional Capital Contributions by Partners pursuant to Article 4 hereof;

(21) an election to dissolve the Partnership pursuant to Section 13.1.B hereof;

(22) the distribution of cash to acquire Partnership Common Units held by a Limited Partner in connection with a Redemption under Section 15.1 hereof;

(23) an election to acquire Tendered Units in exchange for REIT Shares;

(24) the amendment and restatement of Exhibit A hereto to reflect accurately at all times the Capital Contributions and Percentage Interests of the Partners as the same are adjusted from time to time to the extent necessary to reflect redemptions, Capital Contributions, the issuance of Partnership Units, the admission of any Additional Limited Partner or any Substituted Limited Partner or otherwise, which amendment and restatement, notwithstanding anything in this Agreement to the contrary, shall not be deemed an amendment to this Agreement, as long as the matter or event being reflected in Exhibit A hereto otherwise is authorized by this Agreement; and

(25) the registration of any class of securities of the Partnership under the Securities Act or the Exchange Act, and the listing of any debt securities of the Partnership on any exchange.

B. Each of the Limited Partners agrees that, except as provided in Section 7.3 hereof and subject to the rights of any Holder of any Partnership Interest set forth in a Partnership Unit Designation, the General Partner is authorized to execute and deliver any affidavit, agreement, certificate, consent, instrument, notice, power of attorney, waiver or other writing or document in the name and on behalf of the Partnership and to otherwise exercise any power of the General

Partner under this Agreement and the Act on behalf of the Partnership without any further act, approval or vote of the Partners or any other Persons, notwithstanding any other provision of the Act or any applicable law, rule or regulation and, in the absence of any specific corporate action on the part of the General Partner to the contrary, the taking of any action or the execution of any such document or writing by an officer of the General Partner, in the name and on behalf of the General Partner, in its capacity as the general partner of the Partnership, shall conclusively evidence (1) the approval thereof by the General Partner, in its capacity as the general partner of the Partnership, (2) the General Partner's determination that such action, document or writing is necessary or desirable to conduct the business and affairs of the Partnership, exercise the powers of the Partnership under this Agreement and the Act or effectuate the purposes of the Partnership, or any other determination by the General Partner required by this Agreement in connection with the taking of such action or execution of such document or writing, and (3) the authority of such officer with respect thereto.

C. At all times from and after the date hereof, the General Partner may cause the Partnership to obtain and maintain (i) casualty, liability and other insurance on the Properties and (ii) liability insurance for the Indemnitees hereunder.

D. At all times from and after the date hereof, the General Partner may cause the Partnership to establish and maintain working capital and other reserves in such amounts as the General Partner, in its sole and absolute discretion, deems appropriate and reasonable from time to time.

E. In exercising its authority under this Agreement, the General Partner may, but shall be under no obligation to, take into account the tax consequences to any Partner of any action taken (or not taken) by it. The General Partner and the Partnership shall not have liability to a Limited Partner under any circumstances as a result of any income tax liability incurred by such Limited Partner as a result of an action (or inaction) by the General Partner pursuant to its authority under this Agreement.

F. The determination as to any of the following matters, made by or at the direction of the General Partner consistent with the this Agreement and the Act, shall be final and conclusive and shall be binding upon the Partnership and every Limited Partner: the amount of assets at any time available for distribution or the redemption of Partnership Common Units; the amount and timing of any distribution; any determination to redeem Tendered Units; the amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been paid or discharged); the amount of any Partner's Capital Account, Adjusted Capital Account or Adjusted Capital Account Deficit; the amount of Net Income, Net Loss or Depreciation for any period; the Gross Asset Value of any Partnership asset; the Value of any REIT Share; any interpretation of the terms, preferences, conversion or other rights, voting powers or rights, restrictions, limitations as to dividends or distributions, qualifications or terms or conditions of redemption of any class or series of Partnership Interest; the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Partnership or of any Partnership Interest; the number of authorized or outstanding Units of any class or series; any matter relating to the acquisition, holding and disposition of any assets by the Partnership; or any other matter relating to the business and affairs of the Partnership or required or permitted by applicable law, this Agreement or otherwise to be determined by the General Partner.

Section 7.2 *Certificate of Limited Partnership*. To the extent that such action is determined by the General Partner to be reasonable and necessary or appropriate, the General Partner shall file amendments to and restatements of the Certificate and do all the things to maintain the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability) under the laws of the State of Maryland and each other state, the District of Columbia or any other jurisdiction, in which the Partnership may elect to do business or own property. Subject to the terms of Section 8.5.A hereof, the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate or any amendment thereto to any Limited Partner. The General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents as may be reasonable and necessary or appropriate for the formation, continuation, qualification and operation of a limited partnership (or a partnership in which the limited partners have limited liability to the extent provided by applicable law) in the State of Maryland and any other state, or the District of Columbia or other jurisdiction, in which the Partnership may elect to do business or own property.

Section 7.3 *Restrictions on General Partner's Authority*.

A. The General Partner may not take any action in contravention of an express prohibition or limitation of this Agreement without the Consent of the Limited Partners, and may not, without limitation:

(1) take any action that would make it impossible to carry on the ordinary business of the Partnership, except as otherwise provided in this Agreement;

(2) perform any act that would subject a Limited Partner to liability as a general partner in any jurisdiction or any other liability except as provided herein or under the Act; or

(3) enter into any contract, mortgage, loan or other agreement that expressly prohibits or restricts (a) the General Partner or the Partnership from performing its specific obligations under Section 15.1 hereof in full or (b) a Limited Partner from exercising its rights under Section 15.1 hereof to effect a Redemption in full, except, in either case, with the Consent of each Limited Partner affected by the prohibition or restriction.

B. Except as provided in Section 7.3.C hereof, the General Partner shall not, without the prior Consent of the Partners, amend, modify or terminate this Agreement. Further, no amendment may alter the restrictions on the General Partner's authority set forth elsewhere in this Agreement (including, without limitation, this Section 7.3) without the Consent specified therein and no amendment may alter Section 11.2 hereof without the Consent of the Limited Partners.

C. Notwithstanding Section 7.3.B and 14.2 hereof but subject to Section 16.10 and the rights of any Holder of any Partnership Interest set forth in a Partnership Unit Designation, the General Partner shall have the power, without the Consent of the Partners, to amend this Agreement as may be required to facilitate or implement any of the following purposes:

(1) to add to the obligations of the General Partner or surrender any right or power granted to the General Partner or any Affiliate of the General Partner for the benefit of the Limited Partners;

(2) to reflect the admission, substitution or withdrawal of Partners, the Transfer of any Partnership Interest, the termination of the Partnership in accordance with this Agreement, or the adjustment of outstanding LTIP Units as contemplated by Section 16.3, and to amend Exhibit A in connection with such admission, substitution, withdrawal, Transfer or adjustment;

(3) to reflect a change that is of an inconsequential nature or does not adversely affect the Limited Partners in any material respect, or to cure any ambiguity, correct or supplement any provision in this Agreement not inconsistent with law or with other provisions, or make other changes with respect to matters arising under this Agreement that will not be inconsistent with law or with the provisions of this Agreement;

(4) to set forth or amend the designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to distributions, qualifications or terms or conditions of redemption of the Holders of any additional Partnership Interests issued pursuant to Article 4;

(5) to satisfy any requirements, conditions or guidelines contained in any order, directive, opinion, ruling or regulation of a Federal or state agency or contained in Federal or state law;

(6) (a) to reflect such changes as are reasonably necessary for the General Partner to maintain its status as a REIT or to satisfy the REIT Requirements, or (b) to reflect the Transfer of all or any part of a Partnership Interest among the General Partner and any Disregarded Entity with respect to the General Partner;

(7) to modify either or both of the manner in which items of Net Income or Net Loss are allocated pursuant to Article 6 or the manner in which Capital Accounts are adjusted, computed, or maintained (but in each case only to the extent otherwise provided in this Agreement and as may be permitted under applicable law);

(8) to reflect the issuance of additional Partnership Interests in accordance with Section 4.2; or

(9) to reflect any other modification to this Agreement as is reasonably necessary for the business or operations of the Partnership or the General Partner and which does not violate Section 7.3.D.

D. Notwithstanding Sections 7.3.B, 7.3.C and 14.2 hereof, this Agreement shall not be amended, and no action may be taken by the General Partner, without the Consent of each Partner adversely affected thereby, if such amendment or action would (i) convert a Limited Partner Interest in the Partnership into a General Partner Interest (except as a result of the General Partner acquiring such Partnership Interest), (ii) modify the limited liability of a Limited Partner, (iii) alter the rights of any Partner to receive the distributions to which such Partner is

entitled pursuant to Article 5 or Section 13.2.A(4) hereof, or alter the allocations specified in Article 6 hereof (except, in any case, as permitted pursuant to Sections 4.2, 5.5, 7.3.C and Article 6 hereof), (iv) alter or modify the Redemption rights, Cash Amount or REIT Shares Amount as set forth in Section 15.1 hereof, or amend or modify any related definitions, (v) subject to Section 7.9.D, remove, alter or amend the powers and restrictions related to REIT Requirements or permitting the General Partner to avoid paying tax under Code Sections 857 or 4981 contained in Sections 7.1 and 7.3, or (vi) amend this Section 7.3.D. Any such amendment or action consented to by any Partner shall be effective as to that Partner, notwithstanding the absence of such consent by any other Partner.

Section 7.4 *Reimbursement of the General Partner*.

A. The General Partner shall not be compensated for its services as General Partner of the Partnership except as provided in this Agreement (including the provisions of Articles 5 and 6 hereof regarding distributions, payments and allocations to which the General Partner may be entitled in its capacity as the General Partner).

B. Subject to Sections 7.4.D and 15.12 hereof, the Partnership shall be responsible for and shall pay all expenses relating to the Partnership's and the General Partner's organization and the ownership of each of their assets and operations. The General Partner is hereby authorized to pay compensation for accounting, administrative, legal, technical, management and other services rendered to the Partnership. The Partnership shall be liable for, and shall reimburse the General Partner, on a monthly basis, or such other basis as the General Partner may determine in its sole and absolute discretion, for all sums expended in connection with the Partnership's business, including, without limitation, (i) expenses relating to the ownership of interests in and management and operation of the Partnership, (ii) compensation of officers and employees, including, without limitation, payments under future compensation plans, of the General Partner, or the Partnership that may provide for stock units, or phantom stock, pursuant to which employees of the General Partner, or the Partnership will receive payments based upon dividends on or the value of REIT Shares, (iii) director fees and expenses of the General Partner or its Affiliates, (iv) any expenses (other than the purchase price) incurred by the General Partner in connection with the redemption or other repurchase of REIT Shares or Capital Shares, and (v) all costs and expenses of the General Partner being a public company, including, without limitation, costs of filings with the SEC, reports and other distributions to its stockholders; *provided*, *however*, that the amount of any reimbursement shall be reduced by any interest earned by the General Partner with respect to bank accounts or other instruments or accounts held by it on behalf of the Partnership as permitted pursuant to Section 7.5 hereof. The Partners acknowledge that all such expenses of the General Partner are deemed to be for the benefit of the Partnership. Such reimbursements shall be in addition to any reimbursement of the General Partner as a result of indemnification pursuant to Section 7.7 hereof.

C. If the General Partner shall elect to purchase from its stockholders REIT Shares for the purpose of delivering such REIT Shares to satisfy an obligation under any dividend reinvestment program adopted by the General Partner, any employee stock purchase plan adopted by the General Partner or any similar obligation or arrangement undertaken by the General Partner in the future, in lieu of the treatment specified in Section 4.7.B., the purchase price paid by the General Partner for such REIT Shares shall be considered expenses of the

Partnership and shall be advanced to the General Partner or reimbursed to the General Partner, subject to the condition that: (1) if such REIT Shares subsequently are sold by the General Partner, the General Partner shall pay or cause to be paid to the Partnership any proceeds received by the General Partner for such REIT Shares (which sales proceeds shall include the amount of dividends reinvested under any dividend reinvestment or similar program; *provided*, that a transfer of REIT Shares for Partnership Common Units pursuant to Section 15.1 would not be considered a sale for such purposes); and (2) if such REIT Shares are not retransferred by the General Partner within 30 days after the purchase thereof, or the General Partner otherwise determines not to retransfer such REIT Shares, the Partnership shall redeem a number of Partnership Common Units determined in accordance with Section 4.7.B, as adjusted, to the extent the General Partner determines is necessary or advisable in its sole and absolute discretion, (x) pursuant to Section 7.5 (in the event the General Partner acquires material assets, other than on behalf of the Partnership) and (y) for stock dividends and distributions, stock splits and subdivisions, reverse stock splits and combinations, distributions of rights, warrants or options, and distributions of evidences of indebtedness or assets relating to assets not received by the General Partner pursuant to a pro rata distribution by the Partnership (in which case such advancement or reimbursement of expenses shall be treated as having been made as a distribution in redemption of such number of Partnership Units held by the General Partner).

D. To the extent practicable, Partnership expenses shall be billed directly to and paid by the Partnership and, subject to Section 15.12 hereof, if and to the extent any reimbursements to the General Partner or any of its Affiliates by the Partnership pursuant to this Section 7.4 constitute gross income to such Person (as opposed to the repayment of advances made by such Person on behalf of the Partnership), such amounts shall be treated as "guaranteed payments" within the meaning of Code Section 707(c) and shall not be treated as distributions for purposes of computing the Partners' Capital Accounts.

Section 7.5 *Outside Activities of the General Partner*. The General Partner shall not directly or indirectly enter into or conduct any business, other than in connection with, (a) the ownership, acquisition and disposition of Partnership Interests, (b) the management of the business and affairs of the Partnership, (c) the operation of the General Partner as a reporting company with a class (or classes) of securities registered under the Exchange Act, (d) its operations as a REIT, (e) the offering, sale, syndication, private placement or public offering of stock, bonds, securities or other interests, (f) financing or refinancing of any type related to the Partnership or its assets or activities, and (g) such activities as are incidental thereto; *provided*, *however*, that, except as otherwise provided herein, any funds raised by the General Partner pursuant to the preceding clauses (e) and (f) shall be made available to the Partnership, whether as Capital Contributions, loans or otherwise, as appropriate, and, *provided*, *further* that the General Partner may, in its sole and absolute discretion, from time to time hold or acquire assets in its own name or otherwise other than through the Partnership so long as the General Partner takes commercially reasonable measures to ensure that the economic benefits and burdens of such Property are otherwise vested in the Partnership, through assignment, mortgage loan or otherwise or, if it is not commercially reasonable to vest such economic interests in the Partnership, the Partners shall negotiate in good faith to amend this Agreement, including, without limitation, the definition of "Adjustment Factor," to reflect such activities and the direct ownership of assets by the General Partner. Nothing contained herein shall be deemed to prohibit the General Partner from executing guarantees of Partnership debt. The General Partner and all

Disregarded Entities with respect to the General Partner, taken as a group, shall not own any assets or take title to assets (other than temporarily in connection with an acquisition prior to contributing such assets to the Partnership) other than (i) interests in Disregarded Entities with respect to the General Partner, (ii) Partnership Interests as the General Partner, (iii) an interest (not to exceed 1% of capital and profits) in any Subsidiary of the Partnership that the General Partner holds to maintain such Subsidiary's status as a partnership for Federal income tax purposes or otherwise, and (iv) such cash and cash equivalents, bank accounts or similar instruments or accounts as such group deems reasonably necessary, taking into account Section 7.1.D hereof and the requirements necessary for the General Partner to qualify as a REIT and for the General Partner to carry out its responsibilities contemplated under this Agreement and the Charter. Any Limited Partner Interests acquired by the General Partner, whether pursuant to the exercise by a Limited Partner of its right to Redemption, or otherwise, shall be automatically converted into a General Partner Interest comprised of an identical number of Partnership Units with the same terms as the class or series so acquired. Any Affiliates of the General Partner may acquire Limited Partner Interests and shall, except as expressly provided in this Agreement, be entitled to exercise all rights of a Limited Partner relating to such Limited Partner Interests.

Section 7.6 *Transactions with Affiliates*.

A. The Partnership may lend or contribute funds to, and borrow funds from, Persons in which the Partnership has an equity investment, and such Persons may borrow funds from, and lend or contribute funds to, the Partnership, on terms and conditions established in the sole and absolute discretion of the General Partner. The foregoing authority shall not create any right or benefit in favor of any Person.

B. Except as provided in Section 7.5 hereof, the Partnership may transfer assets to joint ventures, limited liability companies, partnerships, corporations, business trusts or other business entities in which it is or thereby becomes a participant upon such terms and subject to such conditions consistent with this Agreement and applicable law.

C. The General Partner and its Affiliates may sell, transfer or convey any property to, or purchase any property from, the Partnership, directly or indirectly, on terms and conditions established by the General Partner in its sole and absolute discretion.

D. The General Partner, in its sole and absolute discretion and without the approval of the Partners or any of them or any other Persons, may propose and adopt (on behalf of the Partnership) employee benefit plans (including without limitation plans that contemplate the issuance of LTIP Units) funded by the Partnership for the benefit of employees of the General Partner, the Partnership, Subsidiaries of the Partnership or any Affiliate of any of them in respect of services performed, directly or indirectly, for the benefit of the General Partner, the Partnership or any of the Partnership's Subsidiaries.

Section 7.7 *Indemnification*.

A. To the fullest extent permitted by applicable law, the Partnership shall indemnify each Indemnitee from and against any and all losses, claims, damages, liabilities, joint or several,

expenses (including, without limitation, attorney's fees and other legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, that relate to the operations of the Partnership ("*Actions*") as set forth in this Agreement in which such Indemnitee may be involved, or is threatened to be involved, as a party or otherwise; *provided*, *however*, that the Partnership shall not indemnify an Indemnitee (i) if the act or omission of the Indemnitee was material to the matter giving rise to the Action and either was committed in bad faith or was the result of active and deliberate dishonesty; (ii) in the case of any criminal proceeding, if the Indemnitee had reasonable cause to believe that the act or omission was unlawful; or (iii) for any transaction for which such Indemnitee actually received an improper personal benefit in violation or breach of any provision of this Agreement; and *provided*, *further*, that no payments pursuant to this Agreement shall be made by the Partnership to indemnify or advance funds to any Indemnitee (x) with respect to any Action initiated or brought voluntarily by such Indemnitee (and not by way of defense) unless (I) approved or authorized by the General Partner or (II) incurred to establish or enforce such Indemnitee's right to indemnification under this Agreement, and (y) in connection with one or more Actions or claims brought by the Partnership or involving such Indemnitee if such Indemnitee is found liable to the Partnership on any portion of any claim in any such Action.

Without limitation, the foregoing indemnity shall extend to any liability of any Indemnitee, pursuant to a loan guaranty or otherwise, for any indebtedness of the Partnership or any Subsidiary of the Partnership (including, without limitation, any indebtedness which the Partnership or any Subsidiary of the Partnership has assumed or taken subject to), and the General Partner is hereby authorized and empowered, on behalf of the Partnership, to enter into one or more indemnity agreements consistent with the provisions of this Section 7.7 in favor of any Indemnitee having or potentially having liability for any such indebtedness. It is the intention of this Section 7.7.A that the Partnership indemnify each Indemnitee to the fullest extent permitted by law and this Agreement. The termination of any proceeding by judgment, order or settlement does not create a presumption that the Indemnitee did not meet the requisite standard of conduct set forth in this Section 7.7.A. The termination of any proceeding by conviction of an Indemnitee or upon a plea of *nolo contendere* or its equivalent by an Indemnitee, or an entry of an order of probation against an Indemnitee prior to judgment, does not create a presumption that such Indemnitee acted in a manner contrary to that specified in this Section 7.7.A with respect to the subject matter of such proceeding. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Partnership, and neither the General Partner nor any other Holder shall have any obligation to contribute to the capital of the Partnership or otherwise provide funds to enable the Partnership to fund its obligations under this Section 7.7.

B. To the fullest extent permitted by law, expenses incurred by an Indemnitee who is a party to a proceeding or otherwise subject to or the focus of or is involved in any Action shall be paid or reimbursed by the Partnership as incurred by the Indemnitee in advance of the final disposition of the Action upon receipt by the Partnership of (i) a written affirmation by the Indemnitee of the Indemnitee's good faith belief that the standard of conduct necessary for indemnification by the Partnership as authorized in Section 7.7.A has been met, and (ii) a written undertaking by or on behalf of the Indemnitee to repay the amount if it shall ultimately be determined that the standard of conduct has not been met.

C. The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee or any other Person may be entitled under any agreement, pursuant to any vote of the Partners, as a matter of law or otherwise, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee unless otherwise provided in a written agreement with such Indemnitee or in the writing pursuant to which such Indemnitee is indemnified.

D. The Partnership may, but shall not be obligated to, purchase and maintain insurance, on behalf of any of the Indemnitees and such other Persons as the General Partner shall determine, against any liability that may be asserted against or expenses that may be incurred by such Person in connection with the Partnership's activities, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

E. Any liabilities which an Indemnitee incurs as a result of acting on behalf of the Partnership or the General Partner (whether as a fiduciary or otherwise) in connection with the operation, administration or maintenance of an employee benefit plan or any related trust or funding mechanism (whether such liabilities are in the form of excise taxes assessed by the IRS, penalties assessed by the U.S. Department of Labor, restitutions to such a plan or trust or other funding mechanism or to a participant or beneficiary of such plan, trust or other funding mechanism, or otherwise) shall be treated as liabilities or judgments or fines under this Section 7.7, unless such liabilities arise as a result of (i) an act or omission of such Indemnitee that was material to the matter giving rise to the Action and either was committed in bad faith or was the result of active and deliberate dishonesty; (ii) in the case of any criminal proceeding, an act or omission that such Indemnitee had reasonable cause to believe was unlawful, or (iii) any transaction in which such Indemnitee actually received an improper personal benefit in violation or breach of any provision of this Agreement.

F. In no event may an Indemnitee subject any of the Holders to personal liability by reason of the indemnification provisions set forth in this Agreement.

G. An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

H. The provisions of this Section 7.7 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons. Any amendment, modification or repeal of this Section 7.7 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the Partnership's liability to any Indemnitee under this Section 7.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

I. It is the intent of the parties that any amounts paid by the Partnership to the General Partner pursuant to this Section 7.7 shall be treated as "guaranteed payments" within the meaning of Code Section 707(c) and shall not be treated as distributions for purposes of computing the Partners' Capital Accounts.

Section 7.8 *Liability of the General Partner*.

A. The Limited Partners agree that: (i) the General Partner is acting for the benefit of the Partnership, the Limited Partners and the General Partner's stockholders collectively; (ii) in the event of a conflict between the interests of the Partnership or any Partner, on the one hand, and the separate interests of the General Partner or its stockholders, on the other hand, the General Partner is under no obligation not to give priority to the separate interests of the General Partner or the stockholders of the General Partner, and any action or failure to act on the part of the General Partner or its directors that gives priority to the separate interests of the General Partner or its stockholders that does not result in a violation of the contract rights of the Limited Partners under this Agreement does not violate the duty of loyalty owed by the General Partner to the Partnership and/or the Partners; and (iii) the General Partner shall not be liable to the Partnership or to any Partner for monetary damages for losses sustained, liabilities incurred or benefits not derived by the Partnership or any Limited Partner in connection with such decisions, except for liability for the General Partner's intentional harm or gross negligence.

B. Subject to its obligations and duties as General Partner set forth in this Agreement and applicable law, the General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its employees or agents. The General Partner shall not be responsible to the Partnership or any Partner for any misconduct or negligence on the part of any such employee or agent appointed by it in good faith.

C. Any obligation or liability whatsoever of the General Partner which may arise at any time under this Agreement or any other instrument, transaction, or undertaking contemplated hereby shall be satisfied, if at all, out of the assets of the General Partner or the Partnership only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, any of the General Partner's directors, stockholders, officers, employees, or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise. Notwithstanding anything to the contrary set forth in this Agreement, none of the directors or officers of the General Partner shall be liable or accountable in damages or otherwise to the Partnership, any Partners, or any Assignees for losses sustained, liabilities incurred or benefits not derived as a result of errors in judgment or mistakes of fact or law or of any act or omission.

D. Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the General Partner's and its officers' and directors' liability to the Partnership and the Limited Partners under this Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

E. Notwithstanding anything herein to the contrary, except for liability for intentional harm or gross negligence on the part of such Partner or pursuant to any express indemnities given to the Partnership by any Partner pursuant to any other written instrument, no Partner shall have any personal liability whatsoever, to the Partnership or to the other Partners, or for the debts or liabilities of the Partnership or the Partnership's obligations hereunder, and the full recourse of the other Partner(s) shall be limited to the interest of that Partner in the Partnership. Without limitation of the foregoing, and except for liability for intentional harm or gross negligence on the part of any Partner, or pursuant to any such express indemnity, no property or assets of such Partner, other than its interest in the Partnership, shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) in favor of any other Partner(s) and arising out of, or in connection with, this Agreement. This Agreement is executed by the officers of the General Partner solely as officers of the same and not in their own individual capacities.

F. To the extent that, at law or in equity, the General Partner has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or the Limited Partners, the General Partner shall not be liable to the Partnership or to any other Partner for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict or modify the duties and liabilities of the General Partner under the Act or otherwise existing at law or in equity, are agreed by the Partners to replace such other duties and liabilities of such General Partner.

G. Whenever in this Agreement the General Partner is permitted or required to make a decision (i) in its "sole and absolute discretion," "sole discretion" or "discretion" or under a grant of similar authority or latitude, the General Partner shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest or factors affecting the Partnership or the Partners or any of them, or (ii) in its "good faith" or under another expressed standard, the General Partner shall act under such express standard and shall not be subject to any other or different standards imposed by this Agreement or any other agreement contemplated herein or by relevant provisions of law or in equity or otherwise. If any question should arise with respect to the operation of the Partnership, which is not otherwise specifically provided for in this Agreement or the Act, or with respect to the interpretation of this Agreement, the General Partner is hereby authorized to make a final determination with respect to any such question and to interpret this Agreement in such a manner as it shall deem, in its sole discretion, to be fair and equitable, and its determination and interpretations so made shall be final and binding on all parties. The General Partner's "sole and absolute discretion," "sole discretion" and "discretion" under this Agreement shall be exercised consistently with the General Partner's fiduciary duties and obligation of good faith and fair dealing under the Act.

Section 7.9 *Other Matters Concerning the General Partner*.

A. The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties.

B. The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, architects, engineers, environmental consultants and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the opinion of such Persons as to matters that the General Partner reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.

C. The General Partner shall have the right, in respect of any of its powers or obligations hereunder, to act through any of its duly authorized officers or agents or a duly appointed attorney or attorneys-in-fact. Each such officer, agent or attorney shall, to the extent authorized by the General Partner, have full power and authority to do and perform all and every act and duty that is permitted or required to be done by the General Partner hereunder.

D. Notwithstanding any other provision of this Agreement or the Act, any action of the General Partner on behalf of the Partnership or any decision of the General Partner to refrain from acting on behalf of the Partnership, undertaken in the good faith belief that such action or omission is necessary or advisable in order (i) to protect the ability of the General Partner to continue to qualify as a REIT, (ii) for the General Partner otherwise to satisfy the REIT Requirements, (iii) for the General Partner to avoid incurring any taxes under Code Section 857 or Code Section 4981, or (iv) for any General Partner Affiliate to continue to qualify as a "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)), is expressly authorized under this Agreement and is deemed approved by all of the Limited Partners.

Section 7.10 *Title to Partnership Assets.* Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually or collectively with other Partners or Persons, shall have any ownership interest in such Partnership assets or any portion thereof. Title to any or all of the Partnership assets may be held in the name of the Partnership, the General Partner or one or more nominees, as the General Partner may determine, including Affiliates of the General Partner. The General Partner hereby declares and warrants that any Partnership assets for which legal title is held in the name of the General Partner or any nominee or Affiliate of the General Partner shall be held by the General Partner or such nominee or Affiliate for the use and benefit of the Partnership in accordance with the provisions of this Agreement. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which legal title to such Partnership assets is held.

Section 7.11 *Reliance by Third Parties.* Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner has full power and authority, without the consent or approval of any other Partner, or Person, to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any contracts on behalf of the Partnership, and take any and all actions on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner as if it were the Partnership's sole party in interest, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the General Partner in connection with any such dealing. In no event shall any Person dealing with the General Partner or its representatives be obligated to ascertain that the terms of this Agreement have been

complied with or to inquire into the necessity or expediency of any act or action of the General Partner or its representatives. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (i) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (ii) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership and (iii) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

ARTICLE 8
RIGHTS AND OBLIGATIONS OF LIMITED PARTNERS

Section 8.1 *Limitation of Liability.* No Limited Partner shall have any liability under this Agreement except for intentional harm or gross negligence on the part of such Limited Partner or as expressly provided in this Agreement (including, without limitation, Section 10.4 hereof) or under the Act.

Section 8.2 *Management of Business.* Subject to the rights and powers of the General Partner hereunder, no Limited Partner or Assignee (other than the General Partner, any of its Affiliates or any officer, director, member, employee, partner, agent or trustee of the General Partner, the Partnership or any of their Affiliates, in their capacity as such) shall take part in the operations, management or control (within the meaning of the Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. The transaction of any such business by the General Partner, any of its Affiliates or any officer, director, member, employee, partner, agent, representative, or trustee of the General Partner, the Partnership or any of their Affiliates, in their capacity as such, shall not affect, impair or eliminate the limitations on the liability of the Limited Partners or Assignees under this Agreement.

Section 8.3 *Outside Activities of Limited Partners.* Subject to any agreements entered into pursuant to Section 7.6 hereof and any other agreements entered into by a Limited Partner or any of its Affiliates with the General Partner, the Partnership or a Subsidiary (including, without limitation, any employment agreement), any Limited Partner and any Assignee, officer, director, employee, agent, trustee, Affiliate, member or stockholder of any Limited Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities that are in direct or indirect competition with the Partnership or that are enhanced by the activities of the Partnership. Neither the Partnership nor any Partner shall have any rights by virtue of this Agreement in any business ventures of any Limited Partner or Assignee. Subject to such agreements, none of the Limited Partners nor any other Person shall have any rights by virtue of this Agreement or the partnership relationship established hereby in any business ventures of any other Person (other than the General Partner), and such Person shall have no obligation pursuant to this Agreement, subject to Section 7.6 hereof and any other agreements entered into by a Limited Partner or its Affiliates with the General Partner, the Partnership or a Subsidiary, to offer any interest in any such business ventures to the Partnership, any Limited Partner, or any such other Person, even if such opportunity is of a character that, if presented to the Partnership, any Limited Partner or such other Person, could be taken by such Person.

Section 8.4 *Return of Capital.* Except pursuant to the rights of Redemption set forth in Section 15.1 hereof or in any Partnership Unit Designation, no Limited Partner shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent of distributions made pursuant to this Agreement or upon termination of the Partnership as provided herein. Except to the extent provided in Article 5 and Article 6 hereof or otherwise expressly provided in this Agreement or in any Partnership Unit Designation, no Limited Partner or Assignee shall have priority over any other Limited Partner or Assignee either as to the return of Capital Contributions or as to profits, losses or distributions.

Section 8.5 *Rights of Limited Partners Relating to the Partnership*.

A. In addition to other rights provided by this Agreement or by the Act, and except as limited by Section 8.5.C hereof, the General Partner shall deliver to each Limited Partner a copy of any information mailed or electronically delivered to all of the common stockholders of the General Partner as soon as practicable after such mailing.

B. The Partnership shall notify any Limited Partner that is a Qualifying Party, on request, of the then current Adjustment Factor and any change made to the Adjustment Factor shall be set forth in the quarterly report required by Section 9.3.B hereof immediately following the date such change becomes effective.

C. Notwithstanding any other provision of this Section 8.5, the General Partner may keep confidential from the Limited Partners (or any of them), for such period of time as the General Partner determines in its sole and absolute discretion to be reasonable, any information that (i) the General Partner believes to be in the nature of trade secrets or other information the disclosure of which the General Partner in good faith believes is not in the best interests of the Partnership or the General Partner or (ii) the Partnership or the General Partner is required by law or by agreement to keep confidential.

Section 8.6 *Partnership Right to Call Limited Partner Interests.* Notwithstanding any other provision of this Agreement, on and after the date on which the aggregate Percentage Interests of the Limited Partners are less than one percent (1%), the Partnership shall have the right, but not the obligation, from time to time and at any time to redeem any and all outstanding Limited Partner Interests by treating any Limited Partner as a Tendering Party who has delivered a Notice of Redemption pursuant to Section 15.1 hereof for the amount of Partnership Common Units to be specified by the General Partner, in its sole and absolute discretion, by notice to such Limited Partner that the Partnership has elected to exercise its rights under this Section 8.6. Such notice given by the General Partner to a Limited Partner pursuant to this Section 8.6 shall be treated as if it were a Notice of Redemption delivered to the General Partner by such Limited Partner. For purposes of this Section 8.6, (a) any Limited Partner (whether or not otherwise a Qualifying Party) may, in the General Partner's sole and absolute discretion, be treated as a Qualifying Party that is a Tendering Party and (b) the provisions of Sections 15.1.F(2) and 15.1.F(3) hereof shall not apply, but the remainder of Section 15.1 hereof shall apply, mutatis mutandis.

Section 8.7 *Rights as Objecting Partner.* No Limited Partner and no Holder of a Partnership Interest shall be entitled to exercise any of the rights of an objecting stockholder provided for under Title 3, Subtitle 2 of the Maryland General Corporation Law or any successor statute in connection with a merger of the Partnership.

ARTICLE 9
BOOKS, RECORDS, ACCOUNTING AND REPORTS

Section 9.1 *Records and Accounting*.

A. The General Partner shall keep or cause to be kept at the principal place of business of the Partnership those records and documents, if any, required to be maintained by the Act and any other books and records deemed by the General Partner to be appropriate with respect to the Partnership's business, including, without limitation, all books and records necessary to provide to the Limited Partners any information, lists and copies of documents required to be provided pursuant to Section 8.5.A, Section 9.3 or Article 13 hereof. Any records maintained by or on behalf of the Partnership in the regular course of its business may be kept on any information storage device, provided that the records so maintained are convertible into clearly legible written form within a reasonable period of time.

B. The books of the Partnership shall be maintained, for financial and tax reporting purposes, on an accrual basis in accordance with generally accepted accounting principles, or on such other basis as the General Partner determines to be necessary or appropriate. To the extent permitted by sound accounting practices and principles, the Partnership and the General Partner may operate with integrated or consolidated accounting records, operations and principles.

Section 9.2 *Partnership Year.* For purposes of this Agreement, "Partnership Year" means the fiscal year of the Partnership, which shall be the same as the tax year of the Partnership. The tax year shall be the calendar year unless otherwise required by the Code.

Section 9.3 *Reports*.

A. As soon as practicable, but in no event later than one hundred five (105) days after the close of each Partnership Year, the General Partner shall cause to be mailed to each Limited Partner of record as of the close of the Partnership Year, financial statements of the Partnership, or of the General Partner if such statements are prepared solely on a consolidated basis with the General Partner, for such Partnership Year, presented in accordance with generally accepted accounting principles, such statements to be audited by a nationally recognized firm of independent public accountants selected by the General Partner.

B. As soon as practicable, but in no event later than sixty (60) days after the close of each calendar quarter (except the last calendar quarter of each year), the General Partner shall cause to be mailed to each Limited Partner of record as of the last day of the calendar quarter, a report containing unaudited financial statements of the Partnership for such calendar quarter, or of the General Partner if such statements are prepared solely on a consolidated basis with the General Partner, and such other information as may be required by applicable law or regulation or as the General Partner determines to be appropriate.

C. The General Partner shall have satisfied its obligations under Section 9.3.A and Section 9.3.B by posting or making available the reports required by this Section 9.3 on the website maintained from time to time by the Partnership or the General Partner, provided that such reports are able to be printed or downloaded from such website.

D. At the request of any Limited Partner, the General Partner shall provide access to the books, records and workpapers upon which the reports required by this Section 9.3 are based, to the extent required by the Act.

ARTICLE 10
TAX MATTERS

Section 10.1 *Preparation of Tax Returns.* The General Partner shall arrange for the preparation and timely filing of all returns with respect to Partnership income, gains, deductions, losses and other items required of the Partnership for Federal and state income tax purposes and shall use all reasonable efforts to furnish, within ninety (90) days of the close of each taxable year, the tax information reasonably required by Limited Partners for Federal and state income tax and any other tax reporting purposes. The Limited Partners shall promptly provide the General Partner with such information relating to the Contributed Properties as is readily available to the Limited Partners, including tax basis and other relevant information, as may be reasonably requested by the General Partner from time to time.

Section 10.2 *Tax Elections*. Except as otherwise provided herein, the General Partner shall, in its sole and absolute discretion, determine whether to make any available election pursuant to the Code, including, but not limited to, the election under Code Section 754. The General Partner shall have the right to seek to revoke any such election (including, without limitation, any election under Code Section 754) upon the General Partner's determination in its sole and absolute discretion that such revocation is in the best interests of the Partners.

Section 10.3 *Tax Matters Partner*.

A. The General Partner shall be the "tax matters partner" of the Partnership for federal income tax purposes. The tax matters partner shall receive no compensation for its services. All third-party costs and expenses incurred by the tax matters partner in performing its duties as such (including legal and accounting fees and expenses) shall be borne by the Partnership in addition to any reimbursement pursuant to Section 7.4 hereof. Nothing herein shall be construed to restrict the Partnership from engaging an accounting firm to assist the tax matters partner in discharging its duties hereunder.

B. The tax matters partner is authorized, but not required:

(1) to enter into any settlement with the IRS with respect to any administrative or judicial proceedings for the adjustment of Partnership items required to be taken into account by a Partner for income tax purposes (such administrative proceedings being referred to as a "tax audit" and such judicial proceedings being referred to as "judicial review"), and in the settlement agreement the tax matters partner may expressly state that such agreement shall bind all Partners, except that such settlement agreement shall not bind any Partner (i) who (within the time prescribed pursuant to the Code and Regulations) files a

statement with the IRS providing that the tax matters partner shall not have the authority to enter into a settlement agreement on behalf of such Partner (as the case may be) or (ii) who is a "notice partner" (as defined in Code Section 6231) or a member of a "notice group" (as defined in Code Section 6223(b)(2));

(2) in the event that a notice of a final administrative adjustment at the Partnership level of any item required to be taken into account by a Partner for tax purposes (a "*Final Adjustment*") is mailed to the tax matters partner, to seek judicial review of such Final Adjustment, including the filing of a petition for readjustment with the United States Tax Court or the United States Claims Court, or the filing of a complaint for refund with the District Court of the United States for the district in which the Partnership's principal place of business is located;

(3) to intervene in any action brought by any other Partner for judicial review of a final adjustment;

(4) to file a request for an administrative adjustment with the IRS at any time and, if any part of such request is not allowed by the IRS, to file an appropriate pleading (petition or complaint) for judicial review with respect to such request;

(5) to enter into an agreement with the IRS to extend the period for assessing any tax that is attributable to any item required to be taken into account by a Partner for tax purposes, or an item affected by such item; and

(6) to take any other action on behalf of the Partners or any of them in connection with any tax audit or judicial review proceeding to the extent permitted by applicable law or regulations.

The taking of any action and the incurring of any expense by the tax matters partner in connection with any such proceeding, except to the extent required by law, is a matter in the sole and absolute discretion of the tax matters partner and the provisions relating to indemnification of the General Partner set forth in Section 7.7 hereof shall be fully applicable to the tax matters partner in its capacity as such.

Section 10.4 *Withholding.* Each Limited Partner hereby authorizes the Partnership to withhold from or pay on behalf of or with respect to such Limited Partner any amount of Federal, state, local or foreign taxes that the General Partner determines the Partnership is required to withhold or pay with respect to any amount distributable or allocable to such Limited Partner pursuant to this Agreement, including, without limitation, any taxes required to be withheld or paid by the Partnership pursuant to Code Section 1441, Code Section 1442, Code Section 1445 or Code Section 1446. Any amount withheld with respect to a Limited Partner pursuant to this Section 10.4 shall be treated as paid or distributed, as applicable, to such Limited Partner for all purposes under this Agreement. Any amount paid on behalf of or with respect to a Limited Partner, in excess of any such withheld amount, shall constitute a loan by the Partnership to such Limited Partner, which loan shall be repaid by such Limited Partner within thirty (30) days after the affected Limited Partner receives written notice from the General Partner that such payment must be made, provided that the Limited Partner shall not be required to repay such deemed loan

if either (i) the Partnership withholds such payment from a distribution that would otherwise be made to the Limited Partner or (ii) the General Partner determines, in its sole and absolute discretion, that such payment may be satisfied out of the Available Cash of the Partnership that would, but for such payment, be distributed to the Limited Partner. Any amounts payable by a Limited Partner hereunder shall bear interest at the base rate on corporate loans at large United States money center commercial banks, as published from time to time in the Wall Street Journal (but not higher than the maximum lawful rate) from the date such amount is due (i.e., thirty (30) days after the Limited Partner receives written notice of such amount) until such amount is paid in full.

Section 10.5 *Organizational Expenses.* The General Partner may cause the Partnership to elect to deduct expenses, if any, incurred by it in organizing the Partnership ratably over a 180-month period as provided in Section 709 of the Code.

ARTICLE 11
PARTNER TRANSFERS AND WITHDRAWALS

Section 11.1 *Transfer*.

A. No part of the interest of a Partner shall be subject to the claims of any creditor, to any spouse for alimony or support, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered except as may be specifically provided for in this Agreement.

B. No Partnership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article 11. Any Transfer or purported Transfer of a Partnership Interest not made in accordance with this Article 11 shall be null and void *ab initio*.

C. No Transfer of any Partnership Interest may be made to a lender to the Partnership or any Person who is related (within the meaning of Section 1.752-4(b) of the Regulations) to any lender to the Partnership whose loan constitutes a Nonrecourse Liability, without the Consent of the General Partner; *provided, however*, that, as a condition to such Consent, the lender may be required to enter into an arrangement with the Partnership and the General Partner to redeem or exchange for the REIT Shares Amount any Partnership Units in which a security interest is held by such lender simultaneously with the time at which such lender would be deemed to be a partner in the Partnership for purposes of allocating liabilities to such lender under Section 752 of the Code (provided that, for purpose of calculating the REIT Shares Amount in this Section 11.1.C, "*Tendered Units*" shall mean all such Partnership Units in which a security interest is held by such lender).

Section 11.2 *Transfer of General Partner's Partnership Interest*.

A. Except as provided in Section 11.2.B or Section 11.2.C, and subject to the rights of any Holder of any Partnership Interest set forth in a Partnership Unit Designation, the General Partner may not Transfer all or any portion of its Partnership Interest (whether by sale, disposition, statutory merger or consolidation, liquidation or otherwise) without the Consent of the Limited Partners. It is a condition to any Transfer of a Partnership Interest of a General

Partner otherwise permitted hereunder (including any Transfer permitted pursuant to Section 11.2.B or Section 11.2.C) that: (i) coincident with such Transfer, the transferee is admitted as a General Partner pursuant to Section 12.1 hereof; (ii) the transferee assumes, by operation of law or express agreement, all of the obligations of the transferor General Partner under this Agreement with respect to such Transferred Partnership Interest; and (iii) the transferee has executed such instruments as may be necessary to effectuate such admission and to confirm the agreement of such transferee to be bound by all the terms and provisions of this Agreement with respect to the Partnership Interest so acquired and the admission of such transferee as a General Partner.

B. *Certain Transactions of the General Partner*. Except as provided in Section 11.2.D and subject to the rights of any Holder of any Partnership Interest set forth in a Partnership Unit Designation, the General Partner may, without the Consent of the Limited Partners, Transfer all of its Partnership Interest in connection with (a) a merger, consolidation or other combination of its assets with another entity, (b) a sale of all or substantially all of its assets not in the ordinary course of the Partnership's business or (c) a reclassification, recapitalization or change of any outstanding shares of the General Partner's stock or other outstanding equity interests (each, a "*Termination Transaction*") if:

(i) in connection with such Termination Transaction, all of the Limited Partners will receive, or will have the right to elect to receive, for each Partnership Common Unit an amount of cash, securities or other property equal to the product of the Adjustment Factor and the greatest amount of cash, securities or other property paid to a holder of one REIT Share in consideration of one REIT Share pursuant to the terms of such Termination Transaction; *provided*, that if, in connection with such Termination Transaction, a purchase, tender or exchange offer shall have been made to and accepted by the holders of the outstanding REIT Shares, each holder of Partnership Common Units shall receive, or shall have the right to elect to receive, the greatest amount of cash, securities or other property which such holder of Partnership Common Units would have received had it exercised its right to Redemption pursuant to Article 15 hereof and received REIT Shares in exchange for its Partnership Common Units immediately prior to the expiration of such purchase, tender or exchange offer and had thereupon accepted such purchase, tender or exchange offer and then such Termination Transaction shall have been consummated; or

(ii) all of the following conditions are met: (w) substantially all of the assets directly or indirectly owned by the surviving entity are owned directly or indirectly by the Partnership or another limited partnership or limited liability company which is the survivor of a merger, consolidation or combination of assets with the Partnership (in each case, the "*Surviving Partnership*"); (x) the Limited Partners that held Partnership Common Units immediately prior to the consummation of such Termination Transaction own a percentage interest of the Surviving Partnership based on the relative fair market value of the net assets of the Partnership and the other net assets of the Surviving Partnership immediately prior to the consummation of such transaction; (y) the rights, preferences and privileges in the Surviving Partnership of such Limited Partners are at least as favorable as those in effect with respect to Partnership Common Units immediately prior to the consummation of such transaction and as those applicable to any

other limited partners or non-managing members of the Surviving Partnership; and (z) the rights of such Limited Partners include at least one of the following: (a) the right to redeem their interests in the Surviving Partnership for the consideration available to such persons pursuant to Section 11.2.B(i) or (b) the right to redeem their interests in the Surviving Partnership for cash on terms substantially equivalent to those in effect with respect to their Partnership Common Units immediately prior to the consummation of such transaction, or, if the ultimate controlling person of the Surviving Partnership has publicly traded common equity securities, such common equity securities, with an exchange ratio based on the determination of relative fair market value of such securities and the REIT Shares.

C. Notwithstanding the other provisions of this Article 11 (other than Section 11.6.D hereof), the General Partner may Transfer all of its Partnership Interests at any time to any Person that is, at the time of such Transfer an Affiliate of the General Partner that is controlled by the General Partner, including any "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)), without the Consent of any Limited Partners. The provisions of Section 11.2.B, 11.3, 11.4.A and 11.5 hereof shall not apply to any Transfer permitted by this Section 11.2.C.

D. The General Partner shall not, without prior Partnership Approval, consummate any transaction that would result in a direct or indirect transfer of all or any portion of the General Partner's Partnership Interest if such direct or indirect transfer would be effected through (a) a Termination Transaction or (b) the issuance of REIT Shares, in each case in connection with which the General Partner seeks to obtain or would be required to obtain approval of its stockholders (each of a "*General Partner Interest Transfer*").

E. Except in connection with Transfers permitted in this Article 11 and as otherwise provided in Section 12.1 in connection with the Transfer of the General Partner's entire Partnership Interest, the General Partner may not voluntarily withdraw as a general partner of the Partnership without the Consent of the Limited Partners.

Section 11.3 *Limited Partners' Rights to Transfer*.

A. *General*. Prior to the end of the first Fourteen-Month Period and except as provided in Section 11.1.C hereof, no Limited Partner shall Transfer all or any portion of its Partnership Interest to any transferee without the Consent of the General Partner; *provided*, *however*, that any Limited Partner may, at any time, without the consent or approval of the General Partner, (i) Transfer all or part of its Partnership Interest to any Family Member (including a Transfer by a Family Member that is an inter vivos or testamentary trust (whether revocable or irrevocable) to a Family Member that is a beneficiary of such trust), any Charity, any Controlled Entity or any Affiliate, or (ii) pledge (a "*Pledge*") all or any portion of its Partnership Interest to a lending institution as collateral or security for a bona fide loan or other extension of credit, and Transfer such pledged Partnership Interest to such lending institution in connection with the exercise of remedies under such loan or extension of credit (any Transfer or Pledge permitted by this proviso is hereinafter referred to as a "*Permitted Transfer*"). After such first Fourteen-Month Period, each Limited Partner, and each transferee of Partnership Units or Assignee pursuant to a Permitted Transfer, shall have the right to Transfer all or any portion of its Partnership Interest to any Person, without the Consent of the General Partner but subject to the provisions of Section 11.4 hereof and to satisfaction of each of the following conditions:

(1) *General Partner Right of First Refusal*. The transferor Limited Partner (or the Partner's estate in the event of the Partner's death) shall give written notice of the proposed Transfer to the General Partner, which notice shall state (i) the identity and address of the proposed transferee and (ii) the amount and type of consideration proposed to be received for the Transferred Partnership Units. The General Partner shall have ten (10) Business Days upon which to give the transferor Limited Partner notice of its election to acquire the Partnership Units on the terms set forth in such notice. If it so elects, it shall purchase the Partnership Units on such terms within ten (10) Business Days after giving notice of such election; *provided*, *however*, that in the event that the proposed terms involve a purchase for cash, the General Partner may at its election deliver in lieu of all or any portion of such cash a note from the General Partner payable to the transferor Limited Partner at a date as soon as reasonably practicable, but in no event later than one hundred eighty (180) days after such purchase, and bearing interest at an annual rate equal to the total dividends declared with respect to one (1) REIT Share for the four (4) preceding fiscal quarters of the General Partner, divided by the Value as of the closing of such purchase; and *provided*, *further*, that such closing may be deferred to the extent necessary to effect compliance with the Hart-Scott-Rodino Act, if applicable, and any other applicable requirements of law. If it does not so elect, the transferor Limited Partner may Transfer such Partnership Units to a third party, on terms no more favorable to the transferee than the proposed terms, subject to the other conditions of this Section 11.3.

(2) *Qualified Transferee*. Any Transfer of a Partnership Interest shall be made only to a single Qualified Transferee; *provided*, *however*, that, for such purposes, all Qualified Transferees that are Affiliates, or that comprise investment accounts or funds managed by a single Qualified Transferee and its Affiliates, shall be considered together to be a single Qualified Transferee; and *provided*, *further*, that each Transfer meeting the minimum Transfer restriction of Section 11.3.A(4) hereof may be to a separate Qualified Transferee.

(3) *Opinion of Counsel*. The transferor Limited Partner shall deliver or cause to be delivered to the General Partner an opinion of counsel reasonably satisfactory to it to the effect that the proposed Transfer may be effected without registration under the Securities Act and will not otherwise violate the registration provisions of the Securities Act and the regulations promulgated thereunder or violate any state securities laws or regulations applicable to the Partnership or the Partnership Interests Transferred; *provided*, *however*, that the General Partner may, in its sole discretion, waive this condition upon the request of the transferor Limited Partner. If, in the opinion of such counsel, such Transfer would require the filing of a registration statement under the Securities Act or would otherwise violate any Federal or state securities laws or regulations applicable to the Partnership or the Partnership Units, the General Partner may prohibit any Transfer otherwise permitted under this Section 11.3 by a Limited Partner of Partnership Interests.

(4) *Minimum Transfer Restriction*. Any Transferring Partner must Transfer not less than the lesser of (i) five hundred (500) Partnership Units or (ii) all of the remaining Partnership Units owned by such Transferring Partner, unless, in each case, otherwise agreed to by

the General Partner; *provided*, *however*, that, for purposes of determining compliance with the foregoing restriction, all Partnership Units owned by Affiliates of a Limited Partner shall be considered to be owned by such Limited Partner.

(5) *Exception for Permitted Transfers*. The conditions of Sections 11.3.A(1) through 11.3.A(4) hereof shall not apply in the case of a Permitted Transfer.

It is a condition to any Transfer otherwise permitted hereunder (whether or not such Transfer is effected during or after the first Fourteen-Month Period) that the transferee assumes by operation of law or express agreement all of the obligations of the transferor Limited Partner under this Agreement with respect to such Transferred Partnership Interest, and no such Transfer (other than pursuant to a statutory merger or consolidation wherein all obligations and liabilities of the transferor Partner are assumed by a successor corporation by operation of law) shall relieve the transferor Partner of its obligations under this Agreement without the Consent of the General Partner. Notwithstanding the foregoing, any transferee of any Transferred Partnership Interest shall be subject to any restrictions on ownership and transfer of stock of the General Partner contained in the Charter that may limit or restrict such transferee's ability to exercise its Redemption rights, including, without limitation, the Ownership Limit. Any transferee, whether or not admitted as a Substituted Limited Partner, shall take subject to the obligations of the transferor hereunder. Unless admitted as a Substituted Limited Partner, no transferee, whether by a voluntary Transfer, by operation of law or otherwise, shall have any rights hereunder, other than the rights of an Assignee as provided in Section 11.5 hereof.

B. *Incapacity*. If a Limited Partner is subject to Incapacity, the executor, administrator, trustee, committee, guardian, conservator or receiver of such Limited Partner's estate shall have all the rights of a Limited Partner, but not more rights than those enjoyed by other Limited Partners, for the purpose of settling or managing the estate, and such power as the Incapacitated Limited Partner possessed to Transfer all or any part of its interest in the Partnership. The Incapacity of a Limited Partner, in and of itself, shall not dissolve or terminate the Partnership.

C. *Adverse Tax Consequences*. Notwithstanding anything to the contrary in this Agreement, the General Partner shall have the authority (but shall not be required) to take any steps it determines are necessary or appropriate in its sole and absolute discretion to prevent the Partnership from being taxable as a corporation for Federal income tax purposes. In addition, except with the Consent of the General Partner, no Transfer by a Limited Partner of its Partnership Interests (including any Redemption, any conversion of LTIP Units into Partnership Common Units, any other acquisition of Partnership Units by the General Partner or any acquisition of Partnership Units by the Partnership) may be made to or by any Person if such Transfer could (i) result in the Partnership being treated as an association taxable as a corporation; (ii) result in a termination of the Partnership under Code Section 708; (iii) be treated as effectuated through an "established securities market" or a "secondary market (or the substantial equivalent thereof)" within the meaning of Code Section 7704 and the Regulations promulgated thereunder, (iv) result in the Partnership being unable to qualify for one or more of the "safe harbors" set forth in Regulations Section 1.7704-1 (or such other guidance subsequently published by the IRS setting forth safe harbors under which interests will not be treated as "readily tradable on a secondary market (or the substantial equivalent thereof)" within

the meaning of Section 7704 of the Code) (the "*Safe Harbors*") or (v) based on the advice of counsel to the Partnership or the General Partner, adversely affect the ability of the General Partner to continue to qualify as a REIT or subject the General Partner to any additional taxes under Code Section 857 or Code Section 4981.

Section 11.4 *Admission of Substituted Limited Partners*.

A. No Limited Partner shall have the right to substitute a transferee (including any transferees pursuant to Transfers permitted by Section 11.3 hereof) as a Limited Partner in its place. A transferee of a Limited Partner Interest may be admitted as a Substituted Limited Partner only with the Consent of the General Partner. The failure or refusal by the General Partner to permit a transferee of any such interests to become a Substituted Limited Partner shall not give rise to any cause of action against the Partnership or the General Partner. Subject to the foregoing, an Assignee shall not be admitted as a Substituted Limited Partner until and unless it furnishes to the General Partner (i) evidence of acceptance, in form and substance satisfactory to the General Partner, of all the terms, conditions and applicable obligations of this Agreement, (ii) a counterpart signature page to this Agreement executed by such Assignee and (iii) such other documents and instruments as may be required or advisable, in the sole and absolute discretion of the General Partner, to effect such Assignee's admission as a Substituted Limited Partner.

B. Concurrently with, and as evidence of, the admission of a Substituted Limited Partner, the General Partner shall amend Exhibit A and the books and records of the Partnership to reflect the name, address and number and class and/or series of Partnership Units of such Substituted Limited Partner and to eliminate or adjust, if necessary, the name, address and number of Partnership Units of the predecessor of such Substituted Limited Partner.

C. A transferee who has been admitted as a Substituted Limited Partner in accordance with this Article 11 shall have all the rights and powers and be subject to all the restrictions and liabilities of a Limited Partner under this Agreement.

Section 11.5 *Assignees*. If the General Partner does not Consent to the admission of any permitted transferee under Section 11.3 hereof as a Substituted Limited Partner, as described in Section 11.4 hereof, or in the event that any Partnership Interest is deemed to have been Transferred notwithstanding the restrictions set forth in this Article 11, such transferee shall be considered an Assignee for purposes of this Agreement. An Assignee shall be entitled to all the rights of an assignee of a limited partnership interest under the Act, including the right to receive distributions from the Partnership and the share of Net Income, Net Losses and other items of income, gain, loss, deduction and credit of the Partnership attributable to the Partnership Interest assigned to such transferee and the rights to Transfer the Partnership Interest provided in this Article 11, but shall not be deemed to be a holder of a Partnership Interest for any other purpose under this Agreement (other than as expressly provided in Section 15.1 hereof with respect to a Qualifying Party that becomes a Tendering Party), and shall not be entitled to effect a Consent or vote with respect to such Partnership Interest on any matter presented to the Partners for approval (such right to Consent or vote, to the extent provided in this Agreement or under the Act, fully remaining with the transferor Limited Partner). In the event that any such transferee desires to make a further Transfer of any such Partnership Interest, such transferee shall be subject to all the provisions of this Article 11 to the same extent and in the same manner as any Limited Partner desiring to make a Transfer of a Limited Partner Interest.

Section 11.6 *General Provisions*.

A. No Limited Partner may withdraw from the Partnership other than as a result of: (i) a permitted Transfer of all of such Limited Partner's Partnership Units in accordance with this Article 11 with respect to which the transferee becomes a Substituted Limited Partner; (ii) pursuant to a redemption (or acquisition by the General Partner) of all of its Partnership Units pursuant to a Redemption under Section 15.1 hereof and/or pursuant to any Partnership Unit Designation or (iii) the acquisition by the General Partner of all of such Limited Partner's Partnership Interest, whether or not pursuant to Section 15.1.B hereof.

B. Any Limited Partner who shall Transfer all of its Partnership Units in a Transfer (i) permitted pursuant to this Article 11 where such transferee was admitted as a Substituted Limited Partner, (ii) pursuant to the exercise of its rights to effect a redemption of all of its Partnership Units pursuant to a Redemption under Section 15.1 hereof and/or pursuant to any Partnership Unit Designation or (iii) to the General Partner, whether or not pursuant to Section 15.1.B hereof, shall cease to be a Limited Partner.

C. If any Partnership Unit is Transferred in compliance with the provisions of this Article 11, or is redeemed by the Partnership, or acquired by the General Partner pursuant to Section 15.1 hereof, on any day other than the first day of a Partnership Year, then Net Income, Net Losses, each item thereof and all other items of income, gain, loss, deduction and credit attributable to such Partnership Unit for such Partnership Year shall be allocated to the transferor Partner or the Tendering Party (as the case may be) and, in the case of a Transfer other than a Redemption, to the transferee Partner, by taking into account their varying interests during the Partnership Year in accordance with Code Section 706(d), using the "interim closing of the books" method or another permissible method selected by the General Partner in its sole and absolute discretion. Solely for purposes of making such allocations, unless the General Partner decides in its sole and absolute discretion to use another method permitted under the Code, each of such items for the calendar month in which a Transfer occurs shall be allocated to the transferee Partner and none of such items for the calendar month in which a Transfer or a Redemption occurs shall be allocated to the transferor Partner, or the Tendering Party (as the case may be) if such Transfer occurs on or before the fifteenth (15th) day of the month, otherwise such items shall be allocated to the transferor. All distributions of Available Cash attributable to such Partnership Unit with respect to which the Partnership Record Date is before the date of such Transfer, assignment or Redemption shall be made to the transferor Partner or the Tendering Party (as the case may be) and, in the case of a Transfer other than a Redemption, all distributions of Available Cash thereafter attributable to such Partnership Unit shall be made to the transferee Partner.

D. In addition to any other restrictions on Transfer herein contained, in no event may any Transfer of a Partnership Interest by any Partner (including any Redemption, any conversion of LTIP Units into Partnership Common Units, any acquisition of Partnership Units by the General Partner or any other acquisition of Partnership Units by the Partnership) be made: (i) to any person or entity who lacks the legal right, power or capacity to own a Partnership Interest; (ii)

in violation of applicable law; (iii) except with the Consent of the General Partner, of any component portion of a Partnership Interest, such as the Capital Account, or rights to distributions, separate and apart from all other components of a Partnership Interest; (iv) in the event that such Transfer could cause either the General Partner or any General Partner Affiliate to cease to comply with the REIT Requirements or to cease to qualify as a "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)); (v) except with the Consent of the General Partner, if such Transfer could, based on the advice of counsel to the Partnership or the General Partner, cause a termination of the Partnership for Federal or state income tax purposes (except as a result of the Redemption (or acquisition by the General Partner) of all Partnership Common Units held by all Limited Partners); (vi) if such Transfer could, based on the advice of legal counsel to the Partnership or the General Partner, cause the Partnership to cease to be classified as a partnership for federal income tax purposes (except as a result of the Redemption (or acquisition by the General Partner) of all Partnership Common Units held by all Limited Partners); (vii) if such Transfer would cause the Partnership to become, with respect to any employee benefit plan subject to Title I of ERISA, a "party-in-interest" (as defined in ERISA Section 3(14)) or a "disqualified person" (as defined in Code Section 4975(c)); (viii) if such Transfer could, based on the advice of legal counsel to the Partnership or the General Partner, cause any portion of the assets of the Partnership to constitute assets of any employee benefit plan pursuant to Department of Labor Regulations Section 2510.3-101; (ix) if such Transfer requires the registration of such Partnership Interest pursuant to any applicable Federal or state securities laws; (x) except with the Consent of the General Partner, if such Transfer (1) could be treated as effectuated through an "established securities market" or a "secondary market" (or the substantial equivalent thereof) within the meaning of Section 7704 of the Code and the Regulations promulgated thereunder, (2) could cause the Partnership to become a "publicly traded partnership," as such term is defined in Sections 469(k)(2) or 7704(b) of the Code, (3) could be in violation of Section 3.4.C(iii), or (4) could cause the Partnership to fail one or more of the Safe Harbors; (xi) if such Transfer causes the Partnership (as opposed to the General Partner) to become a reporting company under the Exchange Act; or (xii) if such Transfer subjects the Partnership to regulation under the Investment Company Act of 1940, the Investment Advisors Act of 1940 or ERISA, each as amended. The General Partner shall, in its sole discretion, be permitted to take all action necessary to prevent the Partnership from being classified as a "publicly traded partnership" under Code Section 7704.

E. Transfers pursuant to this Article 11 may only be made on the first day of a fiscal quarter of the Partnership, unless the General Partner otherwise Consents.

ARTICLE 12
ADMISSION OF PARTNERS

Section 12.1 *Admission of Successor General Partner*. A successor to all of the General Partner's General Partner Interest pursuant to a Transfer permitted by Section 11.2 hereof who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective immediately upon such Transfer. Upon any such Transfer and the admission of any such transferee as a successor General Partner in accordance with this Section 12.1, the transferor General Partner shall be relieved of its obligations under this Agreement and shall cease to be a general partner of the Partnership without any separate Consent of the Limited Partners or the consent or approval of any other Partners. Any such

successor General Partner shall carry on the business and affairs of the Partnership without dissolution. In each case, the admission shall be subject to the successor General Partner executing and delivering to the Partnership an acceptance of all of the terms and conditions of this Agreement and such other documents or instruments as may be required to effect the admission of such Person as a General Partner. Upon any such Transfer, the transferee shall become the successor General Partner for all purposes herein, and shall be vested with the powers and rights of the transferor General Partner, and shall be liable for all obligations and responsible for all duties of the General Partner. Concurrently with, and as evidence of, the admission of a successor General Partner, the General Partner shall amend Exhibit A and the books and records of the Partnership to reflect the name, address and number and classes and/or series of Partnership Units of such successor General Partner.

Section 12.2 *Admission of Additional Limited Partners*.

A. After the admission to the Partnership of the Original Limited Partners, a Person (other than an existing Partner) who makes a Capital Contribution to the Partnership in exchange for Partnership Units and in accordance with this Agreement or is issued LTIP Units in exchange for no consideration in accordance with Section 4.2.B hereof shall be admitted to the Partnership as an Additional Limited Partner only upon furnishing to the General Partner (i) evidence of acceptance, in form and substance satisfactory to the General Partner, of all of the terms and conditions of this Agreement, including, without limitation, the power of attorney granted in Section 2.4 hereof, (ii) a counterpart signature page to this Agreement executed by such Person and (iii) such other documents or instruments as may be required in the sole and absolute discretion of the General Partner in order to effect such Person's admission as an Additional Limited Partner. Concurrently with, and as evidence of, the admission of an Additional Limited Partner, the General Partner shall amend Exhibit A and the books and records of the Partnership to reflect the name, address and number and classes and/or series of Partnership Units of such Additional Limited Partner.

B. Notwithstanding anything to the contrary in this Section 12.2, no Person shall be admitted as an Additional Limited Partner without the Consent of the General Partner. The admission of any Person as an Additional Limited Partner shall become effective on the date upon which the name of such Person is recorded on the books and records of the Partnership, following the Consent of the General Partner to such admission and the satisfaction of all the conditions set forth in Section 12.2.A.

C. If any Additional Limited Partner is admitted to the Partnership on any day other than the first day of a Partnership Year, then Net Income, Net Losses, each item thereof and all other items of income, gain, loss, deduction and credit allocable among Holders for such Partnership Year shall be allocated among such Additional Limited Partner and all other Holders by taking into account their varying interests during the Partnership Year in accordance with Code Section 706(d), using the "interim closing of the books" method or another permissible method selected by the General Partner. Solely for purposes of making such allocations, each of such items for the calendar month in which an admission of any Additional Limited Partner occurs shall be allocated among all the Holders including such Additional Limited Partner, in accordance with the principles described in Section 11.6.C hereof. All distributions of Available Cash with respect to which the Partnership Record Date is before the date of such admission

shall be made solely to Partners and Assignees other than the Additional Limited Partner, and all distributions of Available Cash thereafter shall be made to all the Partners and Assignees including such Additional Limited Partner.

D. Any Additional Limited Partner admitted to the Partnership that is an Affiliate of the General Partner shall be deemed to be a "General Partner Affiliate" hereunder and shall be reflected as such on Exhibit A and the books and records of the Partnership.

Section 12.3 *Amendment of Agreement and Certificate of Limited Partnership*. For the admission to the Partnership of any Partner, the General Partner shall take all steps necessary and appropriate under the Act to amend the records of the Partnership and, if necessary, to prepare as soon as practical an amendment of this Agreement (including an amendment of Exhibit A) and, if required by law, shall prepare and file an amendment to the Certificate and may for this purpose exercise the power of attorney granted pursuant to Section 2.4 hereof.

Section 12.4 *Limit on Number of Partners*. Unless otherwise permitted by the General Partner in its sole and absolute discretion, no Person shall be admitted to the Partnership as an Additional Limited Partner if the effect of such admission would be to cause the Partnership to have a number of Partners that would cause the Partnership to become a reporting company under the Exchange Act.

Section 12.5 *Admission*. A Person shall be admitted to the Partnership as a limited partner of the Partnership or a general partner of the Partnership only upon strict compliance, and not upon substantial compliance, with the requirements set forth in this Agreement for admission to the Partnership as a Limited Partner or a General Partner.

ARTICLE 13
DISSOLUTION, LIQUIDATION AND TERMINATION

Section 13.1 *Dissolution*. The Partnership shall not be dissolved by the admission of Substituted Limited Partners or Additional Limited Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the withdrawal of the General Partner, any successor General Partner shall continue the business and affairs of the Partnership without dissolution. However, the Partnership shall dissolve, and its affairs shall be wound up, upon the first to occur of any of the following (each a "*Liquidating Event*"):

A. an event of withdrawal, as defined in Section 10-402(2) – (9) of the Act (including, without limitation, bankruptcy), or the withdrawal in violation of this Agreement, of the last remaining General Partner unless, within ninety (90) days after the withdrawal, a Majority in Interest of the Partners remaining agree in writing, in their sole and absolute discretion, to continue the Partnership and to the appointment, effective as of the date of such withdrawal, of a successor General Partner;

B. an election to dissolve the Partnership made by the General Partner in its sole and absolute discretion, with or without the Consent of the Partners;

C. entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Act;

D. any sale or other disposition of (other than the attachment of a lien or security interest in) all or substantially all of the assets of the Partnership outside the ordinary course of the Partnership's business or a related series of transactions that, taken together, result in the sale or other disposition of (other than the attachment of a lien or security interest in) all or substantially all of the assets of the Partnership outside the ordinary course of the Partnership's business; or

E. the Redemption or other acquisition by the Partnership or the General Partner of all Partnership Units other than Partnership Units held by the General Partner.

Section 13.2 *Winding Up*.

A. Upon the occurrence of a Liquidating Event, the Partnership shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors and the Holders. After the occurrence of a Liquidating Event, no Holder shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Partnership's business and affairs. The General Partner (or, in the event that there is no remaining General Partner or the General Partner has dissolved, become bankrupt within the meaning of the Act or ceased to operate, any Person elected by a Majority in Interest of the Partners (the General Partner or such other Person being referred to herein as the "*Liquidator*")) shall be responsible for overseeing the winding up and dissolution of the Partnership and shall take full account of the Partnership's liabilities and property, and the Partnership property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom (which may, to the extent determined by the General Partner, include shares of stock in the General Partner) shall be applied and distributed in the following order:

(1) First, to the satisfaction of all of the Partnership's debts and liabilities to creditors other than the Holders (whether by payment or the making of reasonable provision for payment thereof);

(2) Second, to the satisfaction of all of the Partnership's debts and liabilities to the General Partner (whether by payment or the making of reasonable provision for payment thereof), including, but not limited to, amounts due as reimbursements under Section 7.4 hereof;

(3) Third, to the satisfaction of all of the Partnership's debts and liabilities to the other Holders (whether by payment or the making of reasonable provision for payment thereof); and

(4) Fourth, to the Partners in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for all prior periods and the Partnership taxable year during which the liquidation occurs (other than those made as a result of the liquidating distribution set forth in this Section 13.2.A(4)).

The General Partner shall not receive any additional compensation for any services performed pursuant to this Article 13 other than reimbursement of its expenses as set forth in Section 7.4.

B. Notwithstanding the provisions of Section 13.2.A hereof that require liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if prior to or upon dissolution of the Partnership, the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Holders, the Liquidator may, in its sole and absolute discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (including to those Holders as creditors) and/or distribute to the Holders, in lieu of cash, as tenants in common and in accordance with the provisions of Section 13.2.A hereof, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be made only if, in the good faith judgment of the Liquidator, such distributions in kind are in the best interest of the Holders, and shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

C. If any Holder has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), except as otherwise agreed to by such Holder, such Holder shall have no obligation to make any contribution to the capital of the Partnership with respect to such deficit, and such deficit shall not be considered a debt owed to the Partnership or to any other Person for any purpose whatsoever.

D. In the sole and absolute discretion of the General Partner or the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Holders pursuant to this Article 13 may be:

(1) distributed to a trust established for the benefit of the General Partner and the Holders for the purpose of liquidating Partnership assets, collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership or of the General Partner arising out of or in connection with the Partnership and/or Partnership activities. The assets of any such trust shall be distributed to the Holders, from time to time, in the reasonable discretion of the General Partner, in the same proportions and amounts as would otherwise have been distributed to the Holders pursuant to this Agreement; or

(2) withheld or escrowed to provide a reasonable reserve for Partnership liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Partnership, provided that such withheld or escrowed amounts shall be distributed to the Holders in the manner and order of priority set forth in Section 13.2.A hereof as soon as practicable.

Section 13.3 *Deemed Contribution and Distribution*. Notwithstanding any other provision of this Article 13, in the event that the Partnership is liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), but no Liquidating Event has occurred, the Partnership's Property shall not be liquidated, the Partnership's liabilities shall not be paid or discharged and the Partnership's affairs shall not be wound up. Instead, for federal income tax

purposes the Partnership shall be deemed to have contributed all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership; and immediately thereafter, distributed Partnership Units to the Partners in the new partnership in accordance with their respective Capital Accounts in liquidation of the Partnership, and the new partnership is deemed to continue the business of the Partnership. Nothing in this Section 13.3 shall be deemed to have constituted a Transfer to an Assignee as a Substituted Limited Partner without compliance with the provisions of Section 11.4 or Section 13.3 hereof.

Section 13.4 *Rights of Holders*. Except as otherwise provided in this Agreement and subject to the rights of any Holder of any Partnership Interest set forth in a Partnership Unit Designation, (a) each Holder shall look solely to the assets of the Partnership for the return of its Capital Contribution, (b) no Holder shall have the right or power to demand or receive property other than cash from the Partnership and (c) no Holder shall have priority over any other Holder as to the return of its Capital Contributions, distributions or allocations.

Section 13.5 *Notice of Dissolution*. In the event that a Liquidating Event occurs or an event occurs that would, but for an election or objection by one or more Partners pursuant to Section 13.1 hereof, result in a dissolution of the Partnership, the General Partner shall, within thirty (30) days thereafter, provide written notice thereof to each Holder and, in the General Partner's sole and absolute discretion or as required by the Act, to all other parties with whom the Partnership regularly conducts business (as determined in the sole and absolute discretion of the General Partner), and the General Partner may, or, if required by the Act, shall, publish notice thereof in a newspaper of general circulation in each place in which the Partnership regularly conducts business (as determined in the sole and absolute discretion of the General Partner).

Section 13.6 *Cancellation of Certificate of Limited Partnership*. Upon the completion of the liquidation of the Partnership cash and property as provided in Section 13.2 hereof, the Partnership shall be terminated, a certificate of cancellation shall be filed with the SDAT, all qualifications of the Partnership as a foreign limited partnership or association in jurisdictions other than the State of Maryland shall be cancelled, and such other actions as may be necessary to terminate the Partnership shall be taken.

Section 13.7 *Reasonable Time for Winding-Up*. A reasonable time shall be allowed for the orderly winding-up of the business and affairs of the Partnership and the liquidation of its assets pursuant to Section 13.2 hereof, in order to minimize any losses otherwise attendant upon such winding-up, and the provisions of this Agreement shall remain in effect between and among the Partners during the period of liquidation; *provided*, *however*, reasonable efforts shall be made to complete such winding-up within twenty-four (24) months after the adoption of a plan of liquidation of the General Partner, as provided in Section 562(b)(2)(B) of the Code, if necessary, in the sole and absolute discretion of the General Partner.

ARTICLE 14
PROCEDURES FOR ACTIONS AND CONSENTS OF PARTNERS; AMENDMENTS; MEETINGS

Section 14.1 *Procedures for Actions and Consents of Partners*. The actions requiring Consent of any Partner or Partners pursuant to this Agreement, including Section 7.3 hereof, or otherwise pursuant to applicable law, are subject to the procedures set forth in this Article 14.

Section 14.2 *Amendments*. Amendments to this Agreement may be proposed by the General Partner or by Limited Partners holding twenty-five percent (25%) or more of the Partnership Interests held by Limited Partners and, except as set forth in Section 7.3.B and Section 7.3.C and subject to Section 7.3.D, Section 16.10 and the rights of any Holder of Partnership Interest set forth in a Partnership Unit Designation, shall be approved by the Consent of the Partners. Following such proposal, the General Partner shall submit to the Partners entitled to vote thereon any proposed amendment that, pursuant to the terms of this Agreement, requires the consent, approval or vote of such Partners. The General Partner shall seek the consent, approval or vote of the Partners entitled to vote thereon on any such proposed amendment in accordance with Section 14.3 hereof.

Section 14.3 *Actions and Consents of the Partners*.

A. Meetings of the Partners may be called only by the General Partner to transact any business that the General Partner determines. The call shall state the nature of the business to be transacted. Notice of any such meeting shall be given to all Partners entitled to act at the meeting not less than seven (7) days nor more than sixty (60) days prior to the date of such meeting. Partners may vote in person or by proxy at such meeting. Unless approval by a different number or proportion of the Partners is required by this Agreement (including without limitation Section 11.2.D), the affirmative vote of Partners holding a majority of the Percentage Interests held by the Partners entitled to act on any proposal shall be sufficient to approve such proposal at a meeting of the Partners. Whenever the vote, consent or approval of Partners is permitted or required under this Agreement, such vote, consent or approval may be given at a meeting of Partners or may be given at a meeting of Partners or in accordance with the procedure prescribed in Section 14.3.B hereof.

B. Any action requiring the Consent of any Partner or group of Partners pursuant to this Agreement or that is required or permitted to be taken at a meeting of the Partners may be taken without a meeting if a consent in writing or by electronic transmission setting forth the action so taken or consented to is given by Partners whose affirmative vote would be sufficient to approve such action or provide such Consent at a meeting of the Partners. Such consent may be in one instrument or in several instruments, and shall have the same force and effect as the affirmative vote of such Partners at a meeting of the Partners. Such consent shall be filed with the General Partner. An action so taken shall be deemed to have been taken at a meeting held on the effective date so certified. For purposes of obtaining a Consent in writing or by electronic transmission, the General Partner may require a response within a reasonable specified time, but not less than fifteen (15) days, and failure to respond in such time period shall constitute a Consent that is consistent with the General Partner's recommendation with respect to the proposal; *provided*, *however*, that an action shall become effective at such time as requisite Consents are received even if prior to such specified time.

C. Each Partner entitled to act at a meeting of the Partners may authorize any Person or Persons to act for it by proxy on all matters in which a Partner is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Each proxy must be signed by the Partner or its attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy (or there is receipt of a proxy authorizing a later date). Every proxy shall be revocable at the pleasure of the Partner executing it, such revocation to be effective upon the Partnership's receipt of written notice of such revocation from the Partner executing such proxy, unless such proxy states that it is irrevocable and is coupled with an interest.

D. The General Partner may set, in advance, a record date for the purpose of determining the Partners (i) entitled to Consent to any action, (ii) entitled to receive notice of or vote at any meeting of the Partners or (iii) in order to make a determination of Partners for any other proper purpose. Such date, in any case, (x) shall not be prior to the close of business on the day the record date is fixed and shall be not more than ninety (90) days and, in the case of a meeting of the Partners, not less than five (5) days, before the date on which the meeting is to be held or Consent is to be given and (y) shall be, with respect to the determination of the existence of Partnership Approval, the record date established by the General Partner for the approval of its stockholders for the event constituting a General Partner Interest Transfer. If no record date is fixed, the record date for the determination of Partners entitled to notice of or to vote at a meeting of the Partners shall be at the close of business on the day on which the notice of the meeting is sent, and the record date for any other determination of Partners shall be the effective date of such Partner action, distribution or other event. When a determination of the Partners entitled to vote at any meeting of the Partners has been made as provided in this section, such determination shall apply to any adjournment thereof.

E. Each meeting of Partners shall be conducted by the General Partner or such other Person as the General Partner may appoint pursuant to such rules for the conduct of the meeting as the General Partner or such other Person deems appropriate in its sole and absolute discretion. Without limitation, meetings of Partners may be conducted in the same manner as meetings of the General Partner's stockholders and may be held at the same time as, and as part of, the meetings of the General Partner's stockholders.

ARTICLE 15
GENERAL PROVISIONS

Section 15.1 *Redemption Rights of Qualifying Parties*.

A. After the applicable Fourteen-Month Period, a Qualifying Party shall have the right (subject to the terms and conditions set forth herein) to require the Partnership to redeem all or a portion of the Partnership Common Units held by such Tendering Party (Partnership Common Units that have in fact been tendered for redemption being hereafter referred to as "*Tendered Units")* in exchange (a "*Redemption*") for the Cash Amount payable on the Specified Redemption Date. The Partnership may, in the General Partner's sole and absolute discretion,

redeem Tendered Units at the request of the Holder thereof prior to the end of the applicable Fourteen-Month Period (subject to the terms and conditions set forth herein) (a "*Special Redemption*"); *provided*, *however*, that the General Partner first receives a legal opinion to the same effect as the legal opinion described in Section 15.1.G of this Agreement. Any Redemption shall be exercised pursuant to a Notice of Redemption delivered to the General Partner by the Qualifying Party when exercising the Redemption right (the "*Tendering Party*"). The Partnership's obligation to effect a Redemption, however, shall not arise or be binding against the Partnership until the earlier of (i) the date the General Partner notifies the Tendering Party that the General Partner declines to acquire some or all of the Tendered Units under Section 15.1.B hereof following receipt of a Notice of Redemption and (ii) the Business Day following the Cut-Off Date. In the event of a Redemption, the Cash Amount shall be delivered as a certified or bank check payable to the Tendering Party or, in the General Partner's sole and absolute discretion, in immediately available funds, in each case, on or before the tenth (10th) Business Day following the date on which the General Partner receives a Notice of Redemption from the Tendering Party.

B. Notwithstanding the provisions of Section 15.1.A hereof, on or before the close of business on the Cut-Off Date, the General Partner may, in the General Partner's sole and absolute discretion but subject to the Ownership Limit, elect to acquire some or all of the Tendered Units from the Tendering Party in exchange for REIT Shares (the percentage of such Tendered Units to be acquired by the General Partner in exchange for REIT Shares being referred to as the "*Applicable Percentage*"). If the General Partner elects to acquire some or all of the Tendered Units pursuant to this Section 15.1.B, the General Partner shall give written notice thereof to the Tendering Party on or before the close of business on the Cut-Off Date. If the General Partner elects to acquire any of the Tendered Units for REIT Shares, the General Partner shall issue and deliver such REIT Shares to the Tendering Party pursuant to the terms of this Section 15.1.B, in which case (1) the General Partner shall assume directly the obligation with respect thereto and shall satisfy the Tendering Party's exercise of its Redemption right with respect to such Tendered Units and (2) such transaction shall be treated, for federal income tax purposes, as a transfer by the Tendering Party of such Tendered Units to the General Partner in exchange for the REIT Shares Amount. If the General Partner so elects, on the Specified Redemption Date, the Tendering Party shall sell such number of the Tendered Units to the General Partner in exchange for a number of REIT Shares equal to the product of the REIT Shares Amount and the Applicable Percentage. The Tendering Party shall submit (i) such information, certification or affidavit as the General Partner may reasonably require in connection with the application of the Ownership Limit to any such acquisition and (ii) such written representations, investment letters, legal opinions or other instruments necessary, in the General Partner's view, to effect compliance with the Securities Act. In the event of a purchase of the Tendered Units by the General Partner pursuant to this Section 15.1.B, the Tendering Party shall no longer have the right to cause the Partnership to effect a Redemption of such Tendered Units and, upon notice to the Tendering Party by the General Partner given on or before the close of business on the Cut-Off Date that the General Partner has elected to acquire some or all of the Tendered Units pursuant to this Section 15.1.B, the obligation of the Partnership to effect a Redemption of the Tendered Units as to which the General Partner's notice relates shall not accrue or arise. A number of REIT Shares equal to the product of the Applicable Percentage and the REIT Shares Amount, if applicable, shall be delivered by the General Partner as duly authorized, validly issued, fully paid and non-assessable REIT Shares and, if applicable, Rights, free of any pledge, lien, encumbrance or

restriction, other than the Ownership Limit, the Securities Act and relevant state securities or "blue sky" laws. Neither any Tendering Party whose Tendered Units are acquired by the General Partner pursuant to this Section 15.1.B, any Partner, any Assignee nor any other interested Person shall have any right to require or cause the General Partner to register, qualify or list any REIT Shares owned or held by such Person, whether or not such REIT Shares are issued pursuant to this Section 15.1.B, with the SEC, with any state securities commissioner, department or agency, under the Securities Act or the Exchange Act or with any stock exchange; *provided*, *however*, that this limitation shall not be in derogation of any registration or similar rights granted pursuant to any other written agreement between the General Partner and any such Person. Notwithstanding any delay in such delivery, the Tendering Party shall be deemed the owner of such REIT Shares and Rights for all purposes, including, without limitation, rights to vote or consent, receive dividends, and exercise rights, as of the Specified Redemption Date. REIT Shares issued upon an acquisition of the Tendered Units by the General Partner pursuant to this Section 15.1.B may contain such legends regarding restrictions under the Securities Act and applicable state securities laws as the General Partner determines to be necessary or advisable in order to ensure compliance with such laws.

C. Notwithstanding the provisions of Section 15.1.A and 15.1.B hereof, the Tendering Parties shall have no rights under this Agreement that would otherwise be prohibited by the Charter. To the extent that any attempted Redemption or acquisition of the Tendered Units by the General Partner pursuant to Section 15.1.B hereof would be in violation of this Section 15.1.C, it shall be null and void *ab initio*, and the Tendering Party shall not acquire any rights or economic interests in REIT Shares otherwise issuable by the General Partner under Section 15.1.B hereof or cash otherwise payable under Section 15.1.A hereof.

D. If the General Partner does not elect to acquire the Tendered Units pursuant to Section 15.1.B hereof:

(1) The Partnership may elect to raise funds for the payment of the Cash Amount either (a) by requiring that the General Partner contribute to the Partnership funds from the proceeds of a registered public offering by the General Partner of REIT Shares sufficient to purchase the Tendered Units or (b) from any other sources (including, but not limited to, the sale of any Property and the incurrence of additional Debt) available to the Partnership. The General Partner shall make a Capital Contribution of any such amounts to the Partnership for an additional General Partner Interest. Any such contribution shall entitle the General Partner to an equitable Percentage Interest adjustment.

(2) If the Cash Amount is not paid on or before the Specified Redemption Date, interest shall accrue with respect to the Cash Amount from the day after the Specified Redemption Date to and including the date on which the Cash Amount is paid at a rate equal to the base rate on corporate loans at large United States money center commercial banks, as published from time to time in the Wall Street Journal (but not higher than the maximum lawful rate).

E. Notwithstanding the provisions of Section 15.1.B hereof, the General Partner shall not, under any circumstances, elect to acquire any Tendered Units in exchange for REIT Shares if such exchange would be prohibited under the Charter.

F. Notwithstanding anything herein to the contrary (but subject to Section 15.1.C hereof), with respect to any Redemption (or any tender of Partnership Common Units for Redemption if the Tendered Units are acquired by the General Partner pursuant to Section 15.1.B hereof) pursuant to this Section 15.1:

(1) All Partnership Common Units acquired by the General Partner pursuant to Section 15.1.B hereof shall automatically, and without further action required, be converted into and deemed to be a General Partner Interest comprised of the same number of Partnership Common Units.

(2) Subject to the Ownership Limit, no Tendering Party may effect a Redemption for less than one thousand (1,000) Partnership Common Units or, if such Tendering Party holds (as a Limited Partner or, economically, as an Assignee) less than one thousand (1,000) Partnership Common Units, all of the Partnership Common Units held by such Tendering Party, without, in each case, the Consent of the General Partner.

(3) If (i) a Tendering Party surrenders its Tendered Units during the period after the Partnership Record Date with respect to a distribution and before the record date established by the General Partner for a distribution to its stockholders of some or all of its portion of such Partnership distribution, and (ii) the General Partner elects to acquire any of such Tendered Units in exchange for REIT Shares pursuant to Section 15.1.B, such Tendering Party shall pay to the General Partner on the Specified Redemption Date an amount in cash equal to the portion of the Partnership distribution in respect of the Tendered Units exchanged for REIT Shares, insofar as such distribution relates to the same period for which such Tendering Party would receive a distribution in respect of such REIT Shares.

(4) The consummation of such Redemption (or an acquisition of Tendered Units by the General Partner pursuant to Section 15.1.B hereof, as the case may be) shall be subject to the expiration or termination of the applicable waiting period, if any, under the Hart-Scott-Rodino Act.

(5) The Tendering Party shall continue to own (subject, in the case of an Assignee, to the provisions of Section 11.5 hereof) all Partnership Common Units subject to any Redemption, and be treated as a Limited Partner or an Assignee, as applicable, with respect to such Partnership Common Units for all purposes of this Agreement, until such Partnership Common Units are either paid for by the Partnership pursuant to Section 15.1.A hereof or transferred to the General Partner and paid for, by the issuance of the REIT Shares, pursuant to Section 15.1.B hereof on the Specified Redemption Date. Until a Specified Redemption Date and an acquisition of the Tendered Units by the General Partner pursuant to Section 15.1.B hereof, the Tendering Party shall have no rights as a stockholder of the General Partner with respect to the REIT Shares issuable in connection with such acquisition.

G. In connection with an exercise of Redemption rights pursuant to this Section 15.1, except as otherwise Consented to by the General Partner, the Tendering Party shall submit the following to the General Partner, in addition to the Notice of Redemption:

(1) A written affidavit, dated the same date as the Notice of Redemption, (a) disclosing the actual and constructive ownership, as determined for purposes of Code Sections 856(a)(6) and 856(h), of REIT Shares by (i) such Tendering Party and (ii) to the best of their knowledge any Related Party and (b) representing that, after giving effect to the Redemption or an acquisition of the Tendered Units by the General Partner pursuant to Section 15.1.B hereof, neither the Tendering Party nor to the best of their knowledge any Related Party will own REIT Shares in violation of the Ownership Limit;

(2) A written representation that neither the Tendering Party nor to the best of their knowledge any Related Party has any intention to acquire any additional REIT Shares prior to the closing of the Redemption or an acquisition of the Tendered Units by the General Partner pursuant to Section 15.1.B hereof on the Specified Redemption Date; and

(3) An undertaking to certify, at and as a condition to the closing of (i) the Redemption or (ii) the acquisition of the Tendered Units by the General Partner pursuant to Section 15.1.B hereof on the Specified Redemption Date, that either (a) the actual and constructive ownership of REIT Shares by the Tendering Party and to the best of their knowledge any Related Party remain unchanged from that disclosed in the affidavit required by Section 15.1.G(1) or (b) after giving effect to the Redemption or an acquisition of the Tendered Units by the General Partner pursuant to Section 15.1.B hereof, neither the Tendering Party nor to the best of their knowledge any Related Party shall own REIT Shares in violation of the Ownership Limit.

(4) In connection with any Special Redemption, the General Partner shall have the right to receive an opinion of counsel reasonably satisfactory to it to the effect that the proposed Special Redemption will not cause the Partnership or the General Partner to violate any Federal or state securities laws or regulations applicable to the Special Redemption, the issuance and sale of the Tendered Units to the Tendering Party or the issuance and sale of REIT Shares to the Tendering Party pursuant to Section 15.1.B of this Agreement.

H. LTIP Unit Exception. Holders of LTIP Units shall not be entitled to the right of Redemption provided for in Section 15.1 of this Agreement, unless and until such LTIP Units have been converted into Partnership Common Units (or any other class or series of Partnership Units entitled to such right of Redemption) in accordance with their terms.

Section 15.2 *Addresses and Notice*. Any notice, demand, request or report required or permitted to be given or made to a Partner or Assignee under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written or electronic communication (including by telecopy, facsimile, electronic mail or commercial courier service) to the Partner, or Assignee at the address set forth in Exhibit A or Exhibit B (as applicable) or such other address of which the Partner shall notify the General Partner in accordance with this Section 15.2.

Section 15.3 *Titles and Captions*. All article or section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles" or "Sections" are to Articles and Sections of this Agreement.

Section 15.4 *Pronouns and Plurals*. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 15.5 *Further Action*. The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 15.6 *Binding Effect*. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 15.7 *Waiver*.

A. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

B. The restrictions, conditions and other limitations on the rights and benefits of the Limited Partners contained in this Agreement, and the duties, covenants and other requirements of performance or notice by the Limited Partners, are for the benefit of the Partnership and, except for an obligation to pay money to the Partnership, may be waived or relinquished by the General Partner, in its sole and absolute discretion, on behalf of the Partnership in one or more instances from time to time and at any time; *provided*, *however*, that any such waiver or relinquishment may not be made if it would have the effect of (i) creating liability for any other Limited Partner, (ii) causing the Partnership to cease to qualify as a limited partnership, (iii) reducing the amount of cash otherwise distributable to the Limited Partners (other than any such reduction that affects all of the Limited Partners holding the same class or series of Partnership Units on a uniform or pro rata basis, if approved by a Majority in Interest of the Partners holding such class or series of Partnership Units), (iv) resulting in the classification of the Partnership as an association or publicly traded partnership taxable as a corporation or (v) violating the Securities Act, the Exchange Act or any state "blue sky" or other securities laws; and *provided*, *further*, that any waiver relating to compliance with the Ownership Limit or other restrictions in the Charter shall be made and shall be effective only as provided in the Charter.

Section 15.8 *Counterparts*. This Agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto.

Section 15.9 *Applicable Law; Consent to Jurisdiction; Waiver of Jury Trial*.

A. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Maryland, without regard to the principles of conflicts of law. In the event of a conflict between any provision of this Agreement and any non-mandatory provision of the Act, the provisions of this Agreement shall control and take precedence.

B. Each Partner hereby (i) submits to the non-exclusive jurisdiction of any state or federal court sitting in the State of Maryland (collectively, the "*Maryland Courts*"), with respect to any dispute arising out of this Agreement or any transaction contemplated hereby to the extent such courts would have subject matter jurisdiction with respect to such dispute, (ii) irrevocably waives, and agrees not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of any of the Maryland Courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, or that the venue of the action is improper, (iii) agrees that notice or the service of process in any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be properly served or delivered if delivered to such Partner at such Partner's last known address as set forth in the Partnership's books and records, and (iv) irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or related to this Agreement or the transactions contemplated hereby.

Section 15.10 *Entire Agreement*. This Agreement contains all of the understandings and agreements between and among the Partners with respect to the subject matter of this Agreement and the rights, interests and obligations of the Partners with respect to the Partnership. Notwithstanding the immediately preceding sentence, the Partners hereby acknowledge and agree that the General Partner, without the approval of any Limited Partner, may enter into side letters or similar written agreements with Limited Partners that are not Affiliates of the General Partner, executed contemporaneously with the admission of such Limited Partner to the Partnership, affecting the terms hereof, as negotiated with such Limited Partner and which the General Partner in its sole discretion deems necessary, desirable or appropriate. The parties hereto agree that any terms, conditions or provisions contained in such side letters or similar written agreements with a Limited Partner shall govern with respect to such Limited Partner notwithstanding the provisions of this Agreement.

Section 15.11 *Invalidity of Provisions*. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

Section 15.12 *Limitation to Preserve REIT Status*. Notwithstanding anything else in this Agreement, to the extent that the amount to be paid, credited, distributed or reimbursed by the Partnership to any REIT Partner or its officers, directors, employees or agents, whether as a reimbursement, fee, expense or indemnity (a "*REIT Payment*"), would constitute gross income to the REIT Partner for purposes of Code Section 856(c)(2) or Code Section 856(c)(3), then, notwithstanding any other provision of this Agreement, the amount of such REIT Payments, as selected by the General Partner in its discretion from among items of potential distribution, reimbursement, fees, expenses and indemnities, shall be reduced for any Partnership Year so that the REIT Payments, as so reduced, for or with respect to such REIT Partner shall not exceed the lesser of:

(i) an amount equal to the excess, if any, of (a) four and nine-tenths percent (4.9%) of the REIT Partner's total gross income (but excluding the amount of any REIT

Payments and amounts excluded from gross income pursuant to Section 856(c)(5)(G) of the Code) for the Partnership Year that is described in subsections (A) through (I) of Code Section 856(c)(2) over (b) the amount of gross income (within the meaning of Code Section 856(c)(2)) derived by the REIT Partner from sources other than those described in subsections (A) through (I) of Code Section 856(c)(2) (but not including the amount of any REIT Payments and amounts excluded from gross income pursuant to Section 856(c)(5)(G) of the Code); or

(ii) an amount equal to the excess, if any, of (a) twenty-four percent (24%) of the REIT Partner's total gross income (but excluding the amount of any REIT Payments and amounts excluded from gross income pursuant to Section 856(c)(5)(G) of the Code) for the Partnership Year that is described in subsections (A) through (I) of Code Section 856(c)(3) over (b) the amount of gross income (within the meaning of Code Section 856(c)(3)) derived by the REIT Partner from sources other than those described in subsections (A) through (I) of Code Section 856(c)(3) (but not including the amount of any REIT Payments and amounts excluded from gross income pursuant to Section 856(c)(5)(G) of the Code);

provided, *however*, that REIT Payments in excess of the amounts set forth in clauses (i) and (ii) above may be made if the General Partner, as a condition precedent, obtains an opinion of tax counsel that the receipt of such excess amounts should not adversely affect the REIT Partner's ability to qualify as a REIT. To the extent that REIT Payments may not be made in a Partnership Year as a consequence of the limitations set forth in this Section 15.12, such REIT Payments shall carry over and shall be treated as arising in the following Partnership Year if such carry over does not adversely affect the REIT Partner's ability to qualify as a REIT, provided, however, that any such REIT Payment shall not be carried over more than three Partnership Years, and any such remaining payments shall no longer be due and payable. The purpose of the limitations contained in this Section 15.12 is to prevent any REIT Partner from failing to qualify as a REIT under the Code by reason of such REIT Partner's share of items, including distributions, reimbursements, fees, expenses or indemnities, receivable directly or indirectly from the Partnership, and this Section 15.12 shall be interpreted and applied to effectuate such purpose.

Section 15.13 *No Partition*. No Partner nor any successor-in-interest to a Partner shall have the right while this Agreement remains in effect to have any property of the Partnership partitioned, or to file a complaint or institute any proceeding at law or in equity to have such property of the Partnership partitioned, and each Partner, on behalf of itself and its successors and assigns hereby waives any such right. It is the intention of the Partners that the rights of the parties hereto and their successors-in-interest to Partnership property, as among themselves, shall be governed by the terms of this Agreement, and that the rights of the Partners and their respective successors-in-interest shall be subject to the limitations and restrictions as set forth in this Agreement.

Section 15.14 *No Third-Party Rights Created Hereby*. The provisions of this Agreement are solely for the purpose of defining the interests of the Holders, inter se; and no other person, firm or entity (i.e., a party who is not a signatory hereto or a permitted successor to such signatory hereto) shall have any right, power, title or interest by way of subrogation or otherwise, in and to the rights, powers, title and provisions of this Agreement. No creditor or other third

party having dealings with the Partnership shall have the right to enforce the right or obligation of any Partner to make Capital Contributions or loans to the Partnership or to pursue any other right or remedy hereunder or at law or in equity. None of the rights or obligations of the Partners herein set forth to make Capital Contributions or loans to the Partnership shall be deemed an asset of the Partnership for any purpose by any creditor or other third party, nor may any such rights or obligations be sold, transferred or assigned by the Partnership or pledged or encumbered by the Partnership to secure any debt or other obligation of the Partnership or any of the Partners.

Section 15.15 *No Rights as Stockholders*. Nothing contained in this Agreement shall be construed as conferring upon the Holders of Partnership Units any rights whatsoever as stockholders of the General Partner, including without limitation any right to receive dividends or other distributions made to stockholders of the General Partner or to vote or to consent or receive notice as stockholders in respect of any meeting of stockholders for the election of directors of the General Partner or any other matter.

ARTICLE 16
LTIP UNITS

Section 16.1 *Designation*. A class of Partnership Units in the Partnership designated as the "*LTIP Units*" is hereby established. The number of LTIP Units that may be issued is not limited by this Agreement.

Section 16.2 *Vesting*.

A. *Vesting, Generally*. LTIP Units may, in the sole discretion of the General Partner, be issued subject to vesting, forfeiture and additional restrictions on Transfer pursuant to the terms of an award, vesting or other similar agreement (a "*Vesting Agreement*"). The terms of any Vesting Agreement may be modified by the General Partner from time to time in its sole discretion, subject to any restrictions on amendment imposed by the relevant Vesting Agreement or by the Plan, if applicable. LTIP Units that were fully vested when issued or that have vested and are no longer subject to forfeiture under the terms of a Vesting Agreement are referred to as "*Vested LTIP Units*"; all other LTIP Units shall be treated as "*Unvested LTIP Units*."

B. *Forfeiture*. Unless otherwise specified in the Vesting Agreement, the Plan or in any other applicable Stock Option Plan or other compensatory arrangement or incentive program pursuant to which LTIP Units are issued, upon the occurrence of any event specified in such Vesting Agreement, Plan, Stock Option Plan, arrangement or program as resulting in either the right of the Partnership or the General Partner to repurchase LTIP Units at a specified purchase price or some other forfeiture of any LTIP Units, then if the Partnership or the General Partner exercises such right to repurchase or upon the occurrence of the event causing forfeiture in accordance with the applicable Vesting Agreement, Plan, Stock Option Plan, arrangement or program, then the relevant LTIP Units shall immediately, and without any further action, be treated as cancelled and no longer outstanding for any purpose. Unless otherwise specified in the applicable Vesting Agreement, Plan, Stock Option Plan, arrangement or program, no consideration or other payment shall be due with respect to any LTIP Units that have been forfeited, other than any distributions declared with respect to a Partnership Record Date and

with respect to such units prior to the effective date of the forfeiture. Except as otherwise provided in this Agreement (including without limitation Section 6.4.A(ix)) or any agreement relating to the grant of LTIP Units, in connection with any repurchase or forfeiture of such units, the balance of the portion of the Capital Account of the Holder of LTIP Units that is attributable to all of his or her LTIP Units shall be reduced by the amount, if any, by which it exceeds the target balance contemplated by Section 6.2.D, calculated with respect to such Holder's remaining LTIP Units, if any.

Section 16.3 *Adjustments*. The Partnership shall maintain at all times a one-to-one correspondence between LTIP Units and Partnership Common Units for conversion, distribution and other purposes, including without limitation complying with the following procedures; provided, that the foregoing is not intended to alter the special allocations pursuant to Section 6.2.D, differences between distributions to be made with respect to LTIP Units and Partnership Common Units pursuant to Section 13.2 and Section 16.4.B hereof in the event that the Capital Accounts attributable to the LTIP Units are less than those attributable to Partnership Common Units due to insufficient special allocation pursuant to Section 6.2.D or related provisions. If an Adjustment Event occurs, then the General Partner shall take any action reasonably necessary, including any amendment to this Agreement or Exhibit A hereto adjusting the number of outstanding LTIP Units or subdividing or combining outstanding LTIP Units, to maintain a one-for-one conversion and economic equivalence ratio between Partnership Common Units and LTIP Units. The following shall be "*Adjustment Events*": (i) the Partnership makes a distribution on all outstanding Partnership Common Units in Partnership Units, (ii) the Partnership subdivides the outstanding Partnership Common Units into a greater number of units or combines the outstanding Partnership Common Units into a smaller number of units, or (iii) the Partnership issues any Partnership Units in exchange for its outstanding Partnership Common Units by way of a reclassification or recapitalization of its Partnership Common Units. If more than one Adjustment Event occurs, any adjustment to the LTIP Units need be made only once using a single formula that takes into account each and every Adjustment Event as if all Adjustment Events occurred simultaneously. For the avoidance of doubt, the following shall not be Adjustment Events: (x) the issuance of Partnership Units in a financing, reorganization, acquisition or other similar business transaction, (y) the issuance of Partnership Units pursuant to any employee benefit or compensation plan or distribution reinvestment plan, or (z) the issuance of any Partnership Units to the General Partner in respect of a Capital Contribution to the Partnership of proceeds from the sale of securities by the General Partner. If the Partnership takes an action affecting the Partnership Common Units other than actions specifically described above as "Adjustment Events" and in the opinion of the General Partner such action would require action to maintain the one-to-one correspondence described above, the General Partner shall have the right to take such action, to the extent permitted by law, the Plan and by any applicable Stock Option Plan or other compensatory arrangement or incentive program pursuant to which LTIP Units are issued, in such manner and at such time as the General Partner, in its sole discretion, may determine to be reasonably appropriate under the circumstances. If an amendment is made to this Agreement adjusting the number of outstanding LTIP Units as herein provided, the Partnership shall promptly file in the books and records of the Partnership an officer's certificate setting forth a brief statement of the facts requiring such adjustment, which certificate shall be conclusive evidence of the correctness of such adjustment absent manifest error. Promptly after filing of such certificate, the Partnership shall mail a notice to each LTIP Unit Limited Partner setting forth the adjustment to his or her LTIP Units and the effective date of such adjustment.

Section 16.4 *Distributions*.

A. *Operating Distributions*. Except as otherwise provided in this Agreement, the Plan or any other applicable Stock Option Plan, any applicable Vesting Agreement or by the General Partner with respect to any particular class or series of LTIP Units, Holders of LTIP Units shall be entitled to receive, if, when and as authorized by the General Partner out of funds or other property legally available for the payment of distributions, regular, special, extraordinary or other distributions (other than distributions upon the occurrence of a Liquidating Event or proceeds from a Terminating Capital Transaction) which may be made from time to time, in an amount per unit equal to the amount of any such distributions that would have been payable to such holders if the LTIP Units had been Partnership Common Units (if applicable, assuming such LTIP Units were held for the entire period to which such distributions relate).

B. *Liquidating Distributions*. Holders of LTIP Units shall also be entitled to receive, if, when and as authorized by the General Partner out of funds or other property legally available for the payment of distributions, distributions upon the occurrence of a Liquidating Event or representing proceeds from a Terminating Capital Transaction in an amount per LTIP Unit equal to the amount of any such distributions payable on one Partnership Common Unit, whether made prior to, on or after the LTIP Unit Distribution Participation Date; provided that the amount of such distributions shall not exceed the positive balances of the Capital Accounts of the holders of such LTIP Units to the extent attributable to the ownership of such LTIP Units.

C. *Distributions Generally*. Distributions on the LTIP Units, if authorized, shall be payable on such dates and in such manner as may be authorized by the General Partner (any such date, an "*LTIP Unit Distribution Participation Date*"); provided that the LTIP Unit Distribution Participation Date shall be the same as the corresponding date relating to the corresponding distribution on the Partnership Common Units. The record date for determining which Holders of LTIP Units are entitled to receive a distributions shall be the corresponding Partnership Record Date.

Section 16.5 *Allocations*. Holders of LTIP Units shall be allocated Net Income and Net Loss in amounts per LTIP Unit equal to the amounts allocated per Partnership Common Unit. The allocations provided by the preceding sentence shall be subject to Sections 6.2.A and 6.2.B and in addition to any special allocations required by Section 6.2.D. The General Partner is authorized in its discretion to delay or accelerate the participation of the LTIP Units in allocations of Net Income and Net Loss under this Section 16.5, or to adjust the allocations made under this Section 16.5, so that the ratio of (i) the total amount of Net Income or Net Loss allocated with respect to each LTIP Unit in the taxable year in which that LTIP Unit's LTIP Unit Distribution Participation Date falls (excluding special allocations under Section 6.2.D), to (ii) the total amount distributed to that LTIP Unit with respect to such period, is more nearly equal to the ratio of (i) the Net Income and Net Loss allocated with respect to the General Partner's Partnership Common Units in such taxable year to (ii) the amounts distributed to the General Partner with respect to such Partnership Common Units and such taxable year.

Section 16.6 *Transfers*. Subject to the terms of any Vesting Agreement, an LTIP Unit Limited Partner shall be entitled to transfer his or her LTIP Units to the same extent, and subject to the same restrictions as Holders of Partnership Common Units are entitled to transfer their Partnership Common Units pursuant to Article 11.

Section 16.7 *Redemption*. The Redemption Right provided to Qualifying Parties under Section 15.1 shall not apply with respect to LTIP Units unless and until they are converted to Partnership Common Units as provided in Section 16.9 below.

Section 16.8 *Legend*. Any certificate evidencing an LTIP Unit shall bear an appropriate legend indicating that additional terms, conditions and restrictions on transfer, including without limitation any Vesting Agreement, apply to the LTIP Unit.

Section 16.9 *Conversion to Partnership Common Units*.

A. A Qualifying Party holding LTIP Units shall have the right (the "*Conversion Right*"), at his or her option, at any time to convert all or a portion of his or her Vested LTIP Units into Partnership Common Units; provided, however, that a Qualifying Party may not exercise the Conversion Right for less than one thousand (1,000) Vested LTIP Units or, if such Qualifying Party holds less than one thousand (1,000) Vested LTIP Units, all of the Vested LTIP Units held by such Qualifying Party. Qualifying Parties shall not have the right to convert Unvested LTIP Units into Partnership Common Units until they become Vested LTIP Units; *provided*, *however*, that when a Qualifying Party is notified of the expected occurrence of an event that will cause his or her Unvested LTIP Units to become Vested LTIP Units, such Qualifying Party may give the Partnership a Conversion Notice conditioned upon and effective as of the time of vesting and such Conversion Notice, unless subsequently revoked by the Qualifying Party, shall be accepted by the Partnership subject to such condition. In all cases, the conversion of any LTIP Units into Partnership Common Units shall be subject to the conditions and procedures set forth in this Section 16.9.

B. A Qualifying Party may convert his or her Vested LTIP Units into an equal number of fully paid and non-assessable Partnership Common Units, giving effect to all adjustments (if any) made pursuant to Section 16.3. Notwithstanding the foregoing, in no event may a Qualifying Party convert a number of Vested LTIP Units that exceeds (x) the Economic Capital Account Balance of such Limited Partner, to the extent attributable to his or her ownership of LTIP Units, divided by (y) the Common Unit Economic Balance, in each case as determined as of the effective date of conversion (the "*Capital Account Limitation*"). In order to exercise his or her Conversion Right, a Qualifying Party shall deliver a notice (a "*Conversion Notice*") in the form attached as Exhibit D to the Partnership (with a copy to the General Partner) not less than 3 nor more than 10 days prior to a date (the "*Conversion Date*") specified in such Conversion Notice; *provided*, *however*, that if the General Partner has not given to the Qualifying Party notice of a proposed or upcoming Transaction (as defined below) at least thirty (30) days prior to the effective date of such Transaction, then the Qualifying Party shall have the right to deliver a Conversion Notice until the earlier of (x) the tenth (10th) day after such notice from the General Partner of a Transaction or (y) the third business day immediately preceding the effective date of such Transaction. A Conversion Notice shall be provided in the manner provided in Section 15.2. Each Qualifying Party seeking to convert Vested LTIP Units

covenants and agrees with the Partnership that all Vested LTIP Units to be converted pursuant to this Section 16.9 shall be free and clear of all liens. Notwithstanding anything herein to the contrary, if the Fourteen-Month Period with respect to the Partnership Common Units into which the Vested LTIP Units are convertible has elapsed, a Qualifying Party may deliver a Notice of Redemption pursuant to Section 15.1.A relating to such Partnership Common Units in advance of the Conversion Date; *provided*, *however*, that the redemption of such Partnership Common Units by the Partnership shall in no event take place until on or after the Conversion Date. For clarity, it is noted that the objective of this paragraph is to put a Qualifying Party in a position where, if he or she so wishes, the Partnership Common Units into which his or her Vested LTIP Units will be converted can be redeemed by the Partnership pursuant to Section 15.1.A simultaneously with such conversion, with the further consequence that, if the General Partner elects to assume the Partnership's redemption obligation with respect to such Partnership Common Units under Section 15.1.B by delivering to such Qualifying Party REIT Shares rather than cash, then such Qualifying Party can have such REIT Shares issued to him or her simultaneously with the conversion of his or her Vested LTIP Units into Partnership Common Units. The General Partner shall cooperate with a Qualifying Party to coordinate the timing of the different events described in the foregoing sentence.

C. The Partnership, at any time at the election of the General Partner, may cause any number of Vested LTIP Units to be converted (a "*Forced Conversion*") into an equal number of Partnership Common Units, giving effect to all adjustments (if any) made pursuant to Section 16.3; *provided*, *however*, that the Partnership may not cause a Forced Conversion of any LTIP Units that would not at the time be eligible for conversion at the option of a Qualifying Party pursuant to Section 16.9.B. In order to exercise its right of Forced Conversion, the Partnership shall deliver a notice (a "*Forced Conversion Notice*") in the form attached hereto as Exhibit E to the applicable Holder of LTIP Units not less than 10 nor more than 60 days prior to the Conversion Date specified in such Forced Conversion Notice. A Forced Conversion Notice shall be provided in the manner provided in Section 15.2.

D. A conversion of Vested LTIP Units for which the Holder thereof has given a Conversion Notice or the Partnership has given a Forced Conversion Notice shall occur automatically after the close of business on the applicable Conversion Date without any action on the part of such Holder of LTIP Units other than the surrender of any certificate or certificates evidencing such Vested LTIP Units, as of which time such Holder of LTIP Units shall be credited on the books and records of the Partnership as of the opening of business on the next day with the number of Partnership Common Units into which such LTIP Units were converted. After the conversion of LTIP Units as aforesaid, the Partnership shall deliver to such Holder of LTIP Units, upon his or her written request, a certificate of the General Partner certifying the number of Partnership Common Units and remaining LTIP Units, if any, held by such person immediately after such conversion. The Assignee of any Limited Partner pursuant to Article 11 hereof may exercise the rights of such Limited Partner pursuant to this Section 16.9 and such Limited Partner shall be bound by the exercise of such rights by the Assignee.

E. For purposes of making future allocations under Section 6.2.D and applying the Capital Account Limitation, the portion of the Economic Capital Account Balance of the applicable Holder of LTIP Units that is treated as attributable to his or her LTIP Units shall be reduced, as of the date of conversion, by the product of the number of LTIP Units converted and the Common Unit Economic Balance.

F. If the Partnership or the General Partner shall be a party to any transaction (including without limitation a merger, consolidation, unit exchange, self tender offer for all or substantially all Partnership Common Units or other business combination or reorganization, or sale of all or substantially all of the Partnership's assets, but excluding any transaction which constitutes an Adjustment Event) in each case as a result of which Partnership Common Units shall be exchanged for or converted into the right, or the Holders shall otherwise be entitled, to receive cash, securities or other property or any combination thereof (each of the foregoing being referred to herein as a "*Transaction*"), then the General Partner shall, immediately prior to the Transaction, exercise its right to cause a Forced Conversion with respect to the maximum number of LTIP Units then eligible for conversion, taking into account any allocations that occur in connection with the Transaction or that would occur in connection with the Transaction if the assets of the Partnership were sold at the Transaction price or, if applicable, at a value determined by the General Partner in good faith using the value attributed to the Partnership Common Units in the context of the Transaction (in which case the Conversion Date shall be the effective date of the Transaction). In anticipation of such Forced Conversion and the consummation of the Transaction, the Partnership shall use commercially reasonable efforts to cause each LTIP Unit Limited Partner to be afforded the right to receive in connection with such Transaction in consideration for the Partnership Common Units into which his or her LTIP Units will be converted the same kind and amount of cash, securities and other property (or any combination thereof) receivable upon the consummation of such Transaction by a Holder of the same number of Partnership Common Units, assuming such Holder is not a Person with which the Partnership consolidated or into which the Partnership merged or which merged into the Partnership or to which such sale or transfer was made, as the case may be (a "*Constituent Person*"), or an affiliate of a Constituent Person. In the event that Holders of Partnership Common Units have the opportunity to elect the form or type of consideration to be received upon consummation of the Transaction, prior to such Transaction the General Partner shall give prompt written notice to each LTIP Unit Limited Partner of such opportunity, and shall use commercially reasonable efforts to afford the LTIP Unit Limited Partner the right to elect, by written notice to the General Partner, the form or type of consideration to be received upon conversion of each LTIP Unit held by such Holder into Partnership Common Units in connection with such Transaction. If a LTIP Unit Limited Partner fails to make such an election, such Holder (and any of its transferees) shall receive upon conversion of each LTIP Unit held by him or her (or by any of his or her transferees) the same kind and amount of consideration that a Holder of Partnership Common Units would receive if such Holder of Partnership Common Units failed to make such an election. Subject to the rights of the Partnership and the General Partner under any Vesting Agreement and the relevant terms of the Plan or any other applicable Stock Option Plan, the Partnership shall use commercially reasonable effort to cause the terms of any Transaction to be consistent with the provisions of this Section 16.9.F and to enter into an agreement with the successor or purchasing entity, as the case may be, for the benefit of any LTIP Unit Limited Partner whose LTIP Units will not be converted into Partnership Common Units in connection with the Transaction that will (i) contain provisions enabling Qualifying Parties that remain outstanding after such Transaction to convert their LTIP Units into securities as comparable as reasonably possible under the circumstances to the Partnership Common Units and (ii) preserve as far as reasonably possible under the circumstances the distribution, special allocation, conversion, and other rights set forth in the Agreement for the benefit of the LTIP Unit Limited Partners.

Section 16.10 *Voting*. LTIP Unit Limited Partners shall (a) have the same voting rights as Limited Partners holding Partnership Common Units, with the LTIP Unit Limited Partners voting together as a single class with the Partnership Common Units and having one vote per LTIP Unit; and (b) have the additional voting rights that are expressly set forth below, and Holders of LTIP Units shall not be entitled to approve, vote on or consent to any other matter. So long as any LTIP Units remain outstanding and except as provided in Section 16.3, the Partnership shall not, without the Consent of the Limited Partners holding a majority of the LTIP Units held by Limited Partners at the time (voting separately as a class), amend, alter or repeal, whether by merger, consolidation or otherwise, the provisions of the Agreement applicable to LTIP Units so as to materially and adversely affect any right, privilege or voting power of the LTIP Units or the LTIP Unit Limited Partners as such, unless such amendment, alteration, or repeal affects equally, ratably and proportionately the rights, privileges and voting powers of the Limited Partners holding Partnership Common Units; but subject, in any event, to the following provisions: (i) with respect to any Transaction, so long as the LTIP Units are treated in accordance with Section 16.9.F hereof, the consummation of such Transaction shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers of the LTIP Units or the LTIP Unit Limited Partners as such; and (ii) any creation or issuance of any Partnership Units or of any class or series of Partnership Interest including without limitation additional Partnership Units or LTIP Units, whether ranking senior to, junior to, or on a parity with the LTIP Units with respect to distributions or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers of the LTIP Units or the LTIP Unit Limited Partners as such. The foregoing voting provisions will not apply if, at or prior to the time when the action with respect to which such vote would otherwise be required will be effected, all outstanding LTIP Units shall have been converted or provision is made for such conversion to occur as of or prior to such time into Partnership Common Units.

Section 16.11 *Section 83 Safe Harbor*. Each Partner authorizes the General Partner to elect to apply the safe harbor (the "Section 83 Safe Harbor") set forth in proposed Regulations Section 1.83-3(l) and proposed IRS Revenue Procedure published in Notice 2005-43 (together, the "Proposed Section 83 Safe Harbor Regulation") (under which the fair market value of a Partnership Interest that is Transferred in connection with the performance of services is treated as being equal to the liquidation value of the interest) if such Proposed Section 83 Safe Harbor Regulation or similar Regulations are promulgated as a final or temporary Regulations. If the General Partner determines that the Partnership should make such election, the General Partner is hereby authorized to amend this Agreement without the consent of any other Partner to provide that (i) the Partnership is authorized and directed to elect the Section 83 Safe Harbor, (ii) the Partnership and each of its Partners (including any Person to whom a Partnership Interest, including an LTIP Unit, is Transferred in connection with the performance of services) will comply with all requirements of the Section 83 Safe Harbor with respect to all Partnership Interests Transferred in connection with the performance of services while such election remains in effect and (iii) the Partnership and each of its Partners will take all actions necessary, including providing the Partnership with any required information, to permit the Partnership to comply with the requirements set forth or referred to in the applicable Regulations for such

election to be effective until such time (if any) as the General Partner determines, in its sole discretion, that the Partnership should terminate such election. The General Partner is further authorized to amend this Agreement to modify Article 6 to the extent the General Partner determines in its discretion that such modification is necessary or desirable as a result of the issuance of any applicable law, Regulations, notice or ruling relating to the tax treatment of the transfer of a Partnership Interests in connection with the performance of services. Notwithstanding anything to the contrary in this Agreement, each Partner expressly confirms that it will be legally bound by any such amendment.

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

GENERAL PARTNER:

AMERICAN ASSETS TRUST, INC.,
a Maryland corporation,

By: _____
Name:
Its:

LIMITED PARTNER:

[,
a],

By: _____
Name:
Its:

LIMITED PARTNER:

_____
Name:

As of [ ], 20[__]

EXHIBIT A

PARTNERS AND PARTNERSHIP UNITS

Name and Address of Partners	**Partnership Units (Type and Amount)**
General Partner:	
American Assets Trust, Inc. 11455 El Camino Real, Suite 200 San Diego, California 92130	[ ] Partnership Common Units
Limited Partners:	
TOTAL:	[ ] Partnership Common Units

EXHIBIT B

EXAMPLES REGARDING ADJUSTMENT FACTOR

For purposes of the following examples, it is assumed that (a) the Adjustment Factor in effect on [_____] is 1.0 and (b) on [_____] (the "*Partnership Record Date*" for purposes of these examples), prior to the events described in the examples, there are 100 REIT Shares issued and outstanding.

Example 1

On the Partnership Record Date, the General Partner declares a dividend on its outstanding REIT Shares in REIT Shares. The amount of the dividend is one REIT Share paid in respect of each REIT Share owned. Pursuant to Paragraph (i) of the definition of "Adjustment Factor," the Adjustment Factor shall be adjusted on the Partnership Record Date, effective immediately after the stock dividend is declared, as follows:

1.0 * 200/100 = 2.0

Accordingly, the Adjustment Factor after the stock dividend is declared is 2.0.

Example 2

On the Partnership Record Date, the General Partner distributes options to purchase REIT Shares to all holders of its REIT Shares. The amount of the distribution is one option to acquire one REIT Share in respect of each REIT Share owned. The strike price is $4.00 a share. The Value of a REIT Share on the Partnership Record Date is $5.00 per share. Pursuant to Paragraph (ii) of the definition of "Adjustment Factor," the Adjustment Factor shall be adjusted on the Partnership Record Date, effective immediately after the options are distributed, as follows:

1.0 * (100 + 100)/(100 + [100 * $4.00/$5.00]) = 1.1111

Accordingly, the Adjustment Factor after the options are distributed is 1.1111. If the options expire or become no longer exercisable, then the retroactive adjustment specified in Paragraph (ii) of the definition of "Adjustment Factor" shall apply.

Example 3

On the Partnership Record Date, the General Partner distributes assets to all holders of its REIT Shares. The amount of the distribution is one asset with a fair market value (as determined by the General Partner) of $1.00 in respect of each REIT Share owned. It is also assumed that the assets do not relate to assets received by the General Partner pursuant to a pro rata distribution by the Partnership. The Value of a REIT Share on the Partnership Record Date is $5.00 a share. Pursuant to Paragraph (iii) of the definition of "Adjustment Factor," the Adjustment Factor shall be adjusted on the Partnership Record Date, effective immediately after the assets are distributed, as follows:

1.0 * $5.00/($5.00 - $1.00) = 1.25

Accordingly, the Adjustment Factor after the assets are distributed is 1.25.

EXHIBIT C

NOTICE OF REDEMPTION

To: American Assets Trust, Inc.

_____

_____

_____

The undersigned Limited Partner or Assignee hereby irrevocably tenders for Redemption Partnership Common Units in American Assets Trust, L.P. in accordance with the terms of the Amended and Restated Agreement of Limited Partnership of American Assets Trust, L.P., dated as of [ ], 20[__] as amended (the "*Agreement*"), and the Redemption rights referred to therein. The undersigned Limited Partner or Assignee:

(a) undertakes (i) to surrender such Partnership Common Units and any certificate therefor at the closing of the Redemption and (ii) to furnish to the General Partner, prior to the Specified Redemption Date, the documentation, instruments and information required under Section 15.1.G of the Agreement;

(b) directs that the certified check representing the Cash Amount, or the REIT Shares Amount, as applicable, deliverable upon the closing of such Redemption be delivered to the address specified below;

(c) represents, warrants, certifies and agrees that:

(i) the undersigned Limited Partner or Assignee is a Qualifying Party,

(ii) the undersigned Limited Partner or Assignee has, and at the closing of the Redemption will have, good, marketable and unencumbered title to such Partnership Common Units, free and clear of the rights or interests of any other person or entity,

(iii) the undersigned Limited Partner or Assignee has, and at the closing of the Redemption will have, the full right, power and authority to tender and surrender such Partnership Common Units as provided herein, and

(iv) the undersigned Limited Partner or Assignee has obtained the consent or approval of all persons and entities, if any, having the right to consent to or approve such tender and surrender; and

(d) acknowledges that he will continue to own such Partnership Common Units until and unless either (1) such Partnership Common Units are acquired by the General Partner pursuant to Section 15.1.B of the Agreement or (2) such redemption transaction closes.

All capitalized terms used herein and not otherwise defined shall have the same meaning ascribed to them respectively in the Agreement.

Dated: _____

Name of Limited Partner or Assignee:

_____

_____

(Signature of Limited Partner or Assignee)

_____

(Street Address)

_____

(City) (State) (Zip Code)

Signature Medallion Guaranteed by:

_____

Issue Check Payable to:

_____

Please insert social security
or identifying number:

_____

EXHIBIT D

**NOTICE OF ELECTION BY PARTNER TO CONVERT
LTIP UNITS INTO PARTNERSHIP COMMON UNITS**

The undersigned Holder of LTIP Units hereby irrevocably (i) elects to convert the number of LTIP Units in American Assets Trust, L.P. (the "*Partnership*") set forth below into Partnership Common Units in accordance with the terms of the Amended and Restated Agreement of Limited Partnership of the Partnership, as amended; and (ii) directs that any cash in lieu of Partnership Common Units that may be deliverable upon such conversion to be deliverable upon such conversion be delivered to the address specified below. The undersigned hereby represents, warrants, and certifies that the undersigned (a) has title to such LTIP Units, free and clear of the rights or interests of any other person or entity other than the Partnership; (b) has the full right, power, and authority to cause the conversion of such LTIP Units as provided herein; and (c) has obtained the consent or approval of all persons or entities, if any, having the right to consent or approve such conversion.

Name of Holder: _____

Please Print Name as Registered with Partnership

Number of LTIP Units to be Converted: _____

Date of this Notice: _____

_____

(Signature of Holder)

_____

(Street Address)

_____

(City) (State) (Zip Code)

Signature Medallion Guaranteed by:

_____

Issue Check Payable to: _____

Please insert social security
or identifying number: _____

EXHIBIT E

NOTICE OF ELECTION BY PARTNERSHIP TO FORCE CONVERSION OF LTIP UNITS INTO PARTNERSHIP COMMON UNITS

American Assets Trust, L.P. (the "*Partnership*") hereby irrevocably (i) elects to cause the number of LTIP Units held by the Holder set forth below to be converted into Partnership Common Units in accordance with the terms of Amended and Restated Agreement of Limited Partnership of the Partnership, as amended.

Name of Holder: _____

Please Print Name as Registered with Partnership

Number of LTIP Units to be Converted: _____

Date of this Notice: _____

Exhibit 10.2

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT is entered into as of [_____], 2010 by and among American Assets Trust, Inc., a Maryland corporation (the "Company"), and the holders listed on Schedule I hereto (each an "Initial Holder" and, collectively, the "Initial Holders").

RECITALS

WHEREAS, in connection with the initial public offering (the "IPO") of shares of the Company's common stock, par value $.01 per share (the "Common Stock"), the Company and American Assets Trust, L.P., a Maryland limited partnership (the "Operating Partnership"), have concurrently engaged in certain formation transactions (the "Formation Transactions"), pursuant to which the Initial Holders have concurrently received, in exchange for their (or certain related parties') respective interests in the entities participating in the Formation Transactions or in exchange for services rendered, (i) common units of limited partnership interest in the Operating Partnership ("Common OP Units") and/or (iii) shares of Common Stock;

WHEREAS, upon the terms and subject to the conditions contained in the Operating Partnership Agreement (as defined below), Common OP Units will be redeemable for cash or, at the Company's option, exchangeable for shares of Common Stock;

WHEREAS, as a condition to receiving the consent of the Initial Holders to the Formation Transactions, the Company has agreed to grant the Initial Holders and their permitted assignees and transferees the registration rights set forth in Article II hereof.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. In addition to the definitions set forth above, the following terms, as used herein, have the following meanings:

"Affiliate" of any Person means any other Person directly or indirectly controlling or controlled by or under common control with such Person. For the purposes of this definition, "control" when used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" means this Registration Rights Agreement, as it may be amended, supplemented or restated from time to time.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in The City of New York, New York or San Diego, California are authorized by law to close.

"Charter" means the Articles of Amendment and Restatement of the Company as filed with the Secretary of State of the State of Maryland on [_____], 2010, as the same may be amended, modified or restated from time to time.

"Commission" means the Securities and Exchange Commission.

"Company Piggy-Back Registration" has the meaning set forth in Section 2.1(a).

"Effectiveness Period" has the meaning set forth in Section 2.4(b).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Exchangeable Common OP Units" means Common OP Units which may be redeemable for cash or, at the Company's option, exchangeable for shares of Common Stock pursuant to the Operating Partnership Agreement (without regard to any limitations on the exercise of such exchange right as a result of the Ownership Limit Provisions).

"Holder" means (i) any Initial Holder who is the record or beneficial owner of any Registrable Security or (ii) any assignee or transferee of such Initial Holder (including assignments or transfers of Registrable Securities to such assignees or transferees as a result of the foreclosure on any loans secured by such Registrable Securities) (x) to the extent permitted under the Operating Partnership Agreement or the Charter, as applicable, and (y) provided such assignee or transferee agrees in writing to be bound by all the provisions hereof.

"Indemnified Party" has the meaning set forth in Section 2.10.

"Indemnifying Party" has the meaning set forth in Section 2.10.

"Initial Period" means a period commencing on the date hereof and ending 365 days following the effective date of the first Resale Shelf Registration Statement (except that, if the shares of Common Stock issuable upon exchange of Exchangeable Common OP Units received in the Formation Transactions are not included in that Resale Shelf Registration Statement as a result of Section 2.4(b), the 365 days shall not begin until the later of the effective date of (i) the first Resale Shelf Registration Statement and (ii) the first Issuer Shelf Registration Statement).

"Issuer Shelf Registration Statement" has the meaning set forth in Section 2.4(b).

"Market Value" means, with respect to the Common Stock, the average of the daily market price for the ten (10) consecutive trading days immediately preceding the date of a written request for registration pursuant to Section 2.1(a). The market price for each such

trading day shall be: (i) if the Common Stock is listed or admitted to trading on any securities exchange or the NASDAQ-National Market System, the closing price, regular way, on such day, or if no such sale takes place on such day, the average of the closing bid and asked prices on such day, in either case as reported in the principal consolidated transaction reporting system, (ii) if the Common Stock is not listed or admitted to trading on any securities exchange or the NASDAQ-National Market System, the last reported sale price on such day or, if no sale takes place on such day, the average of the closing bid and asked prices on such day, as reported by a reliable quotation source designated by the Company, or (iii) if the Common Stock is not listed or admitted to trading on any securities exchange or the NASDAQ-National Market System and no such last reported sale price or closing bid and asked prices are available, the average of the reported high bid and low asked prices on such day, as reported by a reliable quotation source designated by the Company, or if there shall be no bid and asked prices on such day, the average of the high bid and low asked prices, as so reported, on the most recent day (not more than (10) days prior to the date in question) for which prices have been so reported; provided that if there are no bid and asked prices reported during the ten (10) days prior to the date in question, the Market Value of the Common Stock shall be determined by the Board of Directors of the Company acting in good faith on the basis of such quotations and other information as it considers, in its reasonable judgment, appropriate.

"Notice and Questionnaire" means a written notice, substantially in the form attached as Exhibit A, delivered by a Holder to the Company (i) notifying the Company of such Holder's desire to include Registrable Securities held by it in a Resale Shelf Registration Statement, (ii) containing all information about such Holder required to be included in such registration statement in accordance with applicable law, including Item 507 of Regulation S-K promulgated under the Securities Act, as amended from time to time, or any similar successor rule thereto, and (iii) pursuant to which such Holder agrees to be bound by the terms and conditions hereof.

"Operating Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership of the Operating Partnership, dated as of [_____], 2010, as the same may be amended, modified or restated from time to time.

"Ownership Limit Provisions" mean the various provisions of the Company's Charter set forth in Article [__] thereof restricting the ownership of Common Stock by Persons to specified percentages of the outstanding Common Stock.

"Person" means an individual or a corporation, partnership, limited liability company, association, trust, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Rady Demand Registration" has the meaning set forth in Section 2.1(a).

"Rady Demand Registration Statement" has the meaning set forth in Section 2.1(a).

"Rady Holder" means a Holder that is Ernest S. Rady, or his Affiliates, immediate family members, trusts of immediate family members, estates or heirs or successors or assigns or the Ernest Rady Trust U/D/T March 10, 1983, as amended, or its Affiliates, successors or assigns.

"Rady Piggy-Back Registration" shall have the meaning set forth in Section 2.2.

"Registrable Securities" means with respect to any Holder, shares of Common Stock owned, either of record or beneficially, by such Holder that were (a) received by such Holder or an Initial Holder in the Formation Transactions, (b) acquired by such Holder or an Initial Holder directly from the Underwriters or the Company in the IPO, in each case in a transaction disclosed in the registration statement relating to the IPO, (c) issued or issuable upon exchange of Exchangeable Common OP Units received by such Holder or an Initial Holder in the Formation Transactions, (d) solely in the case of any Rady Holder, any Common Stock acquired by such Rady Holder in the open market after the date hereof and prior to the first (1st) anniversary of the date hereof, and, (e) in the case of (a), (b), (c) and (d), any additional shares of Common Stock issued as a dividend or distribution on, in exchange for, or otherwise in respect of, such shares (including as a result of combinations, recapitalizations, mergers, consolidations, reorganizations or otherwise).

As to any particular Registrable Securities, they shall cease to be Registrable Securities at the earliest time as one of the following shall have occurred: (i) a registration statement (including a Resale Shelf Registration Statement) covering such shares has been declared effective by the Commission and all such shares have been disposed of pursuant to such effective registration statement or unless such shares (other than Restricted Shares) were issued pursuant to an effective registration statement (including an Issuer Shelf Registration Statement), (ii) such shares have been publicly sold under Rule 144, (iii) all such shares may be sold in one transaction pursuant to Rule 144 or (iv) such shares have been otherwise transferred in a transaction that constitutes a sale thereof under the Securities Act, the Company has delivered to the Holder's transferee a new certificate or other evidence of ownership for such shares not bearing the Securities Act restricted stock legend and such shares subsequently may be resold or otherwise transferred by such transferee without registration under the Securities Act.

"Registration Expenses" shall have the meaning set forth in Section 2.2.

"Resale Shelf Registration" shall have the meaning set forth in Section 2.4(a).

"Resale Shelf Registration Statement" shall have the meaning set forth in Section 2.4(a).

"Restricted Shares" means shares of Common Stock issued under an Issuer Shelf Registration Statement which if sold by the holder thereof would constitute "restricted securities" as defined under Rule 144.

"Rule 144" means Rule 144 promulgated under the Securities Act, as amended from time to time, or any similar successor rule thereto that may be promulgated by the Commission.

"Rule 415" means Rule 415 promulgated under the Securities Act, as amended from time to time, or any similar successor rule thereto that may be promulgated by the Commission.

"Securities Act" means the Securities Act of 1933, as amended (together with the rules and regulations promulgated thereunder.

"Selling Holder" means a Holder who is selling Registrable Securities pursuant to a registration statement under the Securities Act pursuant to the terms hereof.

"Shelf Registration Statement" means a Resale Shelf Registration Statement and/or an Issuer Shelf Registration Statement.

"Suspension Notice" means any written notice delivered by the Company pursuant to Section 2.14 with respect to the suspension of rights under a Resale Shelf Registration Statement or any prospectus contained therein.

"Underwriter" means a securities dealer who purchases any Registrable Securities as principal and not as part of such dealer's market-making activities.

ARTICLE II
REGISTRATION RIGHTS

Section 2.1. Underwritten Demand Registration.

(a) Commencing on or after the date that is three hundred sixty five (365) days after the consummation date of the IPO and until such time as a Resale Shelf Registration Statement (or to the extent permitted by Section 2.4(b), an Issuer Shelf Registration Statement) has been declared effective, or if at any time on or after the date that is sixteen (16) months after the consummation date of the IPO, a Resale Shelf Registration Statement (or to the extent permitted by Section 2.4(b), an Issuer Shelf Registration Statement) shall not be effective, the majority in interest of the Rady Holder(s) may make written requests to the Company for one or more registrations of underwritten offerings under the Securities Act of all or part of their Common Stock constituting Registrable Securities (a "Rady Demand Registration"). The Company shall prepare and file a registration statement on an appropriate form with respect to any Rady Demand Registration (the "Rady Demand Registration Statement") and shall use its reasonable efforts to cause the Rady Demand Registration Statement to be declared effective by the Commission as promptly as reasonably practicable after the filing thereof. Any request for a Rady Demand Registration will specify the number of shares of Registrable Securities proposed to be sold in the underwritten offering. The Company shall have the opportunity to register such number of shares of Common Stock as it may elect on the Rady Demand Registration Statement and as part of the same underwritten offering in connection with a Rady Demand Registration (a "Company Piggy-Back Registration"). Unless a majority in interest of the Rady Holders participating in such Rady Demand Registration shall consent in writing, no party, other than the Company, shall be permitted to offer securities in connection with any such Rady Demand Registration.

(b) Underwriters. The Company shall select the book-running managing Underwriter in connection with any Rady Demand Registration; provided that such managing Underwriter must be reasonably satisfactory to a majority in interest of the Rady Holders participating in such Rady Demand Registration. The Company may select any additional investment banks and managers to be used in connection with the offering; provided that such additional investment bankers and managers must be reasonably satisfactory to a majority in interest of the Rady Holders participating in such Rady Demand Registration.

Section 2.2. Piggy-Back Registration. If the Company proposes to file a registration statement under the Securities Act with respect to an underwritten offering of Common Stock by the Company for its own account (other than (i) any registration statement filed in connection with a demand registration by a party other than a Rady Holder or (ii) a registration statement on Form S-4 or S-8 (or any substitute form that may be adopted by the Commission) or filed in connection with an exchange offer or offering of securities solely to the Company's existing securityholders), then the Company shall give written notice of such proposed filing to the Rady Holders as soon as practicable (but in no event less than ten (10) days before the anticipated filing date), and such notice shall offer such Rady Holders the opportunity to register such number of shares of Registrable Securities as each such Rady Holder may request (a "Rady Piggy-Back Registration"); provided, that if and so long as a Shelf Registration Statement is on file and effective, then the Company shall have no obligation to effect a Rady Piggy-Back Registration. The Company shall use its commercially reasonable efforts to cause the managing Underwriter(s) of a proposed underwritten offering to permit the Registrable Securities requested to be included in a Rady Piggy-Back Registration to be included on the same terms and conditions as any similar securities of the Company included therein.

Section 2.3. Reduction of Offering. Notwithstanding anything contained in Sections 2.1 and 2.2, if the managing Underwriter(s) of an offering described in Section 2.1 or 2.2 advise in writing the Company and the Rady Holders that the size of the intended offering is such that the success of the offering would be significantly and adversely affected by inclusion of (i) the Registrable Securities requested to be included by the Rady Holders in a Rady Piggy-Back Registration or (ii) the Common Stock requested to be included by the Company in a Rady Demand Registration/Company Piggy-Back Registration, then: (x) in the case of a Rady Demand Registration/ Company Piggy-Back Registration, the amount of the Common Stock to be offered for the account of the Company shall be reduced to the extent necessary to reduce the total amount of securities to be included in such offering to the amount recommended by such managing Underwriter(s), provided, that the amount of securities to be offered by the Company shall not be reduced to less than fifty percent (50%) of the total number of securities to be included in such offering; and (y) in the case of a Rady Piggy-Back Registration, the amount of securities to be offered for the accounts of Rady Holders shall be reduced to the extent necessary to reduce the total amount of securities to be included in such offering to the amount recommended by such managing Underwriter(s), provided, that the amount of securities to be offered by the Rady Holders shall not be reduced to less than thirty percent (30%) of the total number of securities to be included in such offering.

Section 2.4. Shelf Registration.

(a) Subject to Section 2.14, the Company shall prepare and file not later than fourteen (14) months after the consummation date of the IPO, a "shelf" registration statement with respect to the resale of the Registrable Securities ("Resale Shelf Registration") by the Holders thereof on an appropriate form for an offering to be made on a delayed or continuous basis pursuant to Rule 415 (the "Resale Shelf Registration Statement") and permitting registration of such Registrable Securities for resale by such Holders in accordance with the methods of distribution elected by the Holders and set forth in the Resale Shelf Registration Statement. The Company shall use its reasonable efforts to cause the Resale Shelf Registration Statement to be declared effective by the Commission as promptly as reasonably practicable after the filing thereof, and, subject to Sections 2.4(d) and 2.14, to keep such Resale Shelf Registration Statement continuously effective for a period ending when all shares of Common Stock covered by the Resale Shelf Registration Statement are no longer Registrable Securities.

At the time the Resale Shelf Registration Statement is declared effective, each Holder that has delivered a duly completed and executed Notice and Questionnaire to the Company on or prior to the date ten (10) Business Days prior to such time of effectiveness shall be named as a selling securityholder in the Resale Shelf Registration Statement and the related prospectus in such a manner as to permit such Holder to deliver such prospectus to purchasers of Registrable Securities in accordance with applicable law. If required by applicable law, subject to the terms and conditions hereof, after effectiveness of the Resale Shelf Registration Statement, the Company shall file a supplement to such prospectus or amendment to the Resale Shelf Registration Statement not less than once a quarter as necessary to name as selling securityholders therein any Holders that provide to the Company a duly completed and executed Notice and Questionnaire and shall use reasonable efforts to cause any post-effective amendment to such Resale Shelf Registration Statement filed for such purpose to be declared effective by the Commission as promptly as reasonably practicable after the filing thereof.

(b) The Company may, at its option, satisfy its obligation to prepare and file a Resale Shelf Registration Statement pursuant to Section 2.4(a) with respect to shares of Common Stock issuable upon exchange of Exchangeable Common OP Units by preparing and filing with the Commission not later than fourteen (14) months after the consummation date of the IPO a registration statement on an appropriate form for an offering to be made on a delayed or continuous basis pursuant to Rule 415 (an "Issuer Shelf Registration Statement") providing for (i) the issuance by the Company, from time to time, to the Holders of such Exchangeable Common OP Units, of shares of Common Stock registered under the Securities Act (the "Primary Shares") and (ii) to the extent such Primary Shares constitute Restricted Shares, the registered resale thereof by their Holders from time to time in accordance with the methods of distribution elected by the Holders and set forth therein (but except as provided in Section 2.4(c) below, not an underwritten offering). The Company shall use its reasonable efforts to cause the Issuer Shelf Registration Statement to be declared effective by the Commission as promptly as reasonably practicable after filing thereof and, subject to Sections 2.4(d) and 2.14, to keep the Issuer Shelf Registration Statement continuously effective for a period (the "Effectiveness Period") expiring on the date all of the shares of Common Stock covered by such Issuer Shelf Registration Statement have been issued by the Company pursuant thereto or are no longer Registrable Securities. If the Company shall exercise its rights under this Section 2.4(b), Holders (other than Holders of Restricted Shares) shall have

no right to have shares of Common Stock issued or issuable upon exchange of Exchangeable Common OP Units included in a Resale Shelf Registration Statement pursuant to Section 2.4(a).

(c) Underwritten Registered Resales. Any offering under a Resale Shelf Registration Statement or by Holders under an Issuer Shelf Registration Statement shall be underwritten at the written request of Holders of Registrable Securities under such registration statement that hold in the aggregate at least ten percent 10% of the Registrable Securities originally issued in the Formation Transactions (provided, that the Registrable Securities requested to be registered in such underwritten offering shall either (i) have a Market Value of at least $25,000,000 on the date of such request or (ii) shall represent all remaining Registrable Securities held by all Rady Holders and shall have a Market Value of at least $10,000,000 on the date of such request; provided, further, that the Company shall not be obligated to effect more than three (3) underwritten offerings under this Section 2.4(c); and provided, further, that the Company shall not be obligated to effect, or take any action to effect, an underwritten offering (i) within 120 days following the last date on which an underwritten offering was effected pursuant to this Section 2.4(c) or Section 2.1(a) or during any lock-up period required by the Underwriters in any prior underwritten offering conducted by the Company on its own behalf or on behalf of selling stockholders, or (ii) during the period commencing with the date thirty (30) days prior to the Company's good faith estimate of the date of filing of (provided the Company is actively employed in good faith commercially reasonable efforts to file such registration statement), and ending on a date ninety (90) days after the effective date of, a registration statement with respect to an offering by the Company. Any request for an underwritten offering hereunder shall be made to the Company in accordance with the notice provisions of this Agreement.

(d) Subsequent Filing. The Company shall prepare and file such additional registration statements as necessary every three (3) years and use its reasonable efforts to cause such registration statements to be declared effective by the Commission so that a Shelf Registration Statement remains continuously effective, subject to Section 2.14, with respect to resales of Registrable Securities as and for the periods required under Section 2.4(a) or (b), as applicable (such subsequent registration statements to constitute a Resale Shelf Registration Statement or an Issuer Shelf Registration Statement, as the case may be, hereunder).

(e) Selling Holders Become Party to Agreement. Each Holder acknowledges that by participating in its registration rights pursuant to this Agreement, such Holder will be deemed a party to this Agreement and will be bound by its terms, notwithstanding such Holder's failure to deliver a Notice and Questionnaire; provided, that any Holder that has not delivered a duly completed and executed Notice and Questionnaire shall not be entitled to be named as a Selling Holder in, or have the Registrable Securities held by it covered by, a Shelf Registration Statement.

Section 2.5. Reduction of Offering. Notwithstanding anything contained herein, if the managing Underwriter(s) of an offering described in Section 2.4(c) advise in writing the Company and the Holder(s) of the Registrable Securities included in such offering that the size of the intended offering is such that the success of the offering would be significantly adversely

affected by inclusion of all the Registrable Securities requested to be included, then the amount of securities to be offered for the accounts of Holders shall be reduced pro rata (according to the Registrable Securities requested for inclusion) to the extent necessary to reduce the total amount of securities to be included in such offering to the amount recommended by such managing Underwriter(s) but in priority to any securities proposed to be sold by any other holders of securities of the Company with registration rights to participate therein. The Company shall have the opportunity to include such number of securities as it may elect in an offering described in Section 2.4(c); provided, if the managing Underwriter(s) of such offering advise in writing the Company and the Holder(s) of the Registrable Securities requested to be included that the success of the offering would be significantly adversely affected by inclusion of all the securities requested to be included by the Company, then the amount of securities to be offered for the account of the Company shall be reduced to the extent necessary to reduce the total amount of securities to be included in such offering to the amount recommended by such managing Underwriter(s); provided, further, the amount of securities to be offered by the Company shall not be reduced to less than fifty percent (50%) of the total number of securities to be included in such offering.

Section 2.6. Registration Procedures; Filings; Information. Subject to Section 2.14 hereof, in connection with any Resale Shelf Registration Statement under Section 2.4(a), the Company will use its reasonable efforts to effect the registration of the Registrable Securities covered thereby in accordance with the intended method of disposition thereof as quickly as practicable, and, in connection with any Issuer Shelf Registration Statement under Section 2.4(b), the Company will use its reasonable efforts to effect the registration of the Primary Shares (including for resale, to the extent provided in clause (ii) of Section 2.4(b)) as quickly as reasonably practicable. In connection with any Shelf Registration Statement:

(a) The Company will no later than two (2) Business Days prior to filing a Resale Shelf Registration Statement (or an Issuer Shelf Registration Statement providing for resales pursuant to clause (ii) of Section 2.4(b)) or prospectus or any amendment or supplement thereto, furnish to each Selling Holder and each Underwriter, if any, of the Registrable Securities covered by such registration statement copies of such registration statement as proposed to be filed, and thereafter furnish to such Selling Holder and Underwriter, if any, such number of conformed copies of such registration statement, each amendment and supplement thereto (in each case including all exhibits thereto and documents incorporated by reference therein), the prospectus included in such registration statement (including each preliminary prospectus) and such other documents as such Selling Holder or Underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Selling Holder.

(b) After the filing of a Resale Shelf Registration Statement (or an Issuer Shelf Registration Statement providing for resales pursuant to clause (ii) of Section 2.4(b)), the Company will promptly notify each Selling Holder of Registrable Securities covered by such registration statement of any stop order issued or threatened by the Commission and take all reasonable actions required to prevent the entry of such stop order or to remove it if entered.

(c) The Company will use its reasonable efforts to (i) register or qualify the Registrable Securities under such other securities or "blue sky" laws of such jurisdictions in the United States (where an exemption does not apply) as any Selling Holder or managing Underwriter(s), if any, reasonably (in light of such Selling Holder's intended plan of distribution) requests and (ii) cause such Registrable Securities to be registered with or approved by such other governmental agencies or authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be reasonably necessary or advisable to enable such Selling Holder to consummate the disposition of the Registrable Securities owned by such Selling Holder; provided that the Company will not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this paragraph (c), (B) subject itself to general taxation in any such jurisdiction or (C) consent to general service of process in any such jurisdiction. The Company will promptly notify each Selling Holder of the receipt by the Company of any notification with respect to the suspension of the qualification of any Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction or the initiation of any proceeding for such purpose.

(d) The Company will immediately notify each Selling Holder of such Registrable Securities, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of (i) the Company's receipt of any notification of the suspension of the qualification of any Registrable Securities covered by a Resale Shelf Registration Statement (or an Issuer Shelf Registration Statement providing for resales pursuant to clause (ii) of Section 2.4(b)) for sale in any jurisdiction; or (ii) the occurrence of an event requiring the preparation of a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and promptly make available to each Selling Holder any such supplement or amendment.

(e) The Company will otherwise use its reasonable efforts to comply with all applicable rules and regulations of the Commission, and make available to its securityholders, as soon as reasonably practicable, an earnings statement covering a period of twelve (12) months, beginning within three (3) months after the effective date of the registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 of the Commission promulgated thereunder (or any successor rule or regulation hereafter adopted by the Commission).

(f) In the case of an underwritten offering pursuant to a Resale Shelf Registration Statement (or an Issuer Shelf Registration Statement providing for resales pursuant to clause (ii) of Section 2.4(b)), the Company will enter into and perform its obligations under customary agreements (including an underwriting agreement, if any, in customary form) and take such other actions as are reasonably required in order to expedite or facilitate the disposition of the Registrable Securities (including, to the extent reasonably requested by the lead or managing Underwriters, sending appropriate officers of the Company to attend "road shows" scheduled in reasonable number and at reasonable times in connection with any such underwritten offering, and obtaining customary comfort letters and legal opinions) subject to such underwritten offering.

(g) In the case of an underwritten offering pursuant to a Resale Shelf Registration Statement, the Company will make available for inspection by any Selling Holder of Registrable Securities subject to such underwritten offering, any Underwriter participating in any disposition of such Registrable Securities and any attorney, accountant or other professional retained by any such Selling Holder or Underwriter, all financial and other records, pertinent corporate documents and properties of the Company as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors and employees to supply all information reasonably requested by any inspectors in connection with such registration statement, subject to entry by each such Person of a customary confidentiality agreement in a form reasonably acceptable to the Company.

(h) The Company will use its reasonable efforts to cause all Registrable Securities covered by such Resale Shelf Registration Statement or Primary Shares covered by such Issuer Shelf Registration Statement to be listed on each securities exchange on which similar securities issued by the Company are then listed.

(i) In addition to the Notice and Questionnaire, the Company may require each Selling Holder of Registrable Securities to promptly furnish in writing to the Company such information regarding such Selling Holder, the Registrable Securities held by it and the intended method of distribution of the Registrable Securities as the Company may from time to time reasonably request and such other information as may be legally required in connection with such registration. No Holder may include Registrable Securities in any registration statement pursuant to this Agreement unless and until such Holder has furnished to the Company such information. Each Holder further agrees to furnish as soon as reasonably practicable to the Company all information required to be disclosed in order to make information previously furnished to the Company by such Holder not materially misleading.

(j) Each Selling Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 2.6(b) or 2.6(d) or upon receipt of a Suspension Notice, such Selling Holder will forthwith discontinue disposition of Registrable Securities pursuant to the registration statement covering such Registrable Securities until such Selling Holder's receipt of written notice from the Company that such disposition may be made and, in the case of clause (ii) of Section 2.6(d) or, if applicable, Section 2.14, copies of any supplemented or amended prospectus contemplated by clause (ii) of Section 2.6(d) or, if applicable, prepared under Section 2.14, and, if so directed by the Company, such Selling Holder will deliver to the Company all copies, other than permanent file copies then in such Selling Holder's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice. Each Selling Holder of Registrable Securities agrees that it will immediately notify the Company at any time when a prospectus relating to the registration of such Registrable Securities is required to be delivered under the Securities Act of the happening of an event as a result of which information previously furnished by such Selling Holder to the Company in writing for inclusion in such prospectus contains an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances in which they were made.

Section 2.7. Registration Expenses. In connection with any registration statement required to be filed hereunder, the Company shall pay the following registration expenses incurred in connection with the registration hereunder (the "Registration Expenses"), regardless whether such registration statement is declared effective by the Commission: (i) all registration and filing fees, (ii) fees and expenses of compliance with securities or "blue sky" laws (including reasonable fees and disbursements of counsel in connection with blue sky qualifications of the Registrable Securities), (iii) printing expenses, (iv) internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), (v) the fees and expenses incurred in connection with the listing of the Registrable Securities, (vi) reasonable fees and disbursements of counsel for the Company and customary fees and expenses for independent certified public accountants retained by the Company, including in connection with the preparation of comfort letters, and any transfer agent and registrar fees, and (vii) the reasonable fees and expenses of any special experts retained by the Company in connection with such registration. The Company shall have no obligation to pay any fees, discounts or commissions attributable to the sale of Registrable Securities, or any out-of-pocket expenses of the Holders (or the agents who manage their accounts) or any transfer taxes relating to the registration or sale of the Registrable Securities.

Section 2.8. Indemnification by the Company. The Company agrees to indemnify and hold harmless each Selling Holder of Registrable Securities, its officers, directors, agents, partners, members, employees, managers, advisors, sub-advisors, attorneys, representatives and Affiliates, and each Person, if any, who controls such Selling Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act from and against, as incurred, any and all losses, claims, damages and liabilities (or actions in respect thereof) that arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any registration statement, preliminary prospectus, prospectus, or free writing prospectus relating to the Registrable Securities (in each case, as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), or that arise out of or are based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except insofar as such losses, claims, damages or liabilities arise out of or are based upon any such untrue statement or omission or alleged untrue statement or omission included in reliance upon and in conformity with information furnished in writing to the Company by such Selling Holder or on such Selling Holder's behalf expressly for inclusion therein.

Section 2.9. Indemnification by Holders of Registrable Securities. Each Selling Holder agrees, severally but not jointly or jointly and severally, to indemnify and hold harmless the Company, its officers, directors, agents, employees, attorneys, representatives and Affiliates, and each Person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company to such Selling Holder, but only with respect to information relating to such Selling Holder included in reliance upon and in conformity with information furnished in writing by such Selling Holder or on such Selling Holder's behalf expressly for use in any registration

statement, preliminary prospectus, prospectus or free writing prospectus relating to the Registrable Securities, or any amendment or supplement thereto. In case any action or proceeding shall be brought against the Company or its officers, directors or agents or any such controlling person, in respect of which indemnity may be sought against such Selling Holder, such Selling Holder shall have the rights and duties given to the Company, and the Company or its officers, directors or agents or such controlling person shall have the rights and duties given to such Selling Holder, by Section 2.10; provided, however, that the total obligations of such Selling Holder under this Agreement (including, but not limited to, obligations arising under Section 2.11 herein) will be limited to an amount equal to the net proceeds actually received by such Selling Holder (after deducting any discounts and commissions) from the disposition of Registrable Securities pursuant to such registration statement.

Section 2.10. Conduct of Indemnification Proceedings. In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 2.8 or 2.9, such person (an "Indemnified Party") shall promptly notify the person against whom such indemnity may be sought (an "Indemnifying Party") in writing and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Party, and shall assume the payment of all fees and expenses; provided, however, that the failure of any Indemnified Party to give such notice will not relieve such Indemnifying Party of any obligations under Section 2.8 or 2.9, except to the extent such Indemnifying Party is materially prejudiced by such failure. In any such proceeding, any Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the Indemnifying Party and the Indemnified Party shall have mutually agreed to the retention of such counsel or (ii) representation of the Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between the Indemnified Party and the Indemnified Party. It is understood that the Indemnifying Party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) at any time for all such Indemnified Parties, and that all such fees and expenses shall be reimbursed as they are incurred. In the case of any such separate firm for the Indemnified Parties, such firm shall be designated in writing by (i) in the case of Persons indemnified pursuant to Section 2.8 hereof, the Selling Holders which owned a majority of the Registrable Securities sold under the applicable registration statement and (ii) in the case of Persons indemnified pursuant to Section 2.9, the Company. The Indemnifying Party shall not be liable for any settlement of any proceeding effected without its written consent, which consent shall not be unreasonably withheld, but if settled with such consent, or if there be a final judgment for the plaintiff, the Indemnifying Party shall indemnify and hold harmless such Indemnified Parties from and against any loss or liability (to the extent stated above) by reason of such settlement or judgment. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Party from all liability arising out of such proceeding without any admission of liability by such Indemnified Party.

Section 2.11. Contribution. If the indemnification provided for in Section 2.8 or 2.9 hereof is held by a court of competent jurisdiction to be unavailable to an Indemnified Party or insufficient in respect of any losses, claims, damages or liabilities that otherwise would have been covered by Section 2.8 or 2.9 hereof, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages or liabilities in such proportion as is appropriate to reflect the relative fault of the Company, on the one hand, and of each Selling Holder, on the other hand, in connection with such statements or omissions which resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative fault of the Company on the one hand and of each Selling Holder on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such party.

The Company and the Selling Holders agree that it would not be just and equitable if contribution pursuant to this Section 2.11 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages or liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 2.11, no Selling Holder shall be required to contribute any amount which in the aggregate exceeds the amount by which the net proceeds actually received by such Selling Holder from the sale of its securities to the public exceeds the amount of any damages which such Selling Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Selling Holder's obligations to contribute pursuant to this Section 2.11, if any, are several in proportion to the proceeds of the offering actually received by such Selling Holder bears to the total proceeds of the offering received by all the Selling Holders and not joint.

Section 2.12. Rule 144. The Company covenants that it will (a) make and keep public information regarding the Company available as those terms are defined in Rule 144, (b) file in a timely manner any reports and documents required to be filed by it under the Securities Act and the Exchange Act, (c) furnish to any Holder forthwith upon request (i) a written statement by the Company as to its compliance with the reporting requirements of Rule 144 (at any time more than ninety (90) days after the effective date of the registration statement for the Company's initial public offering), the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), and (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (d) take such further action as any Holder may reasonably request, all to the extent required from time to time to enable Holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144.

Section 2.13. Participation in Underwritten Offerings. No Person may participate in any underwritten offerings hereunder unless such Person (a) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (b) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements and these registration rights provided for in this Article II.

Section 2.14. Suspension of Use of Registration Statement.

(a) If the Board of Directors of the Company determines in its good faith judgment that the filing of a Rady Demand Registration Statement or Resale Shelf Registration Statement under Section 2.1(a) or Section 2.4(a) or the use of any related prospectus would be materially detrimental to the Company because such action would require the disclosure of material information that the Company has a bona fide business purpose for preserving as confidential or the disclosure of which would materially impede the Company's ability to consummate a significant transaction, and that the Company is not otherwise required by applicable securities laws or regulations to disclose, upon written notice of such determination by the Company to the Holders which shall be signed by the Chief Executive Officer, President or any Executive Vice President of the Company certifying thereto, the rights of the Holders to offer, sell or distribute any Registrable Securities pursuant to a Resale Shelf Registration or to require the Company to take action with respect to the registration or sale of any Registrable Securities pursuant to a Resale Shelf Registration Statement shall be suspended until the earliest of (i) the date upon which the Company notifies the Holders in writing that suspension of such rights for the grounds set forth in this Section 2.14(a) is no longer necessary and they may resume use of the applicable prospectus, (ii) the date upon which copies of the applicable supplemented or amended prospectus is distributed to the Holders, and (iii) (x) up to thirty (30) consecutive days after the notice to the Holders if that notice is given during the Initial Period or (y) ninety (90) consecutive days after the notice to the Holders if that notice is given after the Initial Period; provided, that the Company shall not be entitled to exercise any such right more than two (2) times in any twelve (12) month period or less than thirty (30) days from the termination of the prior such suspension period; and provided further, that such exercise shall not prevent the Holders from being entitled to at least three hundred twenty (320) days of effective registration with respect to such registration statement during each Initial Period and thereafter two hundred ten (210) days of effective registration with respect to such registration statement in any 365-day period. The Company agrees to give the notice under (i) above as promptly as practicable following the date that such suspension of rights is no longer necessary.

(b) If all reports required to be filed by the Company pursuant to the Exchange Act have not been filed by the required date without regard to any extension, or if the consummation of any business combination by the Company has occurred or is probable for purposes of Rule 3-05 or Article 11 of Regulation S-X promulgated under the Securities Act or any similar successor rule, upon written notice thereof by the Company to the Holders, the rights of the Holders to offer, sell or distribute any Registrable Securities pursuant to a Rady Demand Registration Statement or Resale Shelf Registration Statement or to require the Company to take action with respect to the registration or sale of any Registrable Securities

pursuant to a Rady Demand Registration Statement or Resale Shelf Registration Statement shall be suspended until the date on which the Company has filed such reports or obtained and filed the financial information required by Rule 3-05 or Article 11 of Regulation S-X to be included or incorporated by reference, as applicable, in a Rady Demand Registration Statement or Resale Shelf Registration Statement, and the Company shall use commercially reasonable efforts to file the required reports or obtain and file the financial information required to be included or incorporated by reference, as applicable, as promptly as commercially practicable, and shall notify the Holders as promptly as practicable when such suspension is no longer required.

Section 2.15. Additional Shares. The Company, at its option, may register under a Shelf Registration Statement and any filings with any state securities commissions filed pursuant to this Agreement, any number of unissued shares of Common Stock or any shares of Common Stock owned by any other stockholder or stockholders of the Company; provided that in no event shall the inclusion of such shares on a registration statement reduce the amount offered for the account of the Holders in any underwritten offering at the request of the Holders pursuant to Section 2.1(a) or Section 2.4(c).

ARTICLE III
MISCELLANEOUS

Section 3.1. Remedies. In addition to being entitled to exercise all rights provided herein and granted by law, including recovery of damages, the Holders shall be entitled to specific performance of the rights under this Agreement. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

Section 3.2. Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, in each case without the written consent of the Company and the Holders against whom enforcement is sought. No failure or delay by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon any breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

Section 3.3. Notices. All notices and other communications in connection with this Agreement shall be made in writing by hand delivery, registered first-class mail, telecopier, or air courier guaranteeing overnight delivery:

(1) if to any Holder, initially to the address indicated in such Holder’s Notice and Questionnaire or, if no Notice and Questionnaire has been delivered, c/o American Assets Trust, Inc., 11455 El Camino Real, Suite 200, San Diego, California 92130, Attention: Chief Executive Officer, or to such other address and to such other Persons as any Holder may hereafter specify in writing; and

(2) if to the Company, initially at 11455 El Camino Real, Suite 200, San Diego, California 92130, Attention: Chief Executive Officer, or to such other address as the Company may hereafter specify in writing.

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; when received if deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if telecopied; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

Section 3.4. Successors and Assigns; Assignment of Registration Rights. This Agreement shall inure to the benefit of and be binding upon the successors, assigns and transferees of each of the parties. Any Holder may assign its rights under this Agreement without the consent of the Company in connection with a transfer of such Holder's Registrable Securities; provided, that the Holder notifies the Company of such proposed transfer and assignment and the transferee or assignee of such rights assumes in writing the obligations of such Holder under this Agreement.

Section 3.5. Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Each party shall become bound by this Agreement immediately upon affixing its signature hereto.

Section 3.6. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California.

Section 3.7. Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

Section 3.8. Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein with respect to the registration rights granted by the Company with respect to the Registrable Securities. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

Section 3.9. Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

Section 3.10. Termination. The obligations of the parties hereunder shall terminate with respect to a Holder when it no longer holds Registrable Securities and with respect to the Company upon the end of the Effectiveness Period with respect to any Issuer Shelf Registration Statement and with respect to a Resale Shelf Registration Statement when there are no longer Registrable Securities with respect to such Resale Shelf Registration Statement, except, in each case, for any obligations under Sections 2.4(d), 2.7, 2.8, 2.9, 2.10, 2.11 and Article III.

Section 3.11. Waiver of Jury Trial. The parties hereto (including any Initial Holder and any subsequent Holder) irrevocably waive any right to trial by jury.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

AMERICAN ASSETS TRUST, INC.

By: _____
Name:
Title:

HOLDERS LISTED ON SCHEDULE I HERETO

AMERICAN ASSETS TRUST, INC.

By: _____
Name:
Title:
As Attorney-in-Fact acting on behalf of each of the Holders named on Schedule I hereto

Schedule I

See Attached.

Exhibit A

Form of Notice and Questionnaire

The undersigned beneficial holder of shares of common stock, par value $.01 per share ("Common Stock"), of American Assets Trust, Inc. (the "Company") and/or units of limited partnership interests ("OP Units" and, together with the Common Stock, the "Registrable Securities") of American Assets Trust, L.P. (the "Operating Partnership"), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the "SEC") one or more registration statements (collectively, the "Resale Shelf Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Registrable Securities in accordance with the terms of the Registration Rights Agreement (the "Registration Rights Agreement"), dated [_____], 2010, among the Company and the holders listed on Schedule I thereto. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Each beneficial owner of Registrable Securities is entitled to the benefits of the Registration Rights Agreement. In order to sell or otherwise dispose of any Registrable Securities pursuant to the Resale Shelf Registration Statement, a beneficial owner of Registrable Securities generally will be required to be named as a selling security holder in the related prospectus, deliver a prospectus to purchasers of Registrable Securities and be bound by those provisions of the Registration Rights Agreement applicable to such beneficial owner (including certain indemnification provisions as described below). **To be included in the Resale Shelf Registration Statement, this Notice and Questionnaire must be completed, executed and delivered to the Company at the address set forth herein on or prior to the tenth business day before the effectiveness of the Resale Shelf Registration Statement.** We will give notice of the filing and effectiveness of the initial Resale Shelf Registration Statement by issuing a press release and by mailing a notice to the holders at their addresses set forth in the register of the registrar.

Beneficial owners that do not complete this Notice and Questionnaire and deliver it to the Company as provided below will not be named as selling security holders in the prospectus and therefore will not be permitted to sell any Registrable Securities pursuant to the Resale Shelf Registration Statement. Beneficial owners are encouraged to complete and deliver this Notice and Questionnaire prior to the effectiveness of the initial Resale Shelf Registration Statement so that such beneficial owners may be named as selling security holders in the related prospectus at the time of effectiveness. Upon receipt of a completed Notice and Questionnaire from a beneficial owner following the effectiveness of the initial Resale Shelf Registration Statement, in accordance with the Registration Rights Agreement, the Company will file such amendments to the initial Resale Shelf Registration Statement or additional shelf registration statements or supplements to the related prospectus as are necessary to permit such holder to deliver such prospectus to purchasers of Registrable Securities.

Certain legal consequences arise from being named as selling security holders in the Resale Shelf Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling security holder in the Resale Shelf Registration Statement and the related prospectus.

NOTICE

The undersigned beneficial owner (the "Selling Security Holder") of Registrable Securities hereby elects to include in the prospectus forming a part of the Resale Shelf Registration Statement the Registrable Securities beneficially owned by it and listed below in Item 3 (unless otherwise specified under Item 3). The undersigned, by signing and returning this Notice and Questionnaire, understands that it will be bound by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement.

Pursuant to the Registration Rights Agreement, the undersigned has agreed to indemnify and hold harmless the Company and its directors, officers and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against certain losses arising in connection with statements concerning the undersigned made in the Resale Shelf Registration Statement or the related prospectus in reliance upon the information provided in this Notice and Questionnaire.

The undersigned hereby provides the following information to the Company and represents and warrants to the Company that such information is accurate and complete:

QUESTIONNAIRE

1. (a) Full Legal Name of Selling Security Holder:

_____

(b) Full Legal Name of registered holder (if not the same as (a) above) through which Registrable Securities listed in Item (3) below are held:

_____

(c) Full Legal Name of DTC Participant (if applicable and if not the same as (b) above) through which Registrable Securities listed in Item (3) below are held:

_____

(d) List below the individual or individuals who exercise voting and/or dispositive powers with respect to the Registrable Securities listed in Item (3) below:

_____

2. Address for Notices to Selling Security Holder:

Telephone: _____

Fax: _____

E-mail address: _____

Contact Person: _____

3. Beneficial Ownership of Registrable Securities:

Type of Registrable Securities beneficially owned, and number of shares of Common Stock and/or Common OP Units, as the case may be, beneficially owned:

4. Beneficial Ownership of Securities of the Company Owned by the Selling Security Holder:

Except as set forth below in this Item (4), the undersigned is not the beneficial or registered owner of any securities of the Company, other than the Registrable Securities listed above in Item (3).

Type and amount of other securities beneficially owned by the Selling Security Holder:

5. Relationship with the Company

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (5% or more) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

6. Plan of Distribution

Except as set forth below, the undersigned (including its donees or pledgees) intends to distribute the Registrable Securities listed above in Item (3) pursuant to the Resale Shelf Registration Statement only as follows and will not be offering any of such Registrable Securities pursuant to an agreement, arrangement or understanding entered into with a

broker or dealer prior to the effective date of the Resale Shelf Registration Statement. Such Registrable Securities may be sold from time to time directly by the undersigned or, alternatively, through underwriters or broker-dealers or agents. If the Registrable Securities are sold through underwriters or broker-dealers, the Selling Security Holder will be responsible for underwriting discounts or commissions or agent's commissions. Such Registrable Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, or at negotiated prices. Such sales may be effected in transactions (which may involve crosses or block transactions)

(i) on any national securities exchange or quotation service on which the Registrable Securities may be listed or quoted at the time of sale;

(ii) in the over-the-counter market;

(iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market; or

(iv) through the writing of options.

In connection with sales of the Registrable Securities or otherwise, the undersigned may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the Registrable Securities and deliver Registrable Securities to close out such short positions, or loan or pledge Registrable Securities to broker-dealers that in turn may sell such securities.

State any exceptions here:

Note: In no event may such method(s) of distribution take the form of an underwritten offering of the Registrable Securities without the prior written agreement of the Company.

ACKNOWLEDGEMENTS

The undersigned acknowledges that it understands its obligation to comply with the provisions of the Securities Exchange Act of 1934, as amended, and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Registrable Securities pursuant to the Registration Rights Agreement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The Selling Security Holder hereby acknowledges its obligations under the Registration Rights Agreement to indemnify and hold harmless certain persons set forth therein. Pursuant to the Registration Rights Agreement, the Company has agreed under certain circumstances to indemnify the Selling Security Holders against certain liabilities.

In accordance with the undersigned's obligation under the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Resale Shelf Registration Statement, the undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Resale Shelf Registration Statement remains effective. All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing at the address set forth below.

In the event that the undersigned transfers all or any portion of the Registrable Securities listed in Item 3 above after the date on which such information is provided to the Company, the undersigned agrees to notify the transferee(s) at the time of transfer of its rights and obligations under this Notice and Questionnaire and the Registration Rights Agreement.

By signing this Notice and Questionnaire, the undersigned consents to the disclosure of the information contained herein in its answers to Items (1) through (6) above and the inclusion of such information in the Resale Shelf Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Resale Shelf Registration Statement and the related prospectus.

Once this Notice and Questionnaire is executed by the Selling Security Holder and received by the Company, the terms of this Notice and Questionnaire and the representations and warranties contained herein shall be binding on, shall insure to the benefit of and shall be enforceable by the respective successors, heirs, personal representatives and assigns of the Company and the Selling Security Holder with respect to the Registrable Securities beneficially owned by such Selling Security Holder and listed in Item 3 above.

This Notice and Questionnaire shall be governed by, and construed in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Beneficial Owner

By _____
Name:
Title:

Dated:

Please return the completed and executed Notice and Questionnaire to:

American Assets Trust, Inc.
11455 El Camino Real, Suite 200
San Diego, CA 92130
Tel: (858) 350-2600
Fax: (858) 350-2620
Attention: Chief Financial Officer

Exhibit 10.5

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 20__, by and between American Assets Trust, Inc., a Maryland corporation (the "Company"), and _____ ("Indemnitee").

WHEREAS, at the request of the Company, Indemnitee currently serves as **[a director] [and] [an officer]** of the Company and may, therefore, be subjected to claims, suits or proceedings arising as a result of **[his][her]** service; and

WHEREAS, as an inducement to Indemnitee to serve or continue to serve as **[a director] [and] [an officer]**, the Company has agreed to indemnify and to advance expenses and costs incurred by Indemnitee in connection with any such claims, suits or proceedings, to the maximum extent permitted by law; and

WHEREAS, the parties by this Agreement desire to set forth their agreement regarding indemnification and advance of expenses;

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Definitions. For purposes of this Agreement:

(a) "Change in Control" means **[**a change in control of the Company occurring after the Effective Date of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), whether or not the Company is then subject to such reporting requirement; provided, however, that, without limitation, such a Change in Control shall be deemed to have occurred if, after the Effective Date (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 15% or more of the combined voting power of all of the Company's then-outstanding securities entitled to vote generally in the election of directors without the prior approval of at least two-thirds of the members of the Board of Directors in office immediately prior to such person's attaining such percentage interest; (ii) the Company is a party to a merger, consolidation, sale of assets, plan of liquidation or other reorganization not approved by at least two-thirds of the members of the Board of Directors then in office, as a consequence of which members of the Board of Directors in office immediately prior to such transaction or event constitute less than a majority of the Board of Directors thereafter; or (iii) at any time, a majority of the members of the Board of Directors are not individuals (A) who were directors as of the Effective Date or (B) whose election by the Board of Directors or nomination for election by the Company's stockholders was approved by the affirmative vote of at least two-thirds of the directors then in office who were directors as of the Effective Date or whose election for nomination for election was previously so approved**]**.

(b) “Corporate Status” means the status of a person as a present or former director, officer, employee or agent of the Company or as a director, trustee, officer, partner, manager, managing member, fiduciary, employee or agent of any other foreign or domestic corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving in such capacity at the request of the Company. As a clarification and without limiting the circumstances in which Indemnitee may be serving at the request of the Company, service by Indemnitee shall be deemed to be at the request of the Company if Indemnitee serves or served as a director, trustee, officer, partner, manager, managing member, fiduciary, employee or agent of any corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise (i) of which a majority of the voting power or equity interest is owned directly or indirectly by the Company or (ii) the management of which is controlled directly or indirectly by the Company.

(c) “Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification and/or advance of Expenses is sought by Indemnitee.

(d) “Effective Date” means the date set forth in the first paragraph of this Agreement.

(e) “Expenses” means any and all reasonable and out-of-pocket attorneys’ fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties and any other disbursements or expenses incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in or otherwise participating in a Proceeding. Expenses shall also include Expenses incurred in connection with any appeal resulting from any Proceeding including, without limitation, the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent.

(f) “Independent Counsel” means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement or of other indemnitees under similar indemnification agreements), or (ii) any other party to or participant or witness in the Proceeding giving rise to a claim for indemnification or advance of Expenses hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(g) “Proceeding” means any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other proceeding, whether brought by or in the right of the Company or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative (formal or informal) nature, including any appeal therefrom, except one pending or

completed on or before the Effective Date, unless otherwise specifically agreed in writing by the Company and Indemnitee. If Indemnitee reasonably believes that a given situation may lead to or culminate in the institution of a Proceeding, such situation shall also be considered a Proceeding.

Section 2. Services by Indemnitee. Indemnitee **[will serve][serves]** as **[a director] [and] [an officer]** of the Company. However, this Agreement shall not impose any independent obligation on Indemnitee or the Company to continue Indemnitee's service to the Company. This Agreement shall not be deemed an employment contract between the Company (or any other entity) and Indemnitee.

Section 3. General. The Company shall indemnify, and advance Expenses to, Indemnitee (a) as provided in this Agreement and (b) otherwise to the maximum extent permitted by Maryland law in effect on the Effective Date and as amended from time to time; provided, however, that no change in Maryland law shall have the effect of reducing the benefits available to Indemnitee hereunder based on Maryland law as in effect on the Effective Date. The rights of Indemnitee provided in this Section 3 shall include, without limitation, the rights set forth in the other sections of this Agreement, including any additional indemnification permitted by Section 2-418(g) of the Maryland General Corporation Law (the "MGCL").

Section 4. Standard for Indemnification. If, by reason of Indemnitee's Corporate Status, Indemnitee is, or is threatened to be, made a party to any Proceeding, the Company shall indemnify Indemnitee against all judgments, penalties, fines and amounts paid in settlement and all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any such Proceeding unless it is established that (a) the act or omission of Indemnitee was material to the matter giving rise to the Proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) Indemnitee actually received an improper personal benefit in money, property or services or (c) in the case of any criminal Proceeding, Indemnitee had reasonable cause to believe that **[his][her]** conduct was unlawful.

Section 5. Certain Limits on Indemnification. Notwithstanding any other provision of this Agreement (other than Section 6), Indemnitee shall not be entitled to:

(a) indemnification hereunder if the Proceeding was one by or in the right of the Company and Indemnitee is adjudged to be liable to the Company;

(b) indemnification hereunder if Indemnitee is adjudged to be liable on the basis that personal benefit was improperly received in any Proceeding charging improper personal benefit to Indemnitee, whether or not involving action in the Indemnitee's Corporate Status; or

(c) indemnification or advance of Expenses hereunder if the Proceeding was brought by Indemnitee, unless: (i) the Proceeding was brought to enforce indemnification under this Agreement, and then only to the extent in accordance with and as authorized by Section 12 of this Agreement, or (ii) the Company's charter or Bylaws, a resolution of the stockholders entitled to vote generally in the election of directors or of the Board of Directors or an agreement approved by the Board of Directors to which the Company is a party expressly provide otherwise.

Section 6. Court-Ordered Indemnification. Notwithstanding any other provision of this Agreement, a court of appropriate jurisdiction, upon application of Indemnitee and such notice as the court shall require, may order indemnification of Indemnitee by the Company in the following circumstances:

(a) if such court determines that Indemnitee is entitled to reimbursement under Section 2-418(d)(1) of the MGCL, the court shall order indemnification, in which case Indemnitee shall be entitled to recover the Expenses of securing such reimbursement; or

(b) if such court determines that Indemnitee is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not Indemnitee (i) has met the standards of conduct set forth in Section 2-418(b) of the MGCL or (ii) has been adjudged liable for receipt of an improper personal benefit under Section 2-418(c) of the MGCL, the court may order such indemnification as the court shall deem proper. However, indemnification with respect to any Proceeding by or in the right of the Company or in which liability shall have been adjudged in the circumstances described in Section 2-418(c) of the MGCL shall be limited to Expenses.

Section 7. Indemnification for Expenses of an Indemnitee Who is Wholly or Partially Successful. Notwithstanding any other provision of this Agreement, and without limiting any such provision, to the extent that Indemnitee was or is, by reason of **[his][her]** Corporate Status, made a party to (or otherwise becomes a participant in) any Proceeding and is successful, on the merits or otherwise, in the defense of such Proceeding, Indemnitee shall be indemnified for all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee under this Section 7 for all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each such claim, issue or matter, allocated on a reasonable and proportionate basis. For purposes of this Section 7 and, without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 8. Advance of Expenses for Indemnitee. If, by reason of Indemnitee's Corporate Status, Indemnitee is, or is threatened to be, made a party to any Proceeding, the Company shall, without requiring a preliminary determination of Indemnitee's ultimate entitlement to indemnification hereunder, advance all reasonable Expenses incurred by or on behalf of Indemnitee in connection with such Proceeding within ten days after the receipt by the Company of a statement or statements requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written affirmation by Indemnitee of Indemnitee's good faith belief that the standard of conduct necessary for indemnification by the Company as authorized by law and by this Agreement has been met and a written undertaking by or on behalf of Indemnitee, in substantially the form attached hereto as Exhibit A or in such form as may be required under applicable law as in effect at the time of the execution thereof, to reimburse the portion of any Expenses advanced to Indemnitee relating to claims, issues or matters in the Proceeding as to

which it shall ultimately be established that the standard of conduct has not been met by Indemnitee and which have not been successfully resolved as described in Section 7 of this Agreement. To the extent that Expenses advanced to Indemnitee do not relate to a specific claim, issue or matter in the Proceeding, such Expenses shall be allocated on a reasonable and proportionate basis. The undertaking required by this Section 8 shall be an unlimited general obligation by or on behalf of Indemnitee and shall be accepted without reference to Indemnitee's financial ability to repay such advanced Expenses and without any requirement to post security therefor.

Section 9. Indemnification and Advance of Expenses as a Witness or Other Participant. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is or may be, by reason of Indemnitee's Corporate Status, made a witness or otherwise asked to participate in any Proceeding, whether instituted by the Company or any other party, and to which Indemnitee is not a party, Indemnitee shall be advanced all reasonable Expenses and indemnified against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith within ten days after the receipt by the Company of a statement or statements requesting any such advance or indemnification from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee.

Section 10. Procedure for Determination of Entitlement to Indemnification.

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. Indemnitee may submit one or more such requests from time to time and at such time(s) as Indemnitee deems appropriate in Indemnitee's sole discretion. The officer of the Company receiving any such request from Indemnitee shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that Indemnitee has requested indemnification.

(b) Upon written request by Indemnitee for indemnification pursuant to Section 10(a) above, a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall promptly be made in the specific case: (i) if a Change in Control shall have occurred, by Independent Counsel, in a written opinion to the Board of Directors, a copy of which shall be delivered to Indemnitee, which Independent Counsel shall be selected by the Indemnitee and approved by the Board of Directors in accordance with Section 2-418(e)(2)(ii) of the MGCL, which approval shall not be unreasonably withheld; or (ii) if a Change in Control shall not have occurred, (A) by the Board of Directors by a majority vote of a quorum consisting of Disinterested Directors or, if such a quorum cannot be obtained, then by a majority vote of a duly authorized committee of the Board of Directors consisting solely of one or more Disinterested Directors, (B) if Independent Counsel has been selected by the Board of Directors in accordance with Section 2-418(e)(2)(ii) of the MGCL and approved by the Indemnitee, which approval shall not be unreasonably withheld, by Independent Counsel, in a written opinion to the Board of Directors, a copy of which shall be delivered to Indemnitee or (C) if so directed by a majority of the members of the Board of Directors, by the stockholders of the Company. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be

made within ten days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination in the discretion of the Board of Directors or Independent Counsel if retained pursuant to clause (ii)(B) of this Section 10(b). Any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company shall indemnify and hold Indemnitee harmless therefrom.

(c) The Company shall pay the reasonable fees and expenses of Independent Counsel, if one is appointed.

Section 11. Presumptions and Effect of Certain Proceedings.

(a) In making any determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 10(a) of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making of any determination contrary to that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, upon a plea of *nolo contendere* or its equivalent, or entry of an order of probation prior to judgment, does not create a presumption that Indemnitee did not meet the requisite standard of conduct described herein for indemnification.

(c) The knowledge and/or actions, or failure to act, of any other director, officer, employee or agent of the Company or any other director, trustee, officer, partner, manager, managing member, fiduciary, employee or agent of any other foreign or domestic corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise shall not be imputed to Indemnitee for purposes of determining any other right to indemnification under this Agreement.

Section 12. Remedies of Indemnitee.

(a) If (i) a determination is made pursuant to Section 10(b) of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advance of Expenses is not timely made pursuant to Sections 8 or 9 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(b) of this Agreement within 60 days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 7 or 9 of this Agreement within ten days after receipt by the Company of a written request therefor, or (v) payment of indemnification pursuant to any other section of this Agreement or the charter or Bylaws of the Company is not made within ten days after a determination has been made that Indemnitee is entitled to indemnification, Indemnitee shall be entitled to an adjudication in an appropriate court located in

the State of Maryland, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such indemnification or advance of Expenses. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence a proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 12(a); provided, however, that the foregoing clause shall not apply to a proceeding brought by Indemnitee to enforce **[his][her]** rights under Section 7 of this Agreement. Except as set forth herein, the provisions of Maryland law (without regard to its conflicts of laws rules) shall apply to any such arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In any judicial proceeding or arbitration commenced pursuant to this Section 12, Indemnitee shall be presumed to be entitled to indemnification or advance of Expenses, as the case may be, under this Agreement and the Company shall have the burden of proving that Indemnitee is not entitled to indemnification or advance of Expenses, as the case may be. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 12, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 8 of this Agreement until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed). The Company shall, to the fullest extent not prohibited by law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

(c) If a determination shall have been made pursuant to Section 10(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification.

(d) In the event that Indemnitee is successful in seeking, pursuant to this Section 12, a judicial adjudication of or an award in arbitration to enforce Indemnitee's rights under, or to recover damages for breach of, this Agreement, Indemnitee shall be entitled to recover from the Company, and shall be indemnified by the Company for, any and all Expenses actually and reasonably incurred by him in such judicial adjudication or arbitration. If it shall be determined in such judicial adjudication or arbitration that Indemnitee is entitled to receive part but not all of the indemnification or advance of Expenses sought, the Expenses incurred by Indemnitee in connection with such judicial adjudication or arbitration shall be appropriately prorated.

(e) Interest shall be paid by the Company to Indemnitee at the maximum rate allowed to be charged for judgments under the Courts and Judicial Proceedings Article of the Annotated Code of Maryland for amounts which the Company pays or is obligated to pay for the period (i) commencing with either the tenth day after the date on which the Company was requested to advance Expenses in accordance with Sections 8 or 9 of this Agreement or the 60th day after the

date on which the Company was requested to make the determination of entitlement to indemnification under Section 10(b) of this Agreement, as applicable, and (ii) ending on the date such payment is made to Indemnitee by the Company.

Section 13. Defense of the Underlying Proceeding.

(a) Indemnitee shall notify the Company promptly in writing upon being served with any summons, citation, subpoena, complaint, indictment, request or other document relating to any Proceeding which may result in the right to indemnification or the advance of Expenses hereunder and shall include with such notice a description of the nature of the Proceeding and a summary of the facts underlying the Proceeding. The failure to give any such notice shall not disqualify Indemnitee from the right, or otherwise affect in any manner any right of Indemnitee, to indemnification or the advance of Expenses under this Agreement unless the Company's ability to defend in such Proceeding or to obtain proceeds under any insurance policy is materially and adversely prejudiced thereby, and then only to the extent the Company is thereby actually so prejudiced.

(b) Subject to the provisions of the last sentence of this Section 13(b) and of Section 13(c) below, the Company shall have the right to defend Indemnitee in any Proceeding which may give rise to indemnification hereunder; provided, however, that the Company shall notify Indemnitee of any such decision to defend within 15 calendar days following receipt of notice of any such Proceeding under Section 13(a) above. The Company shall not, without the prior written consent of Indemnitee, which shall not be unreasonably withheld or delayed, consent to the entry of any judgment against Indemnitee or enter into any settlement or compromise which (i) includes an admission of fault of Indemnitee, (ii) does not include, as an unconditional term thereof, the full release of Indemnitee from all liability in respect of such Proceeding, which release shall be in form and substance reasonably satisfactory to Indemnitee or (iii) would impose any Expense, judgment, fine, penalty or limitation on Indemnitee. This Section 13(b) shall not apply to a Proceeding brought by Indemnitee under Section 12 of this Agreement.

(c) Notwithstanding the provisions of Section 13(b) above, if in a Proceeding to which Indemnitee is a party by reason of Indemnitee's Corporate Status, (i) Indemnitee reasonably concludes, based upon an opinion of counsel approved by the Company, which approval shall not be unreasonably withheld, that Indemnitee may have separate defenses or counterclaims to assert with respect to any issue which may not be consistent with other defendants in such Proceeding, (ii) Indemnitee reasonably concludes, based upon an opinion of counsel approved by the Company, which approval shall not be unreasonably withheld, that an actual or apparent conflict of interest or potential conflict of interest exists between Indemnitee and the Company, or (iii) if the Company fails to assume the defense of such Proceeding in a timely manner, Indemnitee shall be entitled to be represented by separate legal counsel of Indemnitee's choice, subject to the prior approval of the Company, which approval shall not be unreasonably withheld, at the expense of the Company. In addition, if the Company fails to comply with any of its obligations under this Agreement or in the event that the Company or any other person takes any action to declare this Agreement void or unenforceable, or institutes any Proceeding to deny or to recover from Indemnitee the benefits intended to be provided to Indemnitee hereunder, Indemnitee shall have the right to retain counsel of Indemnitee's choice,

subject to the prior approval of the Company, which approval shall not be unreasonably withheld, at the expense of the Company (subject to Section 12(d) of this Agreement), to represent Indemnitee in connection with any such matter.

Section 14. Non-Exclusivity; Survival of Rights; Subrogation.

(a) The rights of indemnification and advance of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the charter or Bylaws of the Company, any agreement or a resolution of the stockholders entitled to vote generally in the election of directors or of the Board of Directors, or otherwise. Unless consented to in writing by Indemnitee, no amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in **[his][her]** Corporate Status prior to such amendment, alteration or repeal, regardless of whether a claim with respect to such action or inaction is raised prior or subsequent to such amendment, alteration or repeal. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right or remedy shall be cumulative and in addition to every other right or remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion of any right or remedy hereunder, or otherwise, shall not prohibit the concurrent assertion or employment of any other right or remedy.

(b) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

Section 15. Insurance. The Company will use its reasonable best efforts to acquire directors and officers liability insurance, on terms and conditions deemed appropriate by the Board of Directors, with the advice of counsel, covering Indemnitee or any claim made against Indemnitee by reason of **[his][her]** Corporate Status and covering the Company for any indemnification or advance of Expenses made by the Company to Indemnitee for any claims made against Indemnitee by reason of **[his][her]** Corporate Status. Without in any way limiting any other obligation under this Agreement, the Company shall indemnify Indemnitee for any payment by Indemnitee arising out of the amount of any deductible or retention and the amount of any excess of the aggregate of all judgments, penalties, fines, settlements and Expenses incurred by Indemnitee in connection with a Proceeding over the coverage of any insurance referred to in the previous sentence. The purchase, establishment and maintenance of any such insurance shall not in any way limit or affect the rights or obligations of the Company or Indemnitee under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and the Indemnitee shall not in any way limit or affect the rights or obligations of the Company under any such insurance policies. If, at the time the Company receives notice from any source of a Proceeding to which Indemnitee is a party or a participant (as a witness or otherwise) the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies.

Section 16. Coordination of Payments. The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable or payable or reimbursable as Expenses hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

Section 17. Reports to Stockholders. To the extent required by the MGCL, the Company shall report in writing to its stockholders the payment of any amounts for indemnification of, or advance of Expenses to, Indemnitee under this Agreement arising out of a Proceeding by or in the right of the Company with the notice of the meeting of stockholders of the Company next following the date of the payment of any such indemnification or advance of Expenses or prior to such meeting.

Section 18. Duration of Agreement; Binding Effect.

(a) This Agreement shall continue until and terminate on the later of (i) the date that Indemnitee shall have ceased to serve as a director, officer, employee or agent of the Company or as a director, trustee, officer, partner, manager, managing member, fiduciary, employee or agent of any other foreign or domestic corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving in such capacity at the request of the Company and (ii) the date that Indemnitee is no longer subject to any actual or possible Proceeding (including any rights of appeal thereto and any Proceeding commenced by Indemnitee pursuant to Section 12 of this Agreement).

(b) The indemnification and advance of Expenses provided by, or granted pursuant to, this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or a director, trustee, officer, partner, manager, managing member, fiduciary, employee or agent of any other foreign or domestic corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving in such capacity at the request of the Company, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

(c) The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(d) The Company and Indemnitee agree that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may enforce this Agreement by seeking injunctive relief and/or

specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which Indemnitee may be entitled. Indemnitee shall further be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertakings in connection therewith. The Company acknowledges that, in the absence of a waiver, a bond or undertaking may be required of Indemnitee by a court, and the Company hereby waives any such requirement of such a bond or undertaking.

Section 19. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 20. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. One such counterpart signed by the party against whom enforceability is sought shall be sufficient to evidence the existence of this Agreement.

Section 21. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 22. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

Section 23. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, on the day of such delivery, or (ii) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed:

(a) If to Indemnitee, to the address set forth on the signature page hereto.

(b) If to the Company, to:

American Assets Trust, Inc.
11455 El Camino Real, Suite 200
San Diego, California 92130
Attn: Secretary

or to such other address as may have been furnished in writing to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

Section 24. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Maryland, without regard to its conflicts of laws rules.

[SIGNATURE PAGE FOLLOWS]

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

AMERICAN ASSETS TRUST, INC.

By: _____
Name:
Title:

INDEMNITEE

_____
Name:
Address:

EXHIBIT A

AFFIRMATION AND UNDERTAKING TO REPAY EXPENSES ADVANCED

The Board of Directors of American Assets Trust, Inc.

Re: Affirmation and Undertaking

Ladies and Gentlemen:

This Affirmation and Undertaking is being provided pursuant to that certain Indemnification Agreement dated the ____ day of _____, 20__, by and between American Assets Trust, Inc., a Maryland corporation (the "Company"), and the undersigned Indemnitee (the "Indemnification Agreement"), pursuant to which I am entitled to advance of Expenses in connection with **[Description of Proceeding]** (the "Proceeding").

Terms used herein and not otherwise defined shall have the meanings specified in the Indemnification Agreement.

I am subject to the Proceeding by reason of my Corporate Status or by reason of alleged actions or omissions by me in such capacity. I hereby affirm my good faith belief that at all times, insofar as I was involved as **[a director] [an officer]** of the Company, in any of the facts or events giving rise to the Proceeding, I (1) did not act with bad faith or active or deliberate dishonesty, (2) did not receive any improper personal benefit in money, property or services and (3) in the case of any criminal proceeding, had no reasonable cause to believe that any act or omission by me was unlawful.

In consideration of the advance of Expenses by the Company for reasonable attorneys' fees and related Expenses incurred by me in connection with the Proceeding (the "Advanced Expenses"), I hereby agree that if, in connection with the Proceeding, it is established that (1) an act or omission by me was material to the matter giving rise to the Proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty or (2) I actually received an improper personal benefit in money, property or services or (3) in the case of any criminal proceeding, I had reasonable cause to believe that the act or omission was unlawful, then I shall promptly reimburse the portion of the Advanced Expenses relating to the claims, issues or matters in the Proceeding as to which the foregoing findings have been established.

IN WITNESS WHEREOF, I have executed this Affirmation and Undertaking on this ____ day of _____, 20__.

_____

Name:

Exhibit 10.6

REPRESENTATION, WARRANTY AND INDEMNITY AGREEMENT

This REPRESENTATION, WARRANTY AND INDEMNITY AGREEMENT (this "Agreement") is made and entered into as of September 13, 2010, and is effective as of the Closing Date (as defined below), by and among American Assets Trust, Inc., a Maryland corporation (the "REIT"), American Assets Trust, L.P., a Maryland limited partnership and subsidiary of the REIT (the "Operating Partnership", and collectively with the REIT, the "Consolidated Entities"), and Ernest Rady Trust U/D/T March 10, 1983, as amended, (the "Principal" or the "Indemnifying Party").

RECITALS

WHEREAS, the REIT desires to consolidate the ownership of a portfolio of properties currently owned, directly or indirectly, by certain entities, each as described under the applicable heading on Schedule I hereto (collectively, the "American Asset Entities");

WHEREAS, concurrently with the execution of this Agreement, each of the entities identified on Schedule I hereto as "Forward REIT Merger Entities" (the "Forward REIT Merger Entities") will enter into an agreement and plan of merger with the REIT pursuant to which each such Forward REIT Merger Entity will merge with and into the REIT;

WHEREAS, concurrently with the execution of this Agreement, the REIT will enter into agreements and plans of merger with certain American Asset Entities identified as "REIT Sub Forward Merger Entities" on Schedule I hereto (the "REIT Sub Forward Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, each of the REIT Sub Forward Merger Entities will merge with and into wholly owned subsidiaries of the REIT;

WHEREAS, immediately following the completion of the mergers described in the preceding paragraphs, the REIT will contribute to the Operating Partnership, (i) all of the assets, rights and obligations of the Forward REIT Merger Entities acquired by the REIT as a result of the mergers between it and the Forward REIT Merger Entities and (ii) all of the REIT's interests in the surviving entities of the mergers of the REIT Sub Forward Merger Entities with and into wholly owned subsidiaries of the REIT;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership or a subsidiary thereof will enter into contribution agreements with certain holders of interests (the "Contributors") in certain American Asset Entities identified as "Contributed Entities" on Schedule I hereto, pursuant to which, immediately following the completion of the mergers and contributions described in the preceding paragraphs, each Contributor shall contribute to the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, all of the Contributor's interests in the applicable Contributed Entities, and the Operating Partnership, or such subsidiary, as applicable, shall acquire from each Contributor all of each Contributor's right, title and interest as a holder of interests in the Contributed Entities;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into an agreement and plan of merger with certain American Asset Entities identified as "Forward OP Merger Entities" on Schedule I hereto (collectively, the "Forward OP

Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraphs, each Forward OP Merger Entity will merge with and into the Operating Partnership in the order set forth in the merger agreement for such entities;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Asset Entities identified as "OP Sub Forward Merger Entities" on Schedule I hereto (collectively, the "OP Sub Forward Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraph, each OP Sub Forward Merger Entity will merge with and into a separate wholly owned subsidiary of the Operating Partnership;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Asset Entities identified as "OP Sub Reverse Merger Entities" on Schedule I hereto (collectively, the "OP Sub Reverse Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, a separate wholly-owned subsidiary of the Operating Partnership will merge with and into each OP Sub Reverse Merger Entity;

WHEREAS, in lieu of one or more of the mergers described in the preceding paragraphs and at the same time as such mergers would have otherwise occurred, certain holders (the "Consenting Holders") of interests in certain American Asset Entities shall contribute to the Operating Partnership, or a wholly owned subsidiary of the Operating Partnership, all of their interests in the applicable American Assets Entity, and the Operating Partnership shall acquire from each Consenting Holder, all of each Consenting Holder's right, title and interest as a holder of interests in such American Asset Entities;

WHEREAS, the Formation Transactions relate to the proposed initial public offering (the "IPO") of shares of common stock of the REIT, par value $.01 per share (the "REIT Shares"), following which the REIT will operate as a self-administered and self-managed real estate investment trust within the meaning of Section 856 of the Code;

WHEREAS, pursuant to the Formation Transaction Documentation, the Consolidated Entities will be paying a combination of cash, without interest, units of partnership interest in the Operating Partnership ("OP Units") and/or REIT Shares to the Pre-Formation Participants for their equity interests in the American Asset Entities;

WHEREAS, the Principal directly or indirectly owns interests in certain of the American Assets Entities;

WHEREAS, in order to induce the Consolidated Entities to enter into the Formation Transaction Documentation, the Principal has agreed to provide certain representations, warranties and indemnities as set forth herein; and

WHEREAS, the Principal has agreed to deposit ten percent (10%) of the REIT Shares, ten percent (10%) of the OP Units and ten percent (10%) of the cash consideration to be received by it and its Affiliates in connection with the Formation Transactions and the IPO (collectively, the "Indemnity Holdback Amount") into an "Indemnity Holdback Escrow" pursuant to the "Escrow Agreement", in the form attached as Exhibit A hereto, with the "Escrow Agent" (as

defined therein) in order to provide an exclusive remedy for any breaches of the representations and warranties made in Article I of this Agreement. Each OP Unit and REIT Share deposited into the Indemnity Holdback Escrow shall be valued at the initial public offering price of a REIT Share in the IPO (the "IPO Price").

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and other terms contained in this Agreement, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I.
REPRESENTATION AND WARRANTIES

Except as disclosed in the Prospectus or in the schedules referenced in this Article I and attached hereto, the Principal represents and warrants to the Consolidated Entities that, with respect to each of the American Assets Entities and its Subsidiaries and their respective Properties, as of the Closing Date:

Section 1.01 ORGANIZATION; AUTHORITY.

(a) Each of the American Assets Entities has been duly organized and is validly existing and in good standing under the Laws of its jurisdiction of organization and has all requisite power and authority to enter into each agreement or other document included in or contemplated by the Formation Transaction Documentation (including each agreement, document and instrument executed and delivered by or on its behalf pursuant to this Agreement or the other Formation Transaction Documentation) and to carry out the transactions contemplated thereby, and to own, lease and/or operate each Property owned, leased and/or operated by it and to carry on its business as presently conducted. Each American Assets Entity, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its Properties make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Schedule 1.01(b) sets forth as of the date hereof with respect to each American Assets Entity (i) each Subsidiary of such American Assets Entity, (ii) the ownership interest of each American Assets Entity in each Subsidiary, (iii) if not wholly owned by an American Assets Entity, the identity and ownership interest of each of the other owners of such Subsidiary, and (iv) each Property owned or leased pursuant to a ground lease by each American Assets Entity or its Subsidiaries. Each Subsidiary of the American Assets Entities has been duly organized and is validly existing and is in good standing under the Laws of its jurisdiction of organization, and has all requisite power and authority to own, lease and/or operate its Properties and other assets and to carry on its business as presently conducted. Each Subsidiary of the American Assets Entities, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its Properties and other assets make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 1.02 DUE AUTHORIZATION. The execution, delivery and performance by each American Assets Entity of each agreement or other document included in or contemplated by the Formation Transaction Documentation (including each agreement, document and instrument executed and delivered by or on behalf of each American Assets Entity pursuant to this Agreement or the other Formation Transaction Documentation) to which it is a party have been duly and validly authorized by all necessary actions required of such American Assets Entity. Each agreement, document and instrument included in or contemplated by the Formation Transaction Documentation and executed and delivered by or on behalf of each American Assets Entity constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of such American Assets Entity, each enforceable against such American Assets Entity in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 1.03 CONSENTS AND APPROVALS. Except as shall have been obtained or satisfied on or prior to the Closing Date, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration or filing with, any Person or Governmental Authority or under any applicable Laws is required to be obtained by any American Assets Entity or any of their respective Subsidiaries in connection with the execution, delivery and performance of any of the agreements or documents included in or contemplated by the Formation Transaction Documentation to which any such American Assets Entity is a party and the transactions contemplated hereby and thereby, except for (i) those consents, waivers, approvals, authorizations, orders, licenses, permits, registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have a material and adverse effect on the ability of such American Assets Entity to execute, deliver or perform of any of such agreements or documents or transactions, or (ii) those consents of the Pre-Formation Participants under the organizational documents of the applicable American Assets Entity, the failure of which to obtain would not, individually or in the aggregate, reasonably be expected to cause a material and adverse effect on the ability of such American Assets Entity to execute, deliver or perform of any of such agreements or documents or transactions.

Section 1.04 NO VIOLATION. None of the execution, delivery or performance by any American Assets Entity of any agreement or document included in or contemplated by the Formation Transaction Documentation to which it is a party and the transactions contemplated hereby and thereby does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the organizational documents of such American Assets Entity or any of its Subsidiaries, (B) any agreement, document or instrument to which such American Assets Entity or any of its Subsidiaries or any of their respective assets or properties (including the Properties) are bound or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on such American Assets Entity or any of its Subsidiaries, except for, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 1.05 CAPITALIZATION. Schedule 1.05 sets forth as of the date hereof the ownership of each American Assets Entity and its Subsidiaries. All of the

issued and outstanding equity interests of each American Assets Entity and its Subsidiaries are duly authorized, validly issued and fully paid (other than the profits interests in respect of any American Assets Entity, if applicable, where the concept of due authorization, valid issuance and full payment is not applicable), and, to the Principal's Knowledge, are not subject to preemptive rights or appraisal, dissenters' or other similar rights under the organizational documents of or any contract to which such American Assets Entity or its Subsidiaries is a party or otherwise bound. There are no outstanding rights to purchase, subscriptions, warrants, options or any other security convertible into or exchangeable for equity interests in any American Assets Entity or its Subsidiaries.

Section 1.06 LICENSES AND PERMITS. All notices, licenses, permits, certificates and authorizations, including liquor licenses, required for the continued use, occupancy, management, leasing and operation of the Properties of such American Assets Entity have been obtained or can be obtained without material cost, are in full force and effect, are in good standing and (to the extent required in connection with the transactions contemplated by the Formation Transaction Documentation) are assignable to the Operating Partnership, except in each case for items that, if not so obtained, obtainable and/or transferred, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No American Assets Entity, any of its Subsidiaries or, to the Principal's Knowledge, any third party has taken any action that (or failed to take any action the omission of which) would result in the revocation of any such notice, license, permit, certificate or authorization where such revocation or revocations would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, nor has any of them received any written notice of violation from any Governmental Authority or written notice of the intention of any entity to revoke any of such notice, license, permit, certificate or authorization, that in each case has not been cured or otherwise resolved to the satisfaction of such Governmental Authority except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 1.07 LITIGATION. Except for actions, suits or proceedings covered by policies of insurance described in Section 1.12, there is no action, suit or proceeding pending or, to the Principal's Knowledge, threatened against any American Assets Entity or any of its Subsidiaries or Properties which, if adversely determined, would, individually or together with all such other actions, reasonably be expected to have a Material Adverse Effect. There is no action, suit or proceeding pending or, to the Principal's Knowledge, threatened against any American Assets Entity or any of its Subsidiaries which challenges or impairs the ability of any American Assets Entity or any of its Subsidiaries to execute or deliver, or perform its obligations under any of the Formation Transaction Documentation or to consummate the transactions contemplated hereby and thereby, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no judgment, decree, injunction, or order of a Governmental Authority outstanding against such American Assets Entity or any of its Subsidiaries or any officer, director, principal, managing member, or general partner of any of the foregoing in their capacity as such, which would reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 1.07, no American Assets Entity has received any written notice of any pending or threatened proceedings for the rezoning (i.e., as opposed to the current zoning) of any Property or any portion thereof which would substantially and materially impair the current or proposed use thereof. The proceedings set forth on Schedule 1.07 under the heading "American Assets, Inc.—Related Litigation" are not reasonably expected to have a Material Adverse Effect.

Section 1.08 COMPLIANCE WITH LAWS. Each American Assets Entity and its Subsidiaries have conducted their respective businesses and maintained each Property in compliance with all applicable Laws, except for such failures that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. None of the American Assets Entities or its Subsidiaries nor, to the Principal's Knowledge, any third party has been informed in writing of any continuing violation of any such Laws or that any investigation has been commenced and is continuing or is contemplated respecting any such possible violation, except in each case for violations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 1.09 PROPERTIES.

(a) Except as set forth on Schedule 1.09(a), each applicable American Assets Entity or one of its Subsidiaries set forth on Schedule 1.09(a) is the insured under a policy of title insurance as the owner of, and, to the Principal's Knowledge, the applicable American Assets Entity or its Subsidiary is the owner of, the fee simple estate (or, in the case of certain Properties, the leasehold estate or tenancy-in-common estate) to such American Assets Entity's Property identified on Schedule 1.09(a) as being owned by such American Assets Entity or its Subsidiary, in each case free and clear of all Liens except for Permitted Liens. Prior to the effective time of the mergers and contributions contemplated in the Formation Transaction Documentation, none of the American Assets Entities nor any of their respective Subsidiaries shall take or omit to take any action to cause any Lien to attach to any Property, except for Permitted Liens and Liens, if any, given to secure mortgage indebtedness encumbering such Property.

(b) Except for matters that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (1) no American Assets Entity, nor any of their respective Subsidiaries, nor any other party to any material agreement affecting any Property (other than a Lease (as such term is hereinafter defined) for space within such Property, but including any agreement that constitutes a Permitted Lien), is in breach or default of any such agreement, (2) to the Principal's Knowledge, no event has occurred or has been threatened in writing, which with or without the passage of time or the giving of notice, or both, would, individually or together with all such other events, constitute a default under any such agreement, or would, individually or together with all such other events, reasonably be expected to cause the acceleration of any material obligation of any party thereto or the creation of a Lien upon any asset of any American Assets Entity or any of their respective Subsidiaries, except for Permitted Liens, and (3) all agreements affecting any Property required for the continued use, occupancy, management, leasing and operation of such Property (exclusive of space Leases) are valid and binding and in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

(c) To the Principal's Knowledge, as presently conducted, none of the operation of the buildings, fixtures and other improvements comprising a part of the Properties is in violation of any applicable building code, zoning ordinance or other "land use" Law, except for such violations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) The applicable American Assets Entity or its Subsidiary holds the lessor's interest under the leases, licenses, tenancies, possession agreements and occupancy agreements with tenants of each Property (the "Leases"). Except for matters that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (1) no American Assets Entity, nor any of its Subsidiaries, nor, to the Principal's Knowledge, any other party to any Lease, is in breach or default of any such Lease, (2) to the Principal's Knowledge, no event has occurred or has been threatened in writing, which with or without the passage of time or the giving of notice, or both, would, individually or together with all such other events, constitute a default under any Lease, or would, permit termination, modification or acceleration under such Lease, and (3) to the Principal's Knowledge, each of the Leases is valid and binding and in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity. To the Principal's Knowledge, no tenant under any of such Leases is presently the subject of any voluntary or involuntary bankruptcy or insolvency proceedings, except for matters that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 1.10 EXISTING LOANS. Schedule 1.10 lists, as of the date hereof, all secured loans encumbering the Properties or any direct or indirect interest in the applicable American Assets Entity (the "Disclosed Loans"), the outstanding aggregate principal balance of which is approximately $1,265,452,000 as of the date hereof based on the calculation of the loans listed in Schedule 1.10. To the Principal's Knowledge no monetary default (beyond applicable notice and cure periods) by any party exists under any of the Disclosed Loans and the documents entered into in connection therewith (collectively, the "Disclosed Loan Documents") and no non-monetary default (beyond applicable notice and cure periods) by any party exists under any of such Disclosed Loan Documents, except for such non-monetary defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 1.11 FRANCHISE AGREEMENTS. The hotel franchise agreement set forth on Schedule 1.11 ("Franchise Agreement") is in full force and effect and is the only hotel franchise agreement in effect for any Property. Except as set forth on Schedule 1.11, no American Assets Entity nor any of its Subsidiaries, nor, to the Principal's Knowledge, any other party to the Franchise Agreement, is in breach or default of the Franchise Agreement except for such breach or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 1.12 INSURANCE. Each American Assets Entity or its Subsidiaries has in place the public liability, casualty and other insurance coverage with respect to each Property owned, leased and/or managed by it as the Principal reasonably deems necessary and in all cases including such coverage as is required under the terms of any continuing loan or Lease. Each of the insurance policies with respect to each American Assets Entity's Property is in full force and effect in all material respects and all premiums due and payable thereunder have been fully paid when due. To the Principal's Knowledge, no American Assets Entity nor any of their respective Subsidiaries has received from any insurance company any notices of cancellation or intent to cancel any insurance.

Section 1.13 ENVIRONMENTAL MATTERS. Except for matters that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (A)

each American Assets Entity and its Subsidiaries are in compliance with all Environmental Laws, (B) no American Assets Entity nor any of their respective Subsidiaries have received any written notice from any Governmental Authority or third party alleging that such American Assets Entity, any of its Subsidiaries or any Property is not in compliance with applicable Environmental Laws, and (C) there has not been a release of a hazardous substance on any Property that would require investigation or remediation under applicable Environmental Laws. The representations and warranties contained in this Section 1.13 constitute the sole and exclusive representations and warranties made by the Principal concerning environmental matters.

Section 1.14 EMINENT DOMAIN. Except as set forth on Schedule 1.14 hereto, there is no existing, proposed or threatened condemnation, eminent domain or similar proceeding, or private purchase in lieu of such a proceeding which would affect any of the Properties, except for such proceedings that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 1.15 TAXES. Except as set forth in Schedule 1.15:

(a) Each American Assets Entity and each of its Subsidiaries has timely and properly filed all Tax returns and reports required to be filed by it (after giving effect to any filing extension properly granted by a Governmental Authority having authority to do so), and all such returns and reports are accurate and complete in all material respects, and has paid (or had paid on its behalf) all Taxes as required to be paid by it.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no deficiencies for any Taxes have been proposed, asserted or assessed against any American Assets Entity or its Subsidiaries, and no requests for waivers of the time to assess any such Taxes are pending.

(c) None of any such American Assets Entity or any of its Subsidiaries holds any asset the disposition of which would be subject to rules similar to Section 1374 of the Code; and none of any such American Assets Entity or any of its Subsidiaries has requested a private letter ruling from the IRS or comparable rulings from other taxing authorities or has entered into any “closing agreement” as described in Section 7121 of the Code or similar arrangement.

(d) There are no pending or threatened audits, assessments or other actions for or relating to any liability in respect of income or material non-income Taxes of any American Assets Entity or their respective Subsidiaries, there are no matters under discussion with any Tax authority with respect to income or material non-income Taxes that are likely to result in an additional liability for Taxes with respect to any American Assets Entity or their respective Subsidiaries and neither any American Assets Entity nor their respective Subsidiaries is, or has ever been, a party to or bound by any Tax indemnity agreement, Tax sharing agreement, Tax allocation agreement or similar contract.

(e) At all times since its formation, each S Corp Target (including any “predecessor corporation” (within the meaning of Treasury Regulations Section 1.1374-1(e)) to such S Corp Target) has continuously qualified as an “S corporation” within the meaning of

Section 1361(a)(1) of the Code and all applicable corresponding provisions of state and local law, and no Tax authority has claimed in writing that such S Corp Target does not qualify as an S corporation. No S Corp Target has ever elected to treat any Subsidiary as a "qualified subchapter S subsidiary" within the meaning of Section 1361(b)(3)(B) of the Code.

(f) No S Corp Target has any current or accumulated earnings and profits which were generated by any entity that was not a REIT, an S corporation or a regulated investment company at the time such earnings and profits were generated.

(g) The current and accumulated earnings and profits of each C Corp Target through the date hereof is set forth in Schedule 1.15.

(h) Since its formation, for U.S. federal income tax purposes, each American Assets Entity and Subsidiary other than the S Corp Targets and the C Corp Targets has been treated as a partnership or a disregarded entity and not as a corporation or an association taxable as a corporation. The Principal has included all income, gain, loss, deduction or other Tax items in its income Tax returns in a manner consistent with the Schedule K-1's received by the Principal from any American Assets Entity.

Section 1.16 NON-FOREIGN STATUS. Except as set forth on Schedule 1.16, none of the American Assets Entities is a foreign person (as defined in the Code).

Section 1.17 BANKRUPTCY. No bankruptcy or similar insolvency proceeding has been filed, or is currently contemplated or, to the Principal's Knowledge, threatened, with respect to any American Assets Entity or any of their respective Subsidiaries.

Section 1.18 EMPLOYEES. Except as set forth on Schedule 1.18, no American Assets Entity nor any of their respective Subsidiaries has or has ever had any employees. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no American Assets Entity nor any of their respective Subsidiaries is delinquent in payments to any of its employees, consultants or independent contractors for any wages, salaries, commissions, bonuses, or other direct compensation for any service performed or amounts required to be reimbursed to such employees, consultants or independent contractors. Each American Assets Entity has, to the extent applicable: (a) complied in all material respects with all applicable laws related to employment, (b) withheld and paid to the appropriate governmental entity or is holding for payment not yet due to such governmental entity all amounts required to be withheld from employees and (c) no policy, practice, plan or program of paying severance or pay or any form of severance compensation in connection with the termination of employment service and no agreement pursuant to which it would be required to pay severance to any director, officer, employee or consultant, except with respect to clauses (a), (b) and (c) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 1.19 CONTRACTS AND COMMITMENTS. Except as set forth in the organizational documents of each American Assets Entity or as otherwise disclosed in the Prospectus, no American Assets Entity nor any of their respective Subsidiaries is a party to any agreements for the sale of its assets, for the grant to any Person of any preferential right to purchase any such assets or the acquisition of any operating business, assets or capital stock of any other corporation, entity or business, other than in the ordinary course of business, entered into during the last twelve (12) months.

Section 1.20 NO IMPLIED REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article I and any other instrument executed by the Principal in connection with the Formation Transactions, the Principal shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby.

ARTICLE II.
NATURE OF REPRESENTATIONS AND WARRANTIES

Section 2.01 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All representations and warranties contained in this Agreement shall survive after the effective time of the mergers, contributions and other Formation Transactions contemplated in the Formation Transaction Documentation until the first anniversary of the Closing Date (the "Expiration Date"). If written notice of a claim in accordance with Section 4.02 has been given prior to the Expiration Date, then the relevant representation or warranty shall survive, but only with respect to such specific claim, until such claim has been finally resolved. Any claim for indemnification not so asserted in writing by the Expiration Date may not thereafter be asserted and shall forever be waived.

ARTICLE III.
INDEMNITY HOLDBACK ESCROW

Section 3.01 ESTABLISHMENT. On the Closing Date, the Principal shall deposit the Indemnity Holdback Amount into the Indemnity Holdback Escrow in the form of cash, REIT Shares and/or OP Units, with each such security to be valued at the IPO Price. For income tax purposes, the parties hereto agree that the Principal shall be treated as the owner of its Indemnity Holdback Amount and shall report such Indemnity Holdback Amount and the earnings thereon consistently with the foregoing.

ARTICLE IV.
INDEMNIFICATION

Section 4.01 INDEMNIFICATION OF CONSOLIDATED ENTITIES. The Consolidated Entities and their Affiliates and each of their respective directors, officers, employees, agents and representatives (each of which is an "Indemnified Party"), shall be indemnified and held harmless by the Indemnifying Party, under the terms and conditions of this Agreement, out of the Indemnity Holdback Escrow, from and against any and all Losses arising out of or relating to, asserted against, imposed upon or incurred by the Indemnified Parties in connection with or as a result of any breach of a representation or warranty contained in Article I of this Agreement (subject to the survival limitations set forth in Section 2.01 hereof) (collectively, the "Indemnified Losses"); *provided*, the Indemnified Parties shall only be entitled to indemnification for breaches of representations and warranties made pursuant to Article I of this Agreement to the extent that the Indemnified Losses with respect to such breaches exceed, in the aggregate, one percent (1.0%) of the consideration to be received by the Principal and its

Affiliates in connection with the Formation Transactions and the IPO (the "Deductible"); and *provided, further*, that the directors, officers and employees of the Consolidated Entities shall be indemnified hereunder only in their capacities as such and not individually. No Indemnified Party (other than the Consolidated Entities) may make a claim hereunder without the prior written consent of the REIT. For the avoidance of doubt, the Indemnifying Party shall only be liable for Indemnified Losses (after giving effect to and only for amounts in excess of the Deductible) up to the Indemnity Holdback Amount.

Section 4.02 CLAIMS.

(a) At the time when either of the Consolidated Entities learns of any potential claim under this Agreement (an "Escrow Claim") against the Indemnifying Party, it will promptly give written notice (a "Claim Notice") to the Principal and the Escrow Agent; *provided* that the failure to so notify the Principal or the Escrow Agent shall not prevent recovery under this Agreement, except to the extent that the Indemnifying Party shall have been materially prejudiced by such failure. Each Claim Notice shall describe in reasonable detail the facts known to the Indemnified Party giving rise to such Escrow Claim. The Indemnified Party shall deliver to the Principal, promptly after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by such Indemnified Party relating to a Third Party Claim (as defined below); *provided* that failure to do so shall not prevent recovery under this Agreement, except to the extent that the Indemnifying Party shall have been materially prejudiced by such failure. Any Indemnified Party may at its option demand indemnity under this Article IV as soon as an Escrow Claim has been threatened by a third party, regardless of whether an actual Loss has been suffered, so long as the Indemnified Party shall in good faith determine that such claim is not frivolous and that the Indemnified Party may be liable for, or otherwise incur, a Loss as a result thereof.

(b) The Principal shall be entitled, at his own expense, to elect in accordance with Section 4.06 below, to assume and control the defense of any Escrow Claim based on claims asserted by third parties ("Third Party Claims"), through counsel chosen by the Principal and reasonably acceptable to the REIT, if he gives written notice of his intention to do so to the Consolidated Entities within thirty (30) days of the receipt of the applicable Claim Notice; *provided, however*, that the Indemnified Parties may at all times participate in such defense at their own expense. Without limiting the foregoing, in the event that the Principal exercises the right to undertake any such defense against a Third Party Claim, the Indemnified Party shall cooperate with the Principal in such defense and make available to the Principal, at the Principal's expense, all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under such Indemnified Party's control relating thereto as is reasonably required by the Principal. No compromise or settlement of such Third Party Claim may be effected by either the Indemnified Party, on the one hand, or the Principal, on the other hand, without the other party's consent (which shall not be unreasonably withheld or delayed) unless (i) there is no finding or admission of any violation of Law and no effect on any other claims that may be made against such other party, (ii) each Indemnified Party that is party to such claim is released from all liability with respect to such claim, and (iii) there is no equitable order, judgment or term that in any manner affects, restrains or interferes with the business of the Indemnified Party that is party to such claim or any of its Affiliates. Notwithstanding the foregoing, if the compromise or settlement of such Third Party Claim could reasonably be

expected to adversely affect the status of the REIT as a real investment trust within the meaning of Section 856 of the Code, then the REIT shall make such decision to compromise or settle the Third Party Claim without the need to obtain the Principal's consent.

Section 4.03 DELIVERY AND RELEASE OF INDEMNITY ESCROW WITH RESPECT TO CLAIMS. Upon resolution of any Escrow Claim or portion of an Escrow Claim as evidenced by a written instruction of the Operating Partnership, in which an officer of the Operating Partnership certifies that the instruction has been approved by either (x) the Indemnifying Party in accordance with Section 4.06 or (y) a final award of an arbitral tribunal in accordance with this Agreement, the Escrow Agent shall release the amount and type of Indemnity Holdback Amount specified therein, and shall charge such amount to the Escrow Fund (as defined in the Escrow Agreement). To the extent a disbursement is made in REIT Shares or OP Units, such disbursement, and the charge to the Escrow Fund, shall be determined at a price per REIT Share or OP Unit equal to the IPO Price. Upon any disbursement from the Indemnity Holdback Escrow pursuant to this Agreement, the Consolidated Entities will purchase (at a price per REIT Share or OP Unit, as applicable, equal to the IPO Price) such number of the securities as will permit the Escrow Agent to distribute cash in lieu of any fractional shares.

Section 4.04 DELIVERY RELEASE OF INDEMNITY ESCROW AFTER EXPIRATION DATE. Within ten (10) days after the Expiration Date, and at the end of each calendar quarter thereafter while any Indemnity Holdback Amount remains in the Indemnity Holdback Escrow, the Consolidated Entities shall deliver to the Escrow Agent a notice which shall (i) set forth a list of outstanding Escrow Claims, together with a good faith estimate of the maximum value (expressed in dollars) of each such Escrow Claim and the aggregate amount of such values that would be allocated against the Escrow Fund in accordance with Section 4.02(a) if the actual amount of Indemnified Losses in respect of such Escrow Claim were equal to such good faith estimate of the maximum value thereof and (ii) instruct the Escrow Agent to release to the Indemnifying Party any consideration in the Escrow Fund in excess of the aggregate value allocated to the Escrow Fund in accordance with the immediately preceding clause (i).

Section 4.05 EXCLUSIVE REMEDY. The sole and exclusive remedy for Indemnified Parties with respect to any and all claims relating to a breach of this Agreement (other than breaches arising out of or in connection with fraud) shall be recovery from the Indemnity Holdback Escrow in accordance with the terms of this Agreement and the Escrow Agreement. The Indemnifying Party shall not be liable or obligated to make payments under this Agreement in excess of the Indemnity Holdback Amount.

Section 4.06 AUTHORIZATION. For purposes of this Article IV, a decision, act, consent, election or instruction of the Principal shall be deemed to be authorized if approved in writing by the Principal, and the Escrow Agent and Consolidated Entities may rely upon such decision, act, consent or instruction as provided in this Section 4.06 as being the decision, act, consent or instruction of the Indemnifying Party. The Escrow Agent and the Consolidated Entities, including their respective directors, officers, employees, agents and representatives, are hereby relieved from any liability to any Person for any acts done by them in accordance with such decision, act, consent or instruction. The Principal may from time to time by written notice to the Consolidated Entities appoint a representative or representatives to exercise such powers with respect to one or more claims as may be delegated by the Principal.

Section 4.07 CHARACTERIZATION OF PAYMENTS. Any indemnity payments made from the Indemnity Holdback Escrow pursuant to Article IV shall constitute an adjustment of the consideration received by the Indemnifying Party for Tax purposes and shall be treated as such by all parties on their tax returns to the extent permitted by Law.

ARTICLE V.
GENERAL PROVISIONS

Section 5.01 NOTICES. All notices and other communications under this Agreement shall be in writing and shall be deemed given when (i) delivered personally, (ii) five (5) Business Days after being mailed by certified mail, return receipt requested and postage prepaid, (iii) one (1) Business Day after being sent by a nationally recognized overnight courier or (iv) transmitted by facsimile if confirmed within twenty four (24) hours thereafter by a signed original sent in the manner provided in clause (i), (ii) or (iii) to the parties at the following addresses (or at such other address for a party as shall be specified by notice from such party):

If to the REIT or the Operating Partnership, to:

American Assets Trust, L.P.
11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620
Attention: Chief Executive Officer

If to the Principal, to:

American Assets, Inc.
11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620
Attention: Chief Executive Officer

Section 5.02 DEFINITIONS. For purposes of this Agreement, the following terms shall have the following meanings.

(a) "Affiliate" means, with respect to any Person, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

(b) "American Assets Entity" means a Forward OP Merger Entity, Forward REIT Merger Entity, Reverse OP Merger Entity or Contributed Entity, as applicable. As used herein, "American Assets Entities" refer to each American Assets Entity, collectively.

(c) "Business Day" means any day that is not a Saturday, Sunday or legal holiday in the State of California.

(d) "C Corp Target" means the entities listed on Schedule 5.02(d).

(e) "Closing Date" means the closing date of the IPO.

(f) "Code" means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated or issued thereunder.

(g) "Environmental Laws" means all federal, state and local Laws governing pollution or the protection of human health or the environment.

(h) "Formation Transaction Documentation" means all of the agreements and plans of merger (including this Agreement) relating to all target entities and all contribution agreements and related documents and agreements pursuant to which all of the American Assets Entities and/or the equity interests in the American Assets Entities held by the Pre-Formation Participants are to be acquired by the REIT or the Operating Partnership, directly or indirectly, as part of the Formation Transactions, as set forth on Schedule II hereto.

(i) "Formation Transactions" means the transactions contemplated by this Agreement and the other Formation Transaction Documentation.

(j) "GAAP" means generally accepted accounting principles, as in effect in the United States of America as of the date of determination.

(k) "Governmental Authority" means any government or agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

(l) "Laws" means laws, statutes, rules, regulations, codes, orders, ordinances, judgments, injunctions, decrees and policies of any Governmental Authority, including, without limitation, zoning, land use or other similar rules or ordinances.

(m) "Liens" means all pledges, claims, liens, charges, restrictions, controls, easements, rights of way, exceptions, reservations, leases, licenses, grants, covenants and conditions, encumbrances and security interests of any kind or nature whatsoever.

(n) "Losses" means charges, complaints, claims, actions, causes of action, losses, damages, Taxes, liabilities and expenses of any nature whatsoever, including without limitation, amounts paid in settlement, reasonable attorneys' fees, costs of investigation, costs of investigative judicial or administrative proceedings or appeals therefrom and costs of attachment or similar bonds, as well as all collection costs and enforcement expenses incurred in retaking, holding, preparing for sale, selling or otherwise disposing of or realizing on collateral or otherwise exercising or enforcing any rights or remedies under pledge and security or other collateral documents, but does not include any diminution in value of the Consolidated Entities except in the case of breaches of Section 1.13.

(o) "Material Adverse Effect" means with respect to each American Assets Entity, Subsidiary or Property, any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects solely with respect to such American Assets Entity, Subsidiary or Property.

(p) "Permitted Liens" means (i) Liens, or deposits made to secure the release of such Liens, securing Taxes, the payment of which is not delinquent or the payment of which (including, without limitation, the amount or validity thereof) is being contested in good faith by appropriate proceedings for which adequate reserves have been made in accordance with GAAP; (ii) zoning, entitlement, building and other land use Laws imposed by governmental agencies having jurisdiction over the Properties; (iii) covenants, conditions, restrictions, easements for public utilities, encroachments, rights of access or other non-monetary matters that do not materially impair the use of the Properties for the purposes for which they are currently being used or proposed to be used in connection with the relevant Person's business; (iv) Liens securing Disclosed Loans that are described in the Prospectus; (v) Liens arising under leases in effect as of the Closing Date; (vi) any exceptions contained in the title policies relating to the Properties as of the Closing Date, none of which substantially and materially impair the use of the Properties for the purposes for which they are currently being used in connection with the relevant Person's business; (vii) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the ordinary course of business that are not yet due and payable and which are not, in the aggregate, material to the business, operations and financial condition of the Properties so encumbered; and (viii) Liens the default under or foreclosure of which would not have a Material Adverse Effect.

(q) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

(r) "Pre-Formation Participants" means the holders of the equity interests in the relevant American Assets Entities immediately prior to the Formation Transactions.

(s) "Principal's Knowledge" means the actual current knowledge of Ernest S. Rady, John Chamberlain and Robert Barton without duty of investigation or inquiry.

(t) "Properties" means the property owned or leased pursuant to a ground lease by any American Assets Entity or any of their respective Subsidiaries, including any associated real and personal property.

(u) "Prospectus" means the REIT's final prospectus as filed with the Securities and Exchange Commission.

(v) "S Corp Target" means the entities listed on Schedule 5.02(v).

(w) "Subsidiary" means any corporation, partnership, limited liability company, joint venture, trust or other legal entity in which an American Assets Entity owns (either directly or through or together with another Subsidiary) either (i) a general partner, managing member or other similar interest, or (ii) (A) ten percent (10%) or more of the voting power of the voting capital stock or other equity interests, or (B) ten percent (10%) or more of the value of the outstanding capital stock or other equity interests of such corporation, partnership, limited liability company, joint venture or other legal entity. As used herein, "Subsidiary" or "Subsidiaries" refers to the Subsidiaries of the American Assets Entities, or an applicable American Assets Entity, as applicable, as set forth on Schedule 5.02(w), unless the context otherwise requires.

(x) "Tax" means all federal, state, local and foreign income, withholding, gross receipts, license, property, sales, franchise, employment, payroll, goods and services, stamp, environmental, customs duties, capital stock, social security, transfer, alternative minimum, excise and other taxes, tariffs or governmental charges of any nature whatsoever, including estimated taxes, together with penalties, interest or additions to Tax with respect thereto, whether or not disputed.

Section 5.03 COUNTERPARTS. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party and delivered to each other party.

Section 5.04 ENTIRE AGREEMENT; THIRD-PARTY BENEFICIARIES. This Agreement and the Escrow Agreement, including, without limitation, the exhibits hereto and thereto, constitute the entire agreement and supersede each prior agreement and understanding, whether written or oral, among the parties regarding the subject matter of this Agreement. This Agreement is not intended to confer any rights or remedies on any Person other than the parties hereto.

Section 5.05 GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, regardless of any laws that might otherwise govern under applicable principles of conflicts of laws thereof.

Section 5.06 ASSIGNMENT. This Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns; *provided*, *however*, that this Agreement may not be assigned (except by operation of law) by any party without the prior written consent of the other parties, and any attempted assignment without such consent shall be null and void and of no force and effect, except that the Operating Partnership may assign its rights and obligations hereunder to an Affiliate.

Section 5.07 JURISDICTION. The parties hereto hereby (a) submit to the exclusive jurisdiction of any state or federal court sitting in the County of San Diego, with respect to any dispute arising out of this Agreement or any transaction contemplated hereby to the extent such courts would have subject matter jurisdiction with respect to such dispute, and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, or that the venue of the action is improper.

Section 5.08 DISPUTE RESOLUTION. The parties intend that this Section 5.08 will be valid, binding, enforceable, exclusive and irrevocable and that it shall survive any termination of this Agreement.

(a) Upon any dispute, controversy or claim arising out of or relating to this Agreement or the enforcement, breach, termination or validity thereof ("Dispute"), the party

raising the Dispute will give written notice to the other parties to the Dispute describing the nature of the Dispute following which the parties to such Dispute shall attempt for a period of ten (10) Business Days from receipt by the parties of notice of such Dispute to resolve such Dispute by negotiation between representatives of the parties hereto who have authority to settle such Dispute. All such negotiations shall be confidential and any statements or offers made therein shall be treated as compromise and settlement negotiations for purposes of any applicable rules of evidence and shall not be admissible as evidence in any subsequent proceeding for any purpose. The statute of limitations applicable to the commencement of a lawsuit shall apply to the commencement of an arbitration hereunder, except that no defense based on the running of the statute of limitations will be available based upon the passage of time during any such negotiation. Regardless of the foregoing, a party shall have the right to seek immediate injunctive relief pursuant to clause (c) below without regard to any such ten (10) Business Day negotiation period.

(b) Any Dispute (including the determination of the scope or applicability of this agreement to arbitrate) that is not resolved pursuant to clause (a) above shall be submitted to final and binding arbitration in California before one neutral and impartial arbitrator, in accordance with the laws of the State of California for agreements made in and to be performed in that State. The arbitration shall be administered by JAMS, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. The parties hereto shall appoint one arbitrator within fifteen (15) days of a demand for arbitration. If an arbitrator is not appointed within such 15-day period, the arbitrator shall be appointed by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. The arbitrator shall designate the place and time of the hearing. The hearing shall be scheduled to begin as soon as practicable and no later than sixty (60) days after the appointment of the arbitrator (unless such period is extended by the arbitrator for good cause shown) and shall be conducted as expeditiously as possible. The award, which shall set forth the arbitrator's findings of fact and conclusions of law, shall be filed with JAMS and mailed to the parties no later than thirty (30) days after the close of the arbitration hearing. The arbitration award shall be final and binding on the parties and not subject to collateral attack. Judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(c) Notwithstanding the parties' agreement to submit all Disputes to final and binding arbitration before JAMS, the parties shall have the right to seek and obtain temporary or preliminary injunctive relief in any court having jurisdiction thereof. Such courts shall have authority to, among other things, grant temporary or provisional injunctive relief in order to protect any party's rights under this Agreement. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitral tribunal shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitral tribunal's orders to that effect.

(d) The prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, and the non-prevailing party shall pay all expenses and fees of JAMS, all costs of the stenographic record, all expenses of witnesses or proofs that may have been produced at the direction of the arbitrator, and the fees, costs and expenses of the arbitrator. The arbitrator shall allocate such costs and designate the prevailing party or parties for these purposes.

Section 5.09 SEVERABILITY. Each provision of this Agreement will be interpreted so as to be effective and valid under applicable law, but if any provision is held invalid, illegal or unenforceable under applicable law in any jurisdiction, then such invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been included herein.

Section 5.10 RULES OF CONSTRUCTION.

(a) The parties hereto agree that they have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(b) The words “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” All terms defined in this Agreement shall have the defined meanings contained herein when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms, unless otherwise defined herein. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time, amended, qualified or supplemented, including (in the case of agreements and instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 5.11 EQUITABLE REMEDIES. The parties agree that irreparable damage would occur to the Consolidated Entities in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the either or both or the Consolidated Entities shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the Principal and to enforce specifically the terms and provisions hereof in any federal or state court located in California, this being in addition to any other remedy to which the Consolidated Entities are entitled under this Agreement or otherwise at law or in equity.

Section 5.12 WAIVER OF SECTION 1542 PROTECTIONS. As of the Closing Date, each of the parties hereto expressly acknowledges that it has had, or has had and waived, the opportunity to be advised by independent legal counsel and hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the California Civil Code and does so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542 which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Indemnifying Party acknowledges and agrees that the foregoing waiver and release does not apply to any Escrow Claims in favor of the Consolidated Entities.

Section 5.13 TIME OF THE ESSENCE. Time is of the essence with respect to all obligations under this Agreement.

Section 5.14 DESCRIPTIVE HEADINGS. The descriptive headings herein are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Section 5.15 NO PERSONAL LIABILITY CONFERRED. This Agreement shall not create or permit any personal liability or obligation on the part of any officer, director, partner, employee or shareholder of the REIT or the Operating Partnership.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized officers, all as of the date first written above.

CONSOLIDATED ENTITIES

AMERICAN ASSETS TRUST, INC.,
a Maryland corporation

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

AMERICAN ASSETS TRUST, L.P.,
a Maryland limited partnership

By: **AMERICAN ASSETS TRUST, INC.**
a Maryland corporation,
Its General Partner

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

PRINCIPAL

ERNEST RADY TRUST U/D/T MARCH 10, 1983, AS AMENDED

By: /s/ Ernest S. Rady
Name: Ernest S. Rady
Title: Trustee

Schedule I

LIST OF FORWARD OP MERGER ENTITIES:

1. Solana Beach Towne Centres Investments, L.P.
2. Pacific San Jose Holdings, L.P.
3. Pacific Sorrento Mesa Holdings, L.P.
4. Hillside 104, a California limited partnership
5. Hillside 276, a California limited partnership
6. Desert Hillside Holdings, LLC
7. BWH Holdings, LLC
8. Waikele Center Holdings, LP

LIST OF FORWARD REIT MERGER ENTITIES:

1. Pacific Stonecrest Assets, Inc.
2. Pacific National City Assets, Inc.
3. Western Assets, Inc.
4. Pacific Towne Centre Assets, Inc.
5. Pacific Oceanside Assets, Inc.
6. Pacific San Jose Assets, Inc.
7. KMBC Assets, Inc.
8. Hero Retail, Inc.
9. Pacific Sorrento Valley Assets I, Inc.
10. Pacific Sorrento Mesa Assets, Inc.
11. Beach Walk Assets, Inc.
12. ICW Plaza, Inc. [d/b/a Delaware ICW Plaza, Inc.]
13. ICW Valencia, Inc.
14. Pacific Torrey Reserve Assets, Inc.
15. Landmark Assets, Inc.
16. Landmark One Market, Inc.
17. Pacific Novato Assets, Inc.
18. Waikele Center Assets, Inc.

LIST OF OP SUB FORWARD MERGER ENTITIES:

1. Pacific Stonecrest Holdings, L.P.
2. Rancho Carmel Plaza, a California limited partnership
3. Pacific Oceanside Holdings, L.P.
4. Kearny Mesa Business Center, a California limited partnership
5. Del Monte Center Holdings, LP
6. Beach Walk Holdings, LP
7. ICW Plaza, L.P., a California limited partnership
8. ICW Valencia, L.P.
9. Desert Oceanside Holdings, LLC
10. San Diego Loma Palisades, L.P.

LIST OF OP SUB REVERSE MERGER ENTITIES:

1. Pacific Waikiki Holdings, L.P.
2. ABW Lewers LLC
3. King Street Holdings, LP
4. Loma Palisades, a California general partnership

LIST OF REIT SUB FORWARD MERGER ENTITIES:

1. Pacific Del Mar Assets, Inc.
2. Pacific Carmel Mountain Assets, Inc.
3. Pacific Solana Beach Assets, Inc.
4. Pacific Waikiki Assets, Inc.
5. King Street Assets, Inc.
6. Pacific Sorrento Valley Assets II, Inc.
7. Pacific Santa Fe Assets, Inc.

LIST OF CONTRIBUTED ENTITIES:

1. American Assets Trust Management, LLC
2. Winrad Vista Hacienda, a California general partnership
3. Vista Hacienda, a California limited partnership
4. Pacific American Assets Holdings, L.P., a California limited partnership
5. Carmel Country Plaza, L.P.
6. Pacific Carmel Mountain Holdings, L.P.
7. Pacific National City Holdings, L.P.
8. Pacific Solana Beach Holdings, L.P.
9. Pacific San Jose Holdings, L.P.
10. Winrad Kearny Mesa Business Center, a California general partnership
11. Pacific Sorrento Valley Holdings I, L.P.
12. Pacific Sorrento Mesa Holdings, L.P.
13. Beach Walk Holdings, LP
14. ICW Plaza, L.P., a California limited partnership
15. ICW Valencia, L.P.
16. Pacific Sorrento Valley Holdings II, L.P.
17. EBW Hotel LLC
18. Imperial Strand, a California limited partnership
19. Winrad Imperial Strand, a California general partnership
20. San Diego Loma Palisades, L.P.
21. Mariner’s Point, LLC
22. Pacific Santa Fe Holdings, L.P.

Schedule II

Formation Transaction Documents

Form of Forward REIT Merger Agreement

Form of REIT Sub Forward Merger Agreement

Form of Forward OP Merger Agreement

Form of OP Sub Forward Merger Agreement

Form of OP Sub Reverse Merger Agreement

Form of OP Contribution Agreement

Form of OP Sub Contribution Agreement

Form of Alternate Contribution Agreement

Form of Tax Protection Agreement

Amended and Restated Agreement of Limited Partnership of American Assets Trust, L.P.

Registration Rights Agreement

Representation, Warranty and Indemnity Agreement

Indemnity Escrow Agreement

Lock-Up Agreement

Articles of Amendment and Restatement of American Assets Trust, Inc.

Bylaws of American Assets Trust, Inc.

Management Business Contribution Agreement

Exhibits

Exhibit A: Form of Escrow Agreement (See attached)

Exhibit 10.7

INDEMNITY ESCROW AGREEMENT

This INDEMNITY ESCROW AGREEMENT (this "Agreement"), dated as of September 13, 2010, is made by and among American Assets Trust, Inc., a Maryland corporation (the "REIT"), American Assets Trust, L.P., a Maryland limited partnership and subsidiary of the REIT (the "Operating Partnership" and collectively with the REIT, the "Consolidated Entities"), the REIT, acting in the capacity of escrow agent (the "Escrow Agent"), and the Ernest Rady Trust U/D/T March 10, 1983, as amended (the "Principal"). Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to such terms in the Indemnity Agreement (as defined below).

WHEREAS, the REIT, the Operating Partnership and the Principal are parties to that certain Representation, Warranty and Indemnity Agreement, dated as of September 13, 2010 and effective as of even date herewith (the "Indemnity Agreement");

WHEREAS, the Indemnity Agreement contains, among other things, certain representations and warranties of the Principal and indemnities with respect thereto, and contemplates the deposit of the Indemnity Holdback Amount by the Principal into an Indemnity Holdback Escrow;

WHEREAS, the indemnification procedures governing the indemnification obligations of the Principal are set forth in the Indemnity Agreement; and

WHEREAS, the parties wish to establish the Indemnity Holdback Escrow pursuant to this Agreement, and the Escrow Agent has agreed to hold and to release the Indemnity Holdback Amount (as reduced by any disbursements hereunder, the "Escrow Fund") pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. ESCROW FUND. In accordance with the Indemnity Agreement, the Principal shall deposit the Indemnity Holdback Amount into the Indemnity Holdback Escrow on the Closing Date in the form of cash, REIT Shares and/or OP Units in escrow with the Escrow Agent. OP Units and REIT Shares constituting any portion of the Indemnity Holdback Amount and any other securities received by the Escrow Agent in respect thereof are referred to herein as "Escrow Securities."

2. INVESTMENT. The Escrow Agent shall promptly invest any cash portion of the Escrow Fund not being disbursed, *provided* that such investments (i) shall be obligations of or guaranteed by the United States of America, in commercial paper obligations receiving the highest rating from either Moody's Investors Services, Inc. or Standard & Poor's Corporation, or in certificates of deposit, bank repurchase agreements or bankers acceptances of domestic commercial banks with equity capital exceeding $500,000,000 (collectively "Permitted Investments") or in money market funds which are invested solely in Permitted Investments and (ii) shall have maturities that will not prevent or delay payments to be made pursuant to this Agreement and the Indemnity Agreement.

3. EARNINGS. Notwithstanding anything herein to the contrary, all interest and earnings on the cash portion of the Escrow Fund and all dividends and distributions in respect of the Escrow Securities, whether in cash, additional OP Units or REIT Shares (including but not limited to REIT Shares received with respect to a dividend reinvestment plan) or other property received by the Escrow Agent shall not be part of the Escrow Fund, but shall be the property of the Principal and shall be distributed currently to the Principal; provided, that stock dividends made to effect stock splits or similar events in respect of any Escrow Securities shall be retained by the Escrow Agent as part of the Escrow Fund. In the event that Escrow Securities are reclassified or otherwise changed into or exchanged for other securities, property or cash pursuant to any merger, consolidation, sale of assets and liquidation or other transaction, the securities, cash or other property received by the Escrow Agent in respect of the Escrow Securities shall be retained by it as part of the Escrow Fund. The provisions of this Section 3 shall apply to successive distributions. Such stock dividends so made or any securities, property or cash so reclassified or exchanged in respect of an OP Unit or a REIT Share shall be valued in the aggregate at the IPO Price, and any such successive stock dividends, reclassifications or exchanges shall be similarly valued.

4. VOTING. The Principal shall have the right to vote all of the amount of the Escrow Securities. The Escrow Agent will forward to the Principal all notices of shareholders' meetings, proxy statements and reports to shareholders received by the Escrow Agent in respect of (x) the Escrow Securities or (y) the Principal and will either (i) vote the Escrow Securities only in accordance with written instructions received from the Principal or (ii) forward to the Principal a signed proxy (with power of substitution) enabling the Principal to vote such Escrow Securities.

5. DISBURSEMENTS OF ESCROW FUND. From time to time, the Escrow Agent shall disburse all or part of the Escrow Fund in accordance with any written instruction from the REIT or the Operating Partnership (which shall include the amounts of each form of consideration to be disbursed, the person(s) to whom the disbursement is to be made), *provided* that an officer of the REIT or the Operating Partnership certifies that such disbursement instructions (i) have been approved in accordance with Section 4.03 of the Indemnity Agreement, or (ii) represent a distribution to the Principal in accordance with Section 4.04 of the Indemnity Agreement. To the extent a disbursement is made in REIT Shares or OP Units, such disbursement shall be determined at a price per REIT Share or OP Unit equal to the IPO Price. To the extent that any disbursement is made pursuant to this Agreement in the form of Escrow Securities, the Consolidated Entities will purchase (at the IPO Price) such number of the securities as will permit the Escrow Agent to distribute cash in lieu of any fractional shares or OP Units. Prior to disbursing all or part of the Escrow Fund, the Escrow Agent will (i) notify the Principal in writing of the amount of the proposed disbursement and the portion thereof which is to be comprised of cash, REIT Shares or OP Units and (ii) provide the Principal with the opportunity for at least ten (10) Business Days to (A) deposit an amount of cash, REIT Shares and/or OP Units into the Indemnity Holdback Escrow in exchange for an amount of cash, REIT Shares and/or OP Units from the Indemnity Holdback Escrow of equal aggregate value and (B) direct the Escrow Agent to pay the proposed disbursement with an amount of cash, REIT Shares and/or OP Units equal in value to the originally proposed disbursement, but in such proportions as the Principal shall designate to avoid adverse tax consequences. For purposes of the preceding sentence, the value of all REIT Shares and/or OP Units shall be determined at a price

per REIT Share or OP Unit equal to the IPO Price. In the event that the Principal directs the Escrow Agent to pay any proposed disbursement with proportions of cash, REIT Shares or OP Units that differ from those certified by the REIT or the Operating Partnership (and to the extent necessary, the Principal has deposited the necessary amounts of cash, REIT Shares and/or OP Units into the Indemnity Holdback Escrow to make such disbursement), the Escrow Agent shall pay such disbursement in accordance with the proportions of cash, REIT Shares and/or OP Units directed by the Principal rather than in accordance with such proportions certified by the REIT or the Operating Partnership.

6. TERMINATION OF ESCROW FUND. Upon distribution of the entire amount of the Escrow Fund, the Indemnity Holdback Escrow shall terminate, and the Escrow Agent shall give the Consolidated Entities notice to such effect.

7. LIABILITY AND COMPENSATION OF ESCROW AGENT.

(a) The duties and obligations of the Escrow Agent hereunder shall be determined solely by the express provisions of this Agreement, and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent shall, in determining its duties hereunder, be under no obligation to refer to any other documents between or among the parties related in any way to this Agreement (except to the extent that this Agreement specifically refers to or incorporates by reference provisions of any other document, including the Indemnity Agreement). The Consolidated Entities shall indemnify and hold the Escrow Agent harmless from and against any and all liability and expense which may arise out of any action taken or omitted by the Escrow Agent, except such liability and expense as may result from the gross negligence or willful misconduct of the Escrow Agent. The reasonable costs and expenses of the Escrow Agent to enforce its indemnification rights under this Section 7(a) shall also be paid by the Consolidated Entities. The Escrow Agent's indemnification rights under this Section 7 shall survive the termination of this Agreement and removal or resignation of the Escrow Agent. With respect to any claims or actions against the Escrow Agent which are indemnified by the Consolidated Entities under this Section 7, the Consolidated Entities shall have the right to retain sole control over the defense, settlement, investigation and preparation related to such claims or actions; *provided*, that (i) the Escrow Agent may employ its own counsel to defend such a claim or action if it reasonably concludes, based on the advice of counsel, that there are defenses available to it which are different from or additional to those available to the Consolidated Entities, and (ii) neither the Consolidated Entities, on the one hand, nor the Escrow Agent, on the other hand, shall settle or compromise any such claim or action without the consent of the other, which consent shall not be unreasonably withheld or delayed.

(b) The Escrow Agent shall not be liable to any person by reason of any error of judgment or for any act done or step taken or omitted by it, or for any mistake of fact or law or anything which it may do or refrain from doing in connection herewith, unless caused by or arising out of its own gross negligence or willful misconduct.

(c) The Escrow Agent shall be entitled to rely on, and shall be protected in acting in reliance upon, any instructions or directions furnished to it in writing signed by the REIT or the Operating Partnership (so long as the instructions include a certificate signed by an officer that the instruction or direction has been given in compliance with any approval

procedures required under the Indemnity Agreement) and shall be entitled to treat as genuine, and as the document it purports to be, any letter, paper or other document furnished to it by the REIT or the Operating Partnership, and believed by the Escrow Agent to be genuine and to have been signed and presented by the proper party or parties. In performing its obligations hereunder, the Escrow Agent may consult with its counsel and shall be entitled to rely on, and shall be protected in acting in reliance upon, the advice or opinion of such counsel.

(d) The Escrow Agent shall not be entitled to compensation for the services to be rendered by the Escrow Agent hereunder nor shall the Escrow Agent be reimbursed for any costs or expenses incurred by it in connection with the performance of such services.

(e) The Escrow Agent may resign at any time by giving sixty (60) days written notice to the Consolidated Entities; *provided* that such resignation shall not be effective unless and until a successor Escrow Agent has been appointed and accepts such position pursuant to the terms of this Section 7; and *provided further* that any such successor agent shall be entitled to customary fees and reimbursement of expenses for providing its services hereunder. In such event, the Consolidated Entities (with the approval of the Principal) shall appoint a successor Escrow Agent or, if the Consolidated Entities do not do so within sixty (60) days after such notice, the Escrow Agent shall be entitled to (i) appoint its own successor, provided that such successor is reasonably acceptable to the Consolidated Entities or (ii) at the expense of the Consolidated Entities, petition any court of competent jurisdiction for the appointment of a successor Escrow Agent. Such appointment, whether by the Consolidated Entities or the Escrow Agent shall be effective on the effective date of the aforesaid resignation (the "Indemnity Transfer Date"). On the Indemnity Transfer Date, all right title and interest to the Escrow Fund, including interest thereon, shall be transferred to the successor Escrow Agent and this Agreement shall be assigned by the Escrow Agent to such successor Escrow Agent, and thereafter, the resigning Escrow Agent shall be released from any further obligations hereunder. The Escrow Agent shall continue to serve until its successor is appointed, accepts this Agreement and receives the transferred Escrow Fund.

(f) The Escrow Agent shall not have any right, claim or interest in any portion of the Escrow Fund except in its capacity as Escrow Agent hereunder.

8. TAXES. The parties agree to treat the Escrow Fund, and all amounts earned on the Escrow Fund, as owned or earned, as applicable, by the Principal and not the REIT or the Operating Partnership and to file all tax returns on a basis consistent with such treatment. All earnings, dividends, distributions, interest and gains earned or realized ("Earnings") on the Escrow Fund shall be distributed to the Principal as provided in Section 3. All voting rights with respect to the Escrow Securities shall be exercised by the Principal as provided in Section 4. The Escrow Agent shall be entitled to deduct and withhold from the amounts distributable pursuant to this Agreement to the Principal such amounts required to be deducted and withheld with respect to the making of such distributions under the Code or any provision of state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been distributed to the Principal.

9. REPRESENTATIONS AND WARRANTIES. Each of the REIT and the Operating Partnership represents and warrants to the other parties hereto that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; that it has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder; that the execution, delivery and performance of this Agreement has been duly authorized and approved by all necessary action; that this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity; and that the execution, delivery and performance of this Agreement will not result in a breach of or loss of rights under or constitute a default under or a violation of any trust (constructive or other), agreement, judgment, decree, order or other instrument to which it is a party or it or its properties or assets may be bound.

10. BENEFIT; SUCCESSOR AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns but shall not be assignable by any party hereto without the written consent of all of the other parties hereto; *provided, however*, that the Escrow Agent may assign its rights hereunder to a successor Escrow Agent appointed hereunder in accordance with Section 7. Except for the persons specified in the preceding sentence, this Agreement is not intended to confer on any person not a party hereto any rights or remedies hereunder.

11. NOTICES. All notices and other communications hereunder shall be in writing and shall be deemed given when actually received and shall be given by a nationally recognized overnight courier delivery service, certified first class mail or by facsimile (with a confirmatory copy sent by overnight courier) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to the Escrow Agent:

American Assets Trust, Inc.
11455 El Camino Real, Suite 200
San Diego, California 92130
Attention: Chief Executive Officer
Facsimile: (858) 350-2600
Telephone: (858) 350-2620

If to the REIT or the Operating Partnership, to it at:

American Assets Trust, Inc.
11455 El Camino Real, Suite 200
San Diego, California 92130
Attention: Lead Director
Facsimile: (858) 350-2600
Telephone: (858) 350-2620

Any party may designate such other address in writing to all the other parties hereto.

12. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to conflict of laws principles.

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

14. HEADINGS. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

15. SEVERABILITY. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective in the jurisdiction involved to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

16. ENTIRE AGREEMENT; MODIFICATION AND WAIVER. This Agreement and the Indemnity Agreement embody the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersede any and all prior agreements and understandings relating to the subject matter hereof. Notwithstanding the preceding sentence, the parties hereto acknowledge that the Escrow Agent is not a party to nor is it bound by the Indemnity Agreement. No amendment, modification or waiver of this Agreement shall be binding or effective for any purpose unless (i) it is made in a writing signed by the Escrow Agent, the REIT and the Operating Partnership, and (ii) an officer of the Consolidated Entities certifies in writing that the amendment has been approved by the Principal. No course of dealing between the parties to this Agreement shall be deemed to affect or to modify, amend or discharge any provision or term of this Agreement. No delay by any party to or any beneficiary of this Agreement in the exercise of any of its rights or remedies shall operate as a waiver thereof, and no single or partial exercise by any party to or any beneficiary of this Agreement of any such right or remedy shall preclude any other or further exercise thereof. A waiver of any right or remedy on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any other occasion.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

CONSOLIDATED ENTITIES

AMERICAN ASSETS TRUST, INC.
a Maryland corporation

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

AMERICAN ASSETS TRUST, L.P.
a Maryland limited partnership

By: American Assets Trust, Inc.
a Maryland corporation
Its General Partner

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

ESCROW AGENT

AMERICAN ASSETS TRUST, INC.
a Maryland corporation

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

PRINCIPAL

ERNEST RADY TRUST U/D/T MARCH 10, 1983, AS AMENDED

By: /s/ Ernest S. Rady
Name: Ernest S. Rady
Title: Trustee

[Signature Page to Idemnity Escrow Agreement]

Exhibit 10.8

TAX PROTECTION AGREEMENT

This TAX PROTECTION AGREEMENT (this "Agreement") is entered into as of [_____, 2010], by and among American Assets Trust, Inc., a Maryland corporation (the "REIT"), American Assets Trust, L.P., a Maryland limited partnership (the "Operating Partnership"), each Protected Partner identified as a signatory on Schedule I, as amended from time to time, each Guaranty Partner identified as a signatory on Schedule II, as amended from time to time, and each Non-Qualified Liability Partner identified as a signatory on Schedule III, as amended from time to time.

RECITALS

WHEREAS, the REIT desires to consolidate the ownership of a portfolio of properties currently owned, directly or indirectly, by certain entities, as set forth in the Formation Transaction Documentation.

WHEREAS, the Formation Transactions relate to the proposed initial public offering of the common stock of the REIT, par value $.01 per share, following which the REIT will operate as a self-administered and self-managed real estate investment trust within the meaning of Section 856 of the Code (as defined below); and

WHEREAS, as a condition to engaging in the Formation Transactions, and as an inducement to do so, the parties hereto are entering into this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINED TERMS

For purposes of this Agreement the following terms shall apply:

Section 1.1 "50% Termination" has the meaning set forth in Section 1.40.

Section 1.2 "Affiliate" means, with respect to any Person, any Person directly or indirectly controlling or controlled by or under common control with such Person. For the purposes of this definition, "control" when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

Section 1.3 "Agreement" has the meaning set forth in the preamble.

Section 1.4 "Approved Liability" means either:

(a) A liability of the Operating Partnership (or of an entity whose separate existence from the Operating Partnership is disregarded for Federal income tax purposes) with respect to which all of the following requirements are satisfied:

(i) the liability is secured by real property or other assets (the "Collateral") owned directly or indirectly by the Operating Partnership (or by an entity whose separate existence from the Operating Partnership is disregarded for Federal income tax purposes);

(ii) on the date on which the Operating Partnership designated such liability as a Approved Liability, the fair market value (as reasonably determined in good faith by the Operating Partnership) of the Collateral was at least 140% times the outstanding principal amount (and any accrued and unpaid interest) of the liability and any other Approved Liabilities secured by such Collateral at such time, *provided* that if interest on such liability is not required to be paid at least annually or if the documents evidencing such liability permit the borrower to borrow additional amounts that are secured by the Collateral, the outstanding principal amount of such liability shall include the maximum amount that could be so added to the principal amount of such liability without a default, *provided*, *however*, if notwithstanding the Operating Partnership's commercially reasonable efforts, it is unable to make available the Guarantee Opportunities required by this Agreement, 130% shall be substituted for 140% as set forth above;

(iii) the liability constitutes "qualified nonrecourse financing" as defined in Section 465(b)(6) of the Code with respect to the Protected Partners;

(iv) other than guaranties by the Guaranty Partners, no other person has executed any guaranties with respect to such liability; and

(v) the Collateral does not provide security for another liability (other than another Approved Liability) that ranks senior to, or *pari passu* with, the liability described in clause (i) above.

For purposes of determining whether clause (ii) has been satisfied in situations where one or more potential Approved Liabilities are secured by more than one item of Collateral, the Operating Partnership shall allocate such liabilities among such items of Collateral in proportion to their relative fair market values (as reasonably determined in good faith by the Operating Partnership);

(b) A liability of the Operating Partnership that

(i) is not secured by any of the assets of the Operating Partnership and is a general, recourse obligation of the Operating Partnership, and

(ii) is not provided by a lender that has an interest in the Operating Partnership or is related to the Operating Partnership within the meaning of Section 465(b)(3)(C) or the Code;

(c) Solely with respect to the Non-Qualified Liability Amount for each Non-Qualified Liability Partner, the applicable Non-Qualified Liabilities; or

(d) Any other indebtedness approved by the Partners' Representative (or his successor or designee) in his sole and absolute discretion.

Section 1.5 "Closing Date" has the meaning assigned to it in the applicable Pre-Formation Transaction Documentation.

Section 1.6 "Code" means the Internal Revenue Code of 1986, as amended.

Section 1.7 "Collateral" has the meaning set forth in the definition of "Approved Liability."

Section 1.8 "Debt Gross Up Amount" has the meaning set forth in definition of "Make Whole Amount."

Section 1.9 "Debt Notification Event" means, with respect to an Approved Liability, any transaction in which such liability shall be refinanced, otherwise repaid (excluding for this purpose, scheduled payments of principal occurring prior to the maturity date of such liability), or guarantied by any of the REIT, the Operating Partnership, or one or more of their Affiliates, or guarantied by one or more partners of the Operating Partnership.

Section 1.10 "Exchange" has the meaning set forth in Section 2.1(b).

Section 1.11 "Formation Transaction Documentation" means all of the agreements and plans of merger and contribution agreements, substantially in the forms accompanying the Request for Consent and Private Placement Memorandum dated July [__], 2010, pursuant to which all or a portion of the equity interests in certain specified entities are to be acquired by the REIT or the Operating Partnership, directly or indirectly, as part of the Formation Transactions.

Section 1.12 "Formation Transactions" means the transactions contemplated by this Agreement and the other Formation Transaction Documentation.

Section 1.13 "Fundamental Transaction" means a merger, consolidation or other combination of the Operating Partnership with or into any other entity, a transfer of all or substantially all of the assets of the Operating Partnership, any reclassification, recapitalization or change of the outstanding equity interests of the Operating Partnership, or a conversion of the Operating Partnership into another form of entity.

Section 1.14 "Gross Up Amount" has the meaning set forth in definition of "Make Whole Amount."

Section 1.15 "Guarantied Liability" means any Approved Liability or Non-Qualified Liability that is guarantied, in whole or in part, by one or more Guaranty Partners or Non-Qualified Liability Partner, as applicable, in accordance with this Agreement.

Section 1.16 "Guaranty Partner" means: (i) each signatory on Schedule II attached hereto, as amended from time to time; (ii) any person who holds OP Units and who acquired such OP Units from another Guaranty Partner in a transaction in which such person's adjusted basis in such OP Units, as determined for Federal income tax purposes, is determined, in whole or in part, by reference to the adjusted basis of the other Guaranty Partner in such OP Units; and (iii) with respect to a Guaranty Partner that is Pass Through Entity, and solely for purposes of computing the amount to be paid under Section 2.4 with respect to such Guaranty Partner, any person who (y) holds an interest in such Guaranty Partner, either directly or through one or more Pass Through Entities, and (z) is required to include all or a portion of the income of such Guaranty Partner in its own gross income.

Section 1.17 "Guaranty Permissible Liability" means a liability with respect to which the lender permits a guaranty.

Section 1.18 "Guaranty Opportunity" has the meaning set forth in Section 2.4(b).

Section 1.19 "Make Whole Amount" means: (a) with respect to any Protected Partner that recognizes gain under Section 704(c) of the Code as a result of a Tax Protection Period Transfer, *the sum of* (i) *the product of* (x) the income and gain recognized by such Protected Partner under Section 704(c) of the Code in respect of such Tax Protection Period Transfer (taking into account any adjustments under Section 743 of the Code to which such Protected Partner is entitled) *multiplied by* (y) the Make Whole Tax Rate, *plus* (ii) an amount equal to the combined Federal, applicable state and local income taxes (calculated using the Make Whole Tax Rate) imposed on a Protected Partner as a result of the receipt by a Protected Partner of a payment under Section 2.2 (the "Gross Up Amount"); *provided*, *however*, that the Gross Up Amount shall be computed without regard to any losses, credit, or other tax attributes that a Protected Partner might have that would reduce its actual tax liability; and (b) with respect to any Guaranty Partner or Non-Qualified Liability Partner that recognizes gain as a result of a breach by the Operating Partnership of the provisions of Section 2.4 or Section 2.5 hereof, *the sum of* (i) *the product of* (x) the income and gain recognized by such Guaranty Partner or Non-Qualified Liability Partner by reason of such breach, *multiplied by* (y) the Make Whole Tax Rate, *plus* (ii) an amount equal to the combined Federal, applicable state and local income taxes (calculated using the Make Whole Tax Rate) imposed on a Guaranty Partner or Non-Qualified Liability Partner as a result of the receipt by a Guaranty Partner or Non-Qualified Liability Partner of a payment under Section 2.4 or Section 2.5 (the "Debt Gross Up Amount"); *provided*, *however*, that the Debt Gross Up Amount shall be computed without regard to any losses, credit, or other tax attributes that a Guaranty Partner or Non-Qualified Liability Partner might have that would reduce its actual tax liability. For purposes of calculating the amount of Section 704(c) gain that is allocated to a Protected Partner, (i) subject to clause (ii) below, any "reverse Section 704(c) gain" allocated to such partner pursuant to Treasury Regulations § 1.704-3(a)(6) shall not be taken into account, and (ii) if, as a result of adjustments to the Gross Asset Value (as defined in the OP Agreement) of the Protected Properties pursuant to clause (b) of the definition of Gross Asset Value as set forth in the OP Agreement, all or a portion of the gain recognized by the Operating Partnership that would have been Section 704(c) gain without regard to such adjustments becomes or is treated as "reverse Section 704(c) gain" or Section 704(b) gain under Section 704 of the Code, then such gain shall continue to be treated as Section 704(c) gain;

provided that the total amount of 704(c) gain and income taken into account for purpose of calculating the Make Whole Amount shall not exceed the initial Section 704(c) gain amount as of the Closing Date (whether or not equal to the estimated amount set forth on Exhibit B).

Section 1.20 "Make Whole Tax Rate" means, with respect to a Protected Partner who is entitled to receive a payment under Section 2.2 and with respect to a Guaranty Partner or Non-Qualified Liability Partner who is entitled to receive payment under Section 2.4 or Section 2.5, the highest combined statutory Federal, state and local tax rate in respect of the income or gain that gave rise to such payment, taking into account the character of the income and gain in the hands of such Protected Partner, Guaranty Partner or Non-Qualified Liability Partner, as applicable (reduced, in the case of Federal taxes, by the deduction allowed for income taxes paid to a state or locality), for the taxable year in which the event that gave rise to such payment under Section 2.2, Section 2.4 or Section 2.5 occurred. Notwithstanding the foregoing, if a Protected Partner, Guaranty Partner or Non-Qualified Liability Partner demonstrates to the reasonable satisfaction of the Operating Partnership that such Protected Partner, Guaranty Partner or Non-Qualified Liability Partner, as applicable, is not entitled to a Federal income tax deduction for all or a portion of the income taxes paid to a state or locality, the Make Whole Tax Rate applicable to such Protected Partner, Guaranty Partner or Non-Qualified Liability Partner shall be reduced only by the deduction, if any, the Protected Partner, Guaranty Partner or Non-Qualified Liability Partner is entitled to take for such taxes.

Section 1.21 "Non-Qualified Liability" means each of the liabilities set forth on Exhibit D.

Section 1.22 "Non-Qualified Liability Amount" means the amount shown in the column labeled "Non-Qualified Liability Amount" for each Non-Qualified Liability listed below each Non-Qualified Liability Partner's name in Exhibit E.

Section 1.23 "Non-Qualified Liability Period" means the period commencing on the Closing Date and ending on the second anniversary of the Closing Date.

Section 1.24 "Non-Qualified Liability Partner" means: (i) each signatory on Schedule III attached hereto, as amended from time to time; and (ii) any person who holds OP Units and who acquired such OP Units from another Non-Qualified Liability Partner in a transaction in which such person's adjusted basis in such OP Units, as determined for Federal income tax purposes, is determined, in whole or in part, by reference to the adjusted basis of the other Guaranty Partner in such OP Units.

Section 1.25 "OP Agreement" means the Agreement of Limited Partnership of American Assets Trust, L.P., as amended from time to time.

Section 1.26 "OP Units" means common units of partnership interest in the Operating Partnership.

Section 1.27 "Operating Partnership" has the meaning set forth in the preamble.

Section 1.28 "Partners' Representative" means Ernest Rady and his executors, administrators or permitted assigns.

Section 1.29 "Pass Through Entity" means a partnership, grantor trust, or S corporation for Federal income tax purposes.

Section 1.30 "Permitted Disposition" means a sale, exchange or other disposition of OP Units (i) by a Protected Partner or Guaranty Partner: (a) to such Protected Partner's or Guaranty Partner's children, spouse or issue; (b) to a trust for such Protected Partner or Guaranty Partner or such Protected Partner's or Guaranty Partner's children, spouse or issue; (c) in the case of a trust which is a Protected Partner or Guaranty Partner, to its beneficiaries, or any of them, whether current or remainder beneficiaries; (d) to a revocable *inter vivos* trust of which such Protected Partner or Guaranty Partner is a trustee; (e) in the case of any partnership or limited liability company which is a Protected Partner or Guaranty Partner, to its partners or members; and/or (f) in the case of any corporation which is a Protected Partner or Guaranty Partner, to its shareholders, and (ii) by a party described in clauses (a), (b), (c) or (d) to a partnership, limited liability company or corporation of which the only partners, members or shareholders, as applicable, are parties described in clauses (a), (b), (c) or (d); *provided*, that for purposes of the definition of Tax Protection Period, such Protected Partner or Guaranty Partner shall be treated as continuing to own any OP Units which were subject to a Permitted Disposition unless and until there has been a sale, exchange or other disposition of such OP Units by a permitted transferee which is not another Permitted Disposition.

Section 1.31 "Person" means an individual or a corporation, partnership, trust, unincorporated organization, association, limited liability company or other entity.

Section 1.32 "Protected Partner" means: (i) each signatory on Schedule I attached hereto, as amended from time to time; (ii) any person who holds OP Units and who acquired such OP Units from another Protected Partner in a transaction in which such person's adjusted basis in such OP Units, as determined for Federal income tax purposes, is determined, in whole or in part, by reference to the adjusted basis of the other Protected Partner in such OP Units; and (iii) with respect to a Protected Partner that is Pass Through Entity, and solely for purposes of computing the amount to be paid under Section 2.2 with respect to such Protected Partner, any person who (y) holds an interest in such Protected Partner, either directly or through one or more Pass Through Entities, and (z) is required to include all or a portion of the income of such Protected Partner in its own gross income.

Section 1.33 "Protected Property" means each property identified on Exhibit A hereto and each property acquired in Exchange for a Protected Property as set forth in Section 2.1(b).

Section 1.34 "Representation, Warranty and Indemnity Agreement" means that certain Representation, Warranty and Indemnity Agreement, made and entered into as of [ ], 2010, by and amount the REIT, the Operating Partnership and Ernest Rady Trust U/D/T March 10, 1983, as amended.

Section 1.35 "Required Liability Amount" means, with respect to each Guaranty Partner, 110% of such Guaranty Partner's estimated "negative tax capital account" as of the Closing Date, a current estimate of which is set forth on Exhibit C hereto for each such Guaranty Partner.

Section 1.36 "REIT" has the meaning set forth in the preamble.

Section 1.38 "Section 2.4 Notice" has the meaning set forth in Section 2.4(c).

Section 1.39 "Section 2.5 Notice" has the meaning set forth in Section 2.5(c).

Section 1.40 "Tax Protection Period" means the period commencing on the Closing Date and ending on the seventh (7th) anniversary of the Closing Date; *provided*, *however*, that such period shall end with respect to any Protected Partner or Guaranty Partner to the extent that such Partner owns less than fifty percent (50%) of the OP Units originally received by the Protected Partner or Guaranty Partner in the Formation Transactions, disregarding the sale, exchange or other disposition of any such OP Units sold, exchanged or otherwise disposed of by the Protected Partner or Guaranty Partner in a Permitted Disposition (such an event, a "50% Termination"); *provided further, however*, that notwithstanding the forgoing, the Tax Protection Period will terminate for all Protected Partners and Guaranty Partners upon the later of the death of Ernest Rady and the death of his wife.

Section 1.41 "Tax Protection Period Transfer" has the meaning set forth in Section 2.1(a).

Section 1.42 "Transfer" means any direct or indirect sale, exchange, transfer or other disposition, whether voluntary or involuntary.

Section 1.43 "Treasury Regulations" means the income tax regulations under the Code, whether such regulations are in proposed, temporary or final form, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

ARTICLE II

TAX PROTECTIONS

Section 2.1 Taxable Transfers.

(a) Unless the Partners' Representative expressly consents in writing to a Tax Protection Period Transfer (for the avoidance of doubt, no vote in favor of a Tax Protection Period Transfer by the Partners' Representative or any of its Affiliates or by a Protected Partner, in each case in its capacity as owner shares of the REIT or OP Units, shall constitute consent), during the Tax Protection Period, the Operating Partnership shall indemnify the Protected Partners as set forth in Section 2.2 if the Operating Partnership or any entity in which the Operating Partnership holds a direct or indirect interest shall cause or permit (i) any Transfer of all or any portion of a Protected Property (including any interest therein or in the entity owning, directly or indirectly, the Protected Property) in a transaction that would result in the recognition of taxable income or gain by any Protected Partner under Section 704(c) of the Code, or (ii) any Fundamental Transaction that would result in the recognition of taxable income or gain to any Protected Partner (a Fundamental Transaction and a Transfer, collectively a "Tax Protection Period Transfer").

(b) Section 2.1(a) shall not apply to any Tax Protection Period Transfer of a Protected Property (including any interest therein or in the entity owning, directly or indirectly, the Protected Property): (i) in a transaction in which no gain is required to be recognized by a Protected Partner (an "Exchange"), including a transaction qualifying under Section 1031 or Section 721 (or any successor statutes) of the Code; *provided*, *however*, that any property acquired by the Operating Partnership in the Exchange shall remain subject to the provisions of this Article II in place of the exchanged Protected Property for the remainder of the Tax Protection Period; (ii) as a result of the condemnation or other taking of any Protected Property by a governmental entity in an eminent domain proceeding or otherwise, provided that the Operating Partnership shall use commercially reasonable efforts to structure such disposition as either a tax-free like-kind exchange under Section 1031 or a tax-free reinvestment of proceeds under Section 1033, provided that in no event shall the Operating Partnership be obligated to acquire or invest in any property that it otherwise would not have acquired or invested in.

(c) For any taxable Transfer of all or any portion of any property of the Operating Partnership which is not a Tax Protection Period Transfer, the Operating Partnership shall use commercially reasonable efforts to cooperate with the Limited Partners to minimize any taxes payable by the Limited Partners in connection with any such Transfers.

Section 2.2 Indemnification for Taxable Transfers.

(a) In the event of a Tax Protection Period Transfer described in Section 2.1(a), each Protected Partner shall, within 30 days after the closing of such Tax Protection Period Transfer, receive from the Operating Partnership an amount of cash equal to the estimated Make Whole Amount applicable to such Tax Protection Period Transfer. If it is later determined that the true Make Whole Amount applicable to a Protected Partner exceeds the estimated Make Whole Amount applicable to such Protected Partner, then the Operating Partnership shall pay such excess to such Protected Partner within 90 days after the closing of the Tax Protection Period Transfer, and if such estimated Make Whole Amount exceeds the true Make Whole Amount, then such Protected Partner shall promptly refund such excess to the Operating Partnership, but only to the extent such excess was actually received by such Protected Partner.

(b) Notwithstanding any provision of this Agreement to the contrary, the sole and exclusive rights and remedies of any Protected Partner under Section 2.1(a) shall be a claim against the Operating Partnership for the Make Whole Amount as set forth in this Section 2.2, and no Protected Partner shall be entitled to pursue a claim for specific performance of the covenants set forth in Section 2.1(a) or bring a claim against any person that acquires a Protected Property from the Operating Partnership in violation of Section 2.1(a).

Section 2.3 Section 704(c) Gains. A good faith estimate of the initial amount of Section 704(c) gain allocable to each Protected Partner as of the Closing Date of each OP Merger is set forth on Exhibit B hereto. The parties acknowledge that the initial amount of such Section 704(c) gain may be adjusted over time as required by Section 704(c) of the Code and the Regulations promulgated thereunder.

Section 2.4 Approved Liability Maintenance and Allocation.

(a) During the Tax Protection Period, the Operating Partnership shall: (1) maintain on a continuous basis an amount of Approved Liabilities at least equal to the Required Liability Amount; and (2) provide the Partners' Representative, promptly upon request, with a description of the nature and amount of any Approved Liabilities that are available to be guarantied by the Guaranty Partners pursuant to Section 2.4(b) of this Agreement. For the avoidance of doubt, and notwithstanding any other provision of this Agreement, the Operating Partnership shall not be required to maintain any amount of Approved Liabilities in excess of the aggregate Required Liability Amount of all Guaranty Partners.

(b) (i) During the Tax Protection Period, the Operating Partnership shall provide each Guaranty Partner with the opportunity to execute a guaranty, substantially in the form attached hereto as Exhibit F or otherwise in a form and manner that is reasonably acceptable to the Partners' Representative, of one or more Approved Liabilities that are Guaranty Permissible Liabilities in an amount up to such Guaranty Partner's Required Liability Amount (each such opportunity and each opportunity required by Section 2.4(c), Section 2.5(b), and Section 2.5(c), a "Guaranty Opportunity"), and (ii) after the Tax Protection Period, and for so long as a Guaranty Partner has not had a 50% Termination, the Operating Partnership shall use commercially reasonable efforts to make Guaranty Opportunities available to each Guaranty Partner, provided that in the case of this clause (ii), the Operating Partnership shall not be required to incur any indebtedness that it would not otherwise have incurred, as determined by the Operating Partnership in its reasonable discretion; *provided*, *however*, that in the case of clauses (i) and (ii) the aggregate amount of all guaranties required to be made available by the Operating Partnership for execution by all Guaranty Partners need not exceed the aggregate Required Liability Amount of all Guaranty Partners. The Operating Partnership shall have the discretion to identify the Approved Liability or Approved Liabilities that shall be made available for guaranty by each Guaranty Partner. Each Guaranty Partner and its indirect owners may allocate the Guaranty Opportunity afforded to such Guaranty Partner in any manner they choose. The Operating Partnership agrees to file its tax returns allocating any debt subject to a Guaranty to the applicable Guaranty Partners. Each Guaranty Partner shall bear the costs incurred by it in connection with the execution of any guaranty to which it is a party. To the extent a Guaranty Partner executes a guaranty, the Operating Partnership shall deliver a copy of such guaranty to the lender under the Guarantied Liability promptly after receiving such copy from the relevant Guaranty Partner.

(c) During the Tax Protection Period, the Operating Partnership shall not allow a Debt Notification Event to occur unless the Operating Partnership provides at least thirty (30) days' written notice (a "Section 2.4 Notice") to each Guaranty Partner that may be affected thereby. The Section 2.4 Notice shall describe the Debt Notification Event and designate one or more Approved Liabilities that may be guarantied by the Guaranty Partners pursuant to Section 2.4(b) of this Agreement in an amount equal to the amount of the refinanced or repaid Approved Liability that was guarantied by such Guaranty Partner immediately prior to the date of the refinancing or repayment. Any Guaranty Partner that desires to execute a guaranty following the receipt of a Section 2.4 Notice shall provide the Operating Partnership with notice thereof within fifteen (15) days after the date of the Section 2.4 Notice.

(d) Provided the Operating Partnership satisfies its obligations under Section 2.4(a), (b) and (c) of this Agreement, it shall have no liability to a Guaranty Partner

under Section 2.4(e) for breach of Section 2.4, whether or not such Guaranty Partner accepts its Guaranty Opportunity. Furthermore, the Operating Partnership makes no representation or warranty to any Guaranty Partner concerning the treatment or effect of any guaranty under Federal, state, local, or foreign tax law, and bears no responsibility for any tax liability of any Guaranty Partner or Affiliate thereof that is attributable to a reallocation, by a taxing authority, of debt subject to a guaranty (other than a reallocation that results from any act or omission taken by the Operating Partnership or one of its Affiliates in violation of this Section 2.4 or an act or omission that is indemnifiable under Section 2.4(e) of this Agreement).

(e) If the Operating Partnership shall fail to comply with any provision of this Section 2.4, the Operating Partnership shall pay, within thirty (30) days of such failure, a Make Whole Payment to each Guaranty Partner who recognizes income or gain as a result of such failure equal to the estimated Make Whole Amount applicable to such failure. If it is determined that the true Make Whole Amount applicable to a Guaranty Partner exceeds the estimated Make Whole Amount applicable to such Guaranty Partner, then the Operating Partnership shall pay such excess to such Guaranty Partner within thirty (30) days after the date of such determination, and if such estimated Make Whole Amount exceeds the true Make Whole Amount, then such Guaranty Partner shall pay such excess to the Operating Partnership within thirty (30) days after the date of such determination, but only to the extent such excess was actually received by such Guaranty Partner.

(f) Notwithstanding any provision of this Agreement to the contrary, the sole and exclusive rights and remedies of any Guaranty Partner for a breach or violation of the covenants set forth in Section 2.4 shall be a claim a claim against the Operating Partnership for the Make Whole Amount as set forth in Section 2.4(e), and no Guaranty Partner shall be entitled to pursue a claim for specific performance of the covenants set forth in Section 2.4.

(g) Notwithstanding any provision of this Section 2.4 to the contrary, to the extent a Guaranty Partner is also a Non-Qualified Liability Partner that has guaranteed Non-Qualified Liabilities pursuant to Section 2.5, the amount of such guaranteed liabilities shall be treated as the Operating Partnership's satisfaction of that amount of its obligation to provide a Guaranty Opportunity under this Section 2.4, and such liabilities shall be treated as an Approved Liability for purposes of this Section 2.4, including for purposes of determining whether a Section 2.4 Notice and substitute Approved Liability are required.

Section 2.5 Non-Qualified Liability Maintenance and Allocation.

(a) During the Non-Qualified Liability Period, the Operating Partnership shall not repay any Non-Qualified Liability (excluding any scheduled payments of principal occurring pursuant to the terms of such Non-Qualified Liability) which has been guarantied by a Non-Qualified Liability Partner pursuant to Section 2.5(b) unless: (i) the Operating Partnership repays such Non-Qualified Liability with proceeds generated by its incurrence of other liabilities which each such Non-Qualified Liability Partner is offered an opportunity to guaranty; or (ii) the Partners' Representative consents in writing to such repayment.

(b) During the Non-Qualified Liability Period, the Operating Partnership shall use commercially reasonable efforts to provide each Non-Qualified Liability Partner with the opportunity to execute a guaranty, substantially in the form attached hereto as Exhibit F or otherwise in a form and manner that is reasonably acceptable to the Partners' Representative, of each Non-Qualified Liability listed below such Non-Qualified Liability Partner's name in Exhibit E in an amount up to such Non-Qualified Liability Partner's Non-Qualified Liability Amount. Each Non-Qualified Liability Partner and its indirect owners may allocate the Guaranty Opportunity afforded to such Non-Qualified Liability Partner in any manner they choose. The Operating Partnership agrees to file its tax returns allocating any Guarantied Liability to the applicable Non-Qualified Liability Partners. Each Non-Qualified Liability Partner shall bear the costs incurred by it in connection with the execution of any guaranty to which it is a party. To the extent a Non-Qualified Liability Partner executes a guaranty, the Operating Partnership shall deliver a copy of such guaranty to the lender under the Guarantied Liability promptly after receiving such copy from the relevant Non-Qualified Liability Partner.

(c) During the Non-Qualified Liability Period, if the Operating Partnership intends to repay any Non-Qualified Liability with proceeds generated by its incurrence of other liabilities as provided in Section 2.5(a)(i), the Operating Partnership shall provide at least thirty (30) days' written notice (a "Section 2.5 Notice") to each Non-Qualified Liability Partner that may be affected thereby. The Section 2.5 Notice shall describe which Non-Qualified Liability is being repaid and the nature and amount of the liability, if any, being incurred to repay such Non-Qualified Liability. The Operating Partnership shall use commercially reasonable efforts to make available to each affected Non-Qualified Liability Partner the opportunity to guaranty any such newly-incurred liability in the same manner as provided in Section 2.5(b) in an amount equal to the amount of the repaid Non-Qualified Liability that was guarantied by such Non-Qualified Liability Partner immediately prior to the date of the repayment. Any Non-Qualified Liability Partner that desires to execute a guaranty following the receipt of a Section 2.5 Notice shall provide the Operating Partnership with notice thereof within fifteen (15) days after the date of the Section 2.5 Notice.

(d) Provided the Operating Partnership satisfies its obligations under Section 2.5(a), (b) and (c) of this Agreement, it shall have no liability to any Non-Qualified Liability Partner for breach of Section 2.5, whether or not such Non-Qualified Liability Partner accepts its Guaranty Opportunity. For the avoidance of doubt, and notwithstanding any other provision of this Agreement, the Operating Partnership shall have no liability to any Non-Qualified Liability Partner if the Operating Partnership is unable, despite its commercially reasonable efforts, to provide each Non-Qualified Liability Partner with the opportunity to guaranty a Non-Qualified Liability. Furthermore, the Operating Partnership makes no representation or warranty to any Non-Qualified Liability Partner concerning the treatment or effect of any guaranty under Federal, state, local, or foreign tax law, and bears no responsibility for any tax liability of any Non-Qualified Liability Partner or Affiliate thereof that is attributable to a reallocation, by a taxing authority, of debt subject to a guaranty (other than a reallocation that results from any act or omission taken by the Operating Partnership or one of its Affiliates in violation of this Section 2.5).

(e) If the Operating Partnership shall fail to comply with any provision of this Section 2.5, the Operating Partnership shall pay, within thirty (30) days of such failure, a Make Whole Payment to each Non-Qualified Liability Partner who recognizes income or gain as a result of such failure equal to the estimated Make Whole Amount applicable to such failure. If it is determined that the true Make Whole Amount applicable to a Non-Qualified Liability Partner exceeds the estimated Make Whole Amount applicable to such Non-Qualified Liability Partner, then the Operating Partnership shall pay such excess to such Non-Qualified Liability Partner within thirty (30) days after the date of such determination, and if such estimated Make Whole Amount exceeds the true Make Whole Amount, then such Non-Qualified Liability Partner shall pay such excess to the Operating Partnership within thirty (30) days after the date of such determination, but only to the extent such excess was actually received by such Non-Qualified Liability Partner.

(f) Notwithstanding any provision of this Agreement to the contrary, no Non-Qualified Liability Partner shall be entitled to pursue a claim for specific performance of the covenants set forth in Section 2.5.

Section 2.7 Dispute Resolution. Any controversy, dispute, or claim of any nature arising out of, in connection with, or in relation to the interpretation, performance, enforcement or breach of this Agreement (and any closing document executed in connection herewith) shall be governed by Section 5.08 of the Representation, Warranty and Indemnity Agreement.

ARTICLE III

GENERAL PROVISIONS

Section 3.1 Notices. All notices, demands, declarations, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms of this Agreement shall be given in the same manner as in the OP Agreement.

Section 3.2 Titles and Captions. All Article or Section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to “Articles” and “Sections” are to Articles and Sections of this Agreement.

Section 3.3 Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 3.4 Further Action. The parties shall execute and deliver all documents, provide all information and take or refrain form taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 3.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 3.6 Creditors. Other than as expressly set forth herein, none of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Operating Partnership.

Section 3.7 Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any covenant, duty, agreement or condition.

Section 3.8 Counterparts. This Agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto.

Section 3.9 Applicable Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of California, without regard to the principles of conflicts of law.

Section 3.10 Invalidity of Provisions. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of other remaining provisions contained herein shall not be affected thereby.

Section 3.11 Entire Agreement. This Agreement contains the entire understanding and agreement among the Partners with respect to the subject matter hereof and amends, restates and supersedes the OP Agreement and any other prior written or oral understandings or agreements among them with respect thereto.

Section 3.12 No Rights as Stockholders. Nothing contained in this Agreement shall be construed as conferring upon the holders of the OP Units any rights whatsoever as stockholders of the REIT, including, without limitation, any right to receive dividends or other distributions made to stockholders of the REIT or to vote or to consent or to receive notice as stockholders in respect of any meeting of stockholders for the election of directors of the REIT or any other matter.

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

REIT:

AMERICAN ASSETS TRUST, INC.,
a Maryland corporation

By: _____
Name: _____
Title: _____

OPERATING PARTNERSHIP:

AMERICAN ASSETS TRUST, L.P.,
a Maryland limited partnership

By: AMERICAN ASSETS TRUST, INC.
a Maryland corporation,
Its General Partner

By: _____
Name: _____
Title : _____

SCHEDULE I

PROTECTED PARTNERS

See attached.

SCHEDULE II

GUARANTY PARTNERS

See attached.

SCHEDULE III

NON-QUALIFIED LIABILITY PARTNERS

See attached.

EXHIBIT A

PROTECTED PROPERTIES

Property Name

Carmel Country Plaza
Carmel Mountain Plaza
Del Monte Center
ICW Plaza
Loma Palisades
Lomas Santa Fe Plaza
Waikele Center

EXHIBIT B

ESTIMATED ALLOCATIONS OF SECTION 704(c) GAIN

See attached.

EXHIBIT C

REQUIRED LIABILITY AMOUNT

See attached.

EXHIBIT D

NON-QUALIFIED LIABILITIES

See attached.

EXHIBIT E

NON-QUALIFIED LIABILITY AMOUNT

See attached.

EXHIBIT F

FORM OF GUARANTY

See attached.

Exhibit 10.9

AGREEMENT AND PLAN OF MERGER

DATED AS OF SEPTEMBER 13, 2010

BY AND AMONG

AMERICAN ASSETS TRUST, L.P.,
a Maryland limited partnership

AND

THE FORWARD OP MERGER ENTITIES
as set forth on Schedule I hereto

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of September 13, 2010, by and among American Assets Trust, L.P., a Maryland limited partnership (the "Operating Partnership") and a subsidiary of American Assets Trust, Inc., a Maryland corporation (the "REIT"), and the entities identified on Schedule I hereto as "Forward OP Merger Entities" (each a "Forward OP Merger Entity" and, collectively the "Forward OP Merger Entities").

RECITALS

WHEREAS, the REIT desires to consolidate the ownership of a portfolio of properties currently owned, directly or indirectly, by certain entities each as described on Schedule I hereto;

WHEREAS, concurrently with the execution of this Agreement, each of the entities identified on Schedule I hereto as "Forward REIT Merger Entities" (the "Forward REIT Merger Entities") will enter into an agreement and plans of merger with the REIT pursuant to which each such Forward REIT Merger Entity will merge with and into the REIT in the order set forth in Section 1.01 and the equity interest in each Forward REIT Merger Entity will be converted automatically into the right to receive cash, without interest, or shares of common stock of the REIT, par value $.01 per share (the "REIT Shares");

WHEREAS, concurrently with the execution of this Agreement, the REIT will enter into agreements and plans of merger with certain American Assets Entities identified as "REIT Sub Forward Merger Entities" on Schedule I hereto (the "REIT Sub Forward Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, each of the REIT Sub Forward Merger Entities will merge with and into wholly owned subsidiaries of the REIT;

WHEREAS, immediately following the completion of the mergers described in the preceding paragraphs, the REIT will contribute to the Operating Partnership, (i) all of the rights and obligations of the Forward REIT Merger Entities acquired by the REIT as a result of the mergers between it and the Forward REIT Merger Entities and (ii) all of the REIT's interests in the surviving entities of the mergers of the REIT Sub Forward Merger Entities with and into wholly owned subsidiaries of the REIT;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, will enter into a contribution agreement with certain holders (the "Contributors") of interests in certain American Assets Entities identified as "Contributed Entities" on Schedule I hereto, pursuant to which, immediately following the completion of the mergers and contributions described in the preceding paragraphs, each Contributor shall contribute to the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, respectively, all of the Contributor's interests in the applicable American Assets Entity (the "Contributed Interest"), and the Operating Partnership, or such subsidiary, as applicable, shall acquire from each Contributor all of each Contributor's right, title and interest as a holder of the Contributed Interests;

WHEREAS, pursuant to this Agreement each Forward OP Merger Entity, immediately following the mergers and contributions identified in the preceding paragraphs, will merge with and into the Operating Partnership in the order set forth in Section 1.01 (the "Mergers") and each partnership or membership interest in each Forward OP Merger Entity (the "Forward OP Merger Entity Interests") will be converted automatically as set forth herein into the right to receive cash, without interest, common units of partnership interest in the Operating Partnership (the "OP Units"), REIT Shares, or a combination of the foregoing;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Assets Entities identified as "OP Sub Forward Merger Entities" on Schedule I hereto (collectively, the "OP Sub Forward Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, each OP Sub Forward Merger Entity will merge with and into a separate wholly-owned subsidiary of the Operating Partnership;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Assets Entities identified as "OP Sub Reverse Merger Entities" on Schedule I hereto (collectively, the "OP Sub Reverse Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraphs, a separate wholly-owned subsidiary of the Operating Partnership will merge with and into each OP Sub Reverse Merger Entity;

WHEREAS, in lieu of one or more of the mergers described in the preceding paragraphs and at the same time as such mergers would have otherwise occurred, certain holders (the "Consenting Holders") of interests in certain American Assets Entities shall contribute to the Operating Partnership, or a wholly owned subsidiary of the Operating Partnership, all of their interests in the applicable American Assets Entity, and the Operating Partnership shall acquire from each Consenting Holder, all of each Consenting Holder's right, title and interest as a holder of interests in such American Assets Entities;

WHEREAS, the Formation Transactions relate to the proposed initial public offering (the "IPO") of the REIT Shares, following which the REIT will operate as a self-administered and self-managed real estate investment trust within the meaning of Section 856 of the Code;

WHEREAS, in accordance with applicable state law for each of the Forward OP Merger Entities, each Forward OP Merger Entity may be merged with another entity, subject to the requisite approvals as provided in applicable state law;

WHEREAS, the REIT, as the general partner of the Operating Partnership has approved and authorized the Mergers and the other Formation Transactions in accordance with the Maryland Revised Uniform Limited Partnership Act (the "MLPA") and the partnership agreement of the Operating Partnership;

WHEREAS, the managing member, manager or general partner, as applicable, of each Forward OP Merger Entity has each determined that it is advisable and in the best interests of each Forward OP Merger Entity, and its respective equity holders and limited partners, as the case may be, to proceed with the Mergers and the other Formation Transactions on the terms described in this Agreement; and

WHEREAS, each Forward OP Merger Entity has obtained the requisite approval of its respective limited partners, members or investors (and lenders, as applicable) to the Mergers and the other Formation Transactions, applicable to each Forward OP Merger Entity.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and other terms contained in this Agreement, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I
THE MERGERS

Section 1.01 THE MERGERS. At the Effective Time (as defined below), and subject to and upon the terms and conditions of this Agreement and in accordance with applicable Laws, each Forward OP Merger Entity shall be merged with and into the Operating Partnership in the order specified in Exhibit D, whereby the separate existence of each Forward OP Merger Entity shall cease, and the Operating Partnership shall continue its existence under Maryland law as the surviving entity (hereinafter sometimes referred to as the "Surviving Entity").

Section 1.02 EFFECTIVE TIME. Subject to and upon the terms and conditions of this Agreement, concurrently with or as soon as practicable after (i) the execution by the REIT and the Operating Partnership of the Underwriting Agreement and (ii) the satisfaction or waiver of the conditions set forth in Article VII, the Operating Partnership and each of the Forward OP Merger Entities shall file articles of merger or similar documents with respect to each Merger (the "Certificates of Merger") as may be required by applicable Laws, with the State Department of Assessments and Taxation of Maryland ("SDAT"), the Secretary of State of the State of Delaware, and each other jurisdiction applicable to each Forward OP Merger Entity providing that each Merger shall become effective upon filing or at such later date and time set forth in the Certificate of Merger with respect to such Merger that is not more than thirty (30) days after the acceptance of the Certificate of Merger by the SDAT for record (the "Effective Time"), together with any certificates and other filings or recordings related thereto, in such forms as are required by, and executed in accordance with the relevant provisions of applicable Laws.

Section 1.03 EFFECT OF THE MERGERS. At the Effective Times, which shall be in the order specified in Exhibit D, the effect of the Mergers shall be as provided in this Agreement, the Certificates of Merger and applicable Laws.

Section 1.04 ORGANIZATIONAL DOCUMENTS. At the Effective Time, (i) the certificate of limited partnership of the Operating Partnership, as in effect immediately prior to the Effective Time, shall be the certificate of limited partnership of the Surviving Entity until thereafter amended as provided therein or in accordance with the MLPA, and (ii) the agreement of limited partnership of the Operating Partnership, as amended and restated and in effect immediately prior to the Effective Time (the "Operating Partnership Agreement"), shall be the agreement of limited partnership of the Surviving Entity until thereafter amended as provided therein or in accordance with the MLPA.

Section 1.05 CONVERSION OF FORWARD OP MERGER ENTITY INTERESTS.

(a) Under and subject to the terms and conditions of the respective Formation Transaction Documentation, as the result of an irrevocable election indicated on a Consent Form submitted by a Pre-Formation Participant or as a result of the failure of a Pre-Formation Participant to submit a Consent Form, each Pre-Formation Participant is irrevocably bound to accept and entitled to receive, as a result of and upon consummation of the Mergers or other Formation Transactions, a specified share of the sponsors' value of the American Assets Entities as a whole in the form of the right to receive cash, REIT Shares and/or OP Units as calculated in this Section 1.05.

At the Effective Time, by virtue of the Mergers and without any action on the part of the parties hereto, except as set forth in Section 1.05(b), each Forward OP Merger Entity Interest shall be converted automatically into the right to receive cash, OP Units and/or REIT Shares with an aggregate value equal to the portion of Equity Value represented by such Forward OP Merger Entity Interest (collectively referred to as the "Merger Consideration") and each holder that receives OP Units in the Mergers shall, upon receipt of such OP Units and the delivery of a Consent Form or a counterpart signature page to the Operating Partnership Agreement and such other documents and instruments as may be required in the sole discretion of the REIT to effect such holder's admission as a limited partner of the Operating Partnership, be admitted as a limited partner of the Operating Partnership in accordance with the MLPA and the Operating Partnership Agreement.

Subject to Section 1.07 and Section 2.02(c), the amount of cash, number of OP Units and/or REIT Shares comprising the Merger Consideration for each Forward OP Merger Entity Interest so converted shall be as follows:

(i) Cash: One hundred percent (100%) of the Allocated Share for each Forward OP Merger Entity Interest held by a Pre-Formation Participant who is not an Accredited Investor shall be paid in cash.

(ii) OP Units. The Elected OP Unit Percentage of the Allocated Share for each Forward OP Merger Entity Interest or portion thereof held by a Pre-Formation Participant who is an Accredited Investor shall be distributed in the form of a number of OP Units equal to the applicable portion of such Allocated Share divided by the IPO Price.

(iii) REIT Shares. The Elected REIT Shares Percentage of the Allocated Share for each Forward OP Merger Entity Interest or portion thereof held by a Pre-Formation Participant who is an Accredited Investor shall be distributed in the form of a number of REIT Shares equal to the applicable portion of such Allocated Share divided by the IPO Price; *provided that*, to the extent such distribution of REIT Shares to the holder of the Forward OP Merger Entity Interests would result in a violation of the restrictions on ownership and transfer set forth in Section 6.3 of the REIT's charter (the "Ownership Limits"), such holder shall receive (x) the maximum number of whole REIT Shares that would not result in such a violation of the Ownership Limits, and (y) that number of OP Units equal to the remaining number of REIT Shares not distributed as a result of the application of the foregoing clause (x).

(b) Each Forward OP Merger Entity Interest issued and outstanding immediately prior to the Effective Time that is owned by the REIT, the Operating Partnership or any of their direct or indirect wholly-owned Subsidiaries (having been previously acquired by the REIT, the Operating Partnership or any such Subsidiary thereof pursuant to the other Formation Transactions) shall remain issued and outstanding, and no consideration shall be delivered hereunder in exchange therefor.

Section 1.06 CANCELLATION AND RETIREMENT OF FORWARD OP MERGER ENTITY INTERESTS. From and after the Effective Time, (i) each Forward OP Merger Entity Interest converted into the right to receive the Merger Consideration pursuant to Section 1.05(a) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of such Forward OP Merger Entity Interest so converted shall thereafter cease to have any rights as a partner or member of any Forward OP Merger Entity except the right to receive the Merger Consideration applicable thereto, and (ii) each Forward OP Merger Entity Interest issued and outstanding that is owned by the REIT, the Operating Partnership or any of their direct or indirect wholly-owned Subsidiaries shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist and no consideration shall be delivered hereunder in exchange therefor.

Section 1.07 FRACTIONAL INTERESTS. No fractional OP Units or REIT Shares shall be issued in the Mergers. All fractional OP Units that a holder of Forward OP Merger Entity Interests would otherwise be entitled to receive as a result of the Mergers and the other Formation Transactions shall be aggregated, and each holder shall receive the number of whole OP Units resulting from such aggregation and, in lieu of any fractional OP Unit resulting from such aggregation, an amount in cash determined by multiplying that fraction of an OP Unit to which such holder would otherwise have been entitled, by the IPO Price. All fractional REIT Shares that a holder of Forward OP Merger Entity Interests would otherwise be entitled to receive as a result of the Mergers and the other Formation Transactions shall be aggregated, and each holder shall receive the number of whole REIT Shares resulting from such aggregation and, in lieu of any fractional REIT Share resulting from such aggregation, an amount in cash determined by multiplying that fraction of a REIT Share to which such holder would otherwise have been entitled, by the IPO Price. No interest will be paid or will accrue on any cash paid or payable in lieu of any fractional OP Unit or REIT Share.

Section 1.08 CALCULATION OF MERGER CONSIDERATION. As soon as practicable following the determination of the IPO Price and prior to the Effective Time, all calculations relating to the Merger Consideration shall be performed in good faith by, or under the direction of, the REIT, and, absent manifest error, shall be final and binding upon the holders of Forward OP Merger Entity Interests.

Section 1.09 TRANSACTION COSTS. If the Closing occurs, the REIT and the Operating Partnership shall be solely responsible for all transaction costs and expenses of the REIT, the Operating Partnership and the American Assets Entities in connection with the Formation Transactions and the IPO, which include, but are not limited to, the underwriting discounts and commissions. In the event the Closing does not occur, each party shall be responsible for its allocable portion of such costs and expenses in accordance with the terms of those certain letter agreements identified on Schedule II.

ARTICLE II

CLOSING; TERM OF AGREEMENT

Section 2.01 CLOSING. Unless this Agreement shall have been terminated pursuant to Section 2.05, and subject to the satisfaction or waiver of the conditions in Article VII, the filing of the Certificates of Merger, the Effective Time and the closing of the other transactions contemplated by this Agreement shall occur substantially concurrently with the receipt by the REIT of the proceeds from the IPO from the underwriters (the "Closing" or the "Closing Date") in the order set forth on Exhibit D. The Closing shall take place at the offices of Latham & Watkins LLP, 12636 High Bluff Drive, Suite 400 San Diego, California 92130 or such other place as determined by the REIT in its sole discretion. The Closing hereunder and the closing of the IPO shall be deemed concurrent for all purposes.

Section 2.02 PAYMENT OF MERGER CONSIDERATION.

(a) As soon as reasonably practicable after the Effective Time, the Surviving Entity (or its successor in interest) shall deliver to each holder of Forward OP Merger Entity Interests, whose Forward OP Merger Entity Interests have been converted into the right to receive the Merger Consideration pursuant to Section 1.05(a) hereof, the Merger Consideration payable to such holder in the amounts and form provided in Section 1.05(a) hereof. The issuance of the OP Units and admission of the recipients thereof as limited partners of the Operating Partnership pursuant to Section 1.05(a) shall be evidenced by an amendment to Exhibit A to the Operating Partnership Agreement, and the Operating Partnership shall deliver, or cause to be delivered, an executed copy of such amendment to each Pre-Formation Participant receiving OP Units hereunder. Any certificate representing REIT Shares issuable as Merger Consideration shall bear the following legend:

> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS THE TRANSFEROR DELIVERS TO THE CORPORATION AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION, TO THE EFFECT THAT THE PROPOSED SALE, TRANSFER OR OTHER DISPOSITION MAY BE EFFECTED WITHOUT REGISTRATION UNDER THE ACT AND UNDER APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON BENEFICIAL AND CONSTRUCTIVE OWNERSHIP AND TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). SUBJECT TO CERTAIN FURTHER RESTRICTIONS AND EXCEPT AS EXPRESSLY PROVIDED IN THE CORPORATION'S CHARTER, (I) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF THE CORPORATION'S COMMON STOCK IN EXCESS OF [__]% (IN VALUE OR NUMBER OF SHARES) OF THE OUTSTANDING SHARES OF COMMON STOCK OF THE CORPORATION UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (II) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK OF THE CORPORATION IN EXCESS OF [__]% OF THE VALUE OF THE TOTAL OUTSTANDING SHARES OF CAPITAL STOCK OF THE CORPORATION, UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (III) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN CAPITAL STOCK THAT WOULD RESULT IN THE CORPORATION BEING "CLOSELY HELD" UNDER SECTION 856(h) OF THE CODE OR OTHERWISE CAUSE THE CORPORATION TO FAIL TO QUALIFY AS A REIT; AND (IV) NO PERSON MAY TRANSFER SHARES OF CAPITAL STOCK IF SUCH TRANSFER WOULD RESULT IN THE CAPITAL STOCK OF THE CORPORATION BEING OWNED BY FEWER THAN 100 PERSONS. ANY PERSON WHO BENEFICIALLY OR CONSTRUCTIVELY OWNS OR ATTEMPTS TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK WHICH CAUSES OR WILL CAUSE A PERSON TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK IN EXCESS OR IN VIOLATION OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE CORPORATION. IF ANY OF THE RESTRICTIONS ON TRANSFER OR OWNERSHIP SET FORTH IN (I) THROUGH (III) ABOVE ARE VIOLATED, THE SHARES OF CAPITAL STOCK REPRESENTED HEREBY WILL BE AUTOMATICALLY TRANSFERRED TO A TRUSTEE OF A TRUST FOR THE BENEFIT OF ONE OR MORE CHARITABLE BENEFICIARIES. IN ADDITION, THE CORPORATION MAY TAKE OTHER ACTIONS, INCLUDING REDEEMING SHARES UPON THE TERMS AND CONDITIONS SPECIFIED BY THE BOARD OF DIRECTORS IN ITS SOLE AND ABSOLUTE DISCRETION IF THE BOARD OF DIRECTORS DETERMINES THAT OWNERSHIP OR A TRANSFER OR OTHER EVENT MAY VIOLATE THE RESTRICTIONS DESCRIBED ABOVE. FURTHERMORE, UPON THE OCCURRENCE OF CERTAIN EVENTS, ATTEMPTED TRANSFERS IN VIOLATION OF THE RESTRICTIONS DESCRIBED ABOVE MAY BE VOID *AB INITIO*. ALL UNDERLINED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN THE CHARTER OF THE CORPORATION, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER AND OWNERSHIP, WILL BE FURNISHED TO EACH HOLDER OF CAPITAL STOCK OF THE CORPORATION ON REQUEST AND WITHOUT CHARGE. REQUESTS FOR SUCH A COPY MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL OFFICE.

(b) The Surviving Entity (or its successor in interest) shall not be liable to any holder of a Forward OP Merger Entity Interest for any portion of the Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(c) So long as some portion of the Merger Consideration with respect to an American Assets Entity is in the form of OP Units, the parties hereto intend and agree that, for United States federal income tax purposes, the Merger of each such entity shall constitute an "assets-over" partnership merger within the meaning of Treasury Regulations Section 1.708-1(c)(3)(i), and, as a result, that (i) any payment of cash or REIT Shares for the Forward OP Merger Entity Interests of such holder in such entity shall be treated as a sale of such Forward OP Merger Entity Interests by the holder and a purchase of such Forward OP Merger Entity Interests by the Operating Partnership for the cash and/or REIT Shares so paid under the terms of this Agreement in accordance with Treasury Regulations Section 1.708-1(c)(4), and (ii) each such holder of the Forward OP Merger Entity Interests who accepts cash and/or REIT Shares shall explicitly agree and consent (the "Sale Consent") to such treatment in their Consent Form as a condition to electing such consideration. To the extent the Operating Partnership acquires any Forward OP Merger Entity Interests as described above, or previously acquired such interest, for United States federal income tax purposes the receipt by the Operating Partnership of the portion of property attributable to such Forward OP Merger Entity Interests shall be treated as a distribution by a Forward OP Merger Entity in redemption of such Forward OP Merger Entity Interests. Notwithstanding Section 1.05(a) and any holder's election as to the form of their Merger Consideration, if any holder (other than a non-accredited investor), fails to execute a Sale Consent prior to the Closing, such holder's Merger Consideration shall consist solely of OP Units. Any cash paid as the Merger Consideration to a non-accredited investor for a Forward OP Merger Entity Interest shall be paid only after the receipt of a Sale Consent from such holder.

Section 2.03 TAX WITHHOLDING. The Operating Partnership and each Forward OP Merger Entity shall be entitled to deduct and withhold from the consideration payable pursuant to this Agreement to any holder of a Forward OP Merger Entity Interest such amounts required to be deducted and withheld with respect to the making of such payment under the Code or any provision of state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the Forward OP Merger Entity Interests in respect of which such deduction and withholding was made.

Section 2.04 FURTHER ACTION. If, at any time after the Effective Time, the Surviving Entity shall determine or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Entity the right, title or interest in, to or under any of the rights, properties or assets of any Forward OP Merger Entity acquired or to be acquired by the Surviving Entity as a result of, or in connection with, the Mergers or otherwise to carry out this

Agreement, the Surviving Entity shall be authorized to execute and deliver, in the name and on behalf of any Forward OP Merger Entity or otherwise, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of any Forward OP Merger Entity or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Entity or otherwise to carry out this Agreement.

Section 2.05 TERM OF THE AGREEMENT. This Agreement shall terminate automatically if (i) the initial registration statement of the REIT for the IPO (the "Registration Statement") has not been filed with the Securities and Exchange Commission ("SEC") by March 31, 2011, or (ii) the Mergers shall not have been consummated on or prior to December 31, 2011 (such date is hereinafter referred to as the "Outside Date").

Section 2.06 EFFECT OF TERMINATION. In the event of termination of this Agreement for any reason, all obligations on the part of the Operating Partnership and each Forward OP Merger Entity under this Agreement shall terminate, except that the obligations set forth in Article VIII shall survive; it being understood and agreed, however, for the avoidance of doubt, that if this Agreement is terminated because one or more of the conditions to a non-breaching party's obligations under this Agreement are not satisfied by the Outside Date as a result of the other party's material breach of a covenant, representation, warranty or other obligation under this Agreement or any other Formation Transaction Documentation, the non-breaching party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE OPERATING PARTNERSHIP

The Operating Partnership hereby represents and warrants to each Forward OP Merger Entity as follows:

Section 3.01 ORGANIZATION; AUTHORITY.

(a) The Operating Partnership has been duly formed and is validly existing and in good standing under the Laws of its jurisdiction of formation, and, upon the effectiveness of the Operating Partnership Agreement, will have all requisite power and authority to enter into this Agreement and the other Formation Transaction Documentation and to carry out the transactions contemplated hereby and thereby, and to own, lease and/or operate its property and to carry on its business as presently conducted and, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

(b) Schedule 3.01(b) sets forth as of the date hereof, (i) each Subsidiary of the Operating Partnership (each an "Operating Partnership Subsidiary"), (ii) the ownership interest therein of the Operating Partnership, and (iii) if not wholly owned by the Operating Partnership,

the identity and ownership interest of each of the other owners of such Operating Partnership Subsidiary. Each Operating Partnership Subsidiary has been duly organized or formed and is validly existing and is in good standing under the Laws of its jurisdiction of organization or formation, as applicable, has all requisite power and authority to own, lease and/or operate its property and to carry on its business as presently conducted and, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.02 DUE AUTHORIZATION. The execution, delivery and performance of this Agreement and the other Formation Transaction Documentation (including each agreement, document and instrument executed and delivered by or on behalf of the Operating Partnership pursuant to this Agreement or the other Formation Transaction Documentation) by the Operating Partnership has been duly and validly authorized by all necessary actions required of the Operating Partnership. This Agreement, the other Formation Transaction Documentation and each agreement, document and instrument executed and delivered by or on behalf of the Operating Partnership pursuant to this Agreement or the other Formation Transaction Documentation constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of the Operating Partnership, enforceable against the Operating Partnership in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.03 CONSENTS AND APPROVALS. Except for the filing of the Certificates of Merger in accordance with Section 1.02 hereof or in connection with the IPO and the consummation of the other Formation Transactions, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration or filing with, any Person or Governmental Authority or under any applicable Laws is required to be obtained by the Operating Partnership in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby and thereby, except for (i) those consents, waivers, approvals, authorizations, orders, licenses, permits, registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect, or (ii) those consents of the Pre-Formation Participants under the Organizational Documents of the applicable American Assets Entity, the failure of which to obtain would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.04 NO VIOLATION. None of the execution, delivery or performance of this Agreement, the other Formation Transaction Documentation, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the organizational documents of the Operating Partnership, (B) any agreement, document or instrument to which the Operating Partnership or any of its assets are bound or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on the Operating Partnership, except for, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.05 VALIDITY OF OP UNITS. Any OP Units to be issued pursuant to this Agreement will have been duly authorized and, when issued against the consideration therefor, will be validly issued by the Operating Partnership, free and clear of all Liens created by the Operating Partnership (other than any Liens created by the Operating Partnership Agreement).

Section 3.06 OPERATING PARTNERSHIP AGREEMENT. Attached as Exhibit B hereto is a true and correct copy of the Operating Partnership Agreement in substantially final form.

Section 3.07 LIMITED ACTIVITIES. Except for activities in connection with the IPO, the Formation Transactions or in the ordinary course of business, the Operating Partnership and the Operating Partnership Subsidiaries have not engaged in any material business or incurred any material obligations.

Section 3.08 LITIGATION. Except for actions, suits or proceedings covered by policies of insurance, there is no action, suit or proceeding pending or, to the knowledge of the Operating Partnership, threatened against the Operating Partnership or any Operating Partnership Subsidiary, other than actions, suits, proceedings arising in the ordinary course of business from the ownership and operation of the Operating Partnership, that individually or in the aggregate, would not reasonably be expected, (a) if adversely determined, to have an OP Material Adverse Effect, or (b) to challenge or impair the ability of the Operating Partnership to execute or deliver, or materially perform its obligations under, this Agreement and the documents executed by it pursuant to this Agreement or to consummate the transactions contemplated hereby or thereby, to such an extent as would result in an OP Material Adverse Effect.

Section 3.09 NO BROKER. The Operating Partnership has not entered into, and covenants that it will not enter into, any agreement, arrangement or understanding with any Person or firm which will result in the obligation of any Forward OP Merger Entity or any Affiliates thereof to pay any finder’s fee, brokerage commission or similar payment in connection with the transaction contemplated by this Agreement (other than underwriting discounts, commissions and other fees and expenses to be paid by the REIT in connection with the IPO and any related financing transactions).

Section 3.10 NO IMPLIED REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article III, the Operating Partnership, shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby. All representations, warranties and covenants of the Operating Partnership contained in this Agreement shall expire at the Closing.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE FORWARD OP MERGER ENTITIES

Except as disclosed in the Prospectus or the schedules attached hereto, each Forward OP Merger Entity represents and warrants to the Operating Partnership that the following statements are true and correct solely with respect to such Forward OP Merger Entity as of the Closing Date:

Section 4.01 ORGANIZATION; AUTHORITY.

(a) Each Forward OP Merger Entity has been duly organized and is validly existing and in good standing under the Laws of its jurisdiction of formation and has all requisite power and authority to enter into this Agreement, each agreement contemplated hereby and the other Formation Transaction Documentation to which it is a party (including any agreement, document and instrument executed and delivered by or on behalf of such Forward OP Merger Entity pursuant to this Agreement or the other Formation Transaction Documentation) and to carry out the transactions contemplated hereby and thereby, and to own, lease and/or operate any Property owned, leased and/or operated by it and to carry on its business as presently conducted. Each Forward OP Merger Entity, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of a Property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect.

(b) Schedule 4.01(b) sets forth as of the date hereof with respect to such Forward OP Merger Entity (i) each Subsidiary of such Forward OP Merger Entity (each a "Forward OP Merger Entity Subsidiary"), (ii) the ownership interest therein of such Forward OP Merger Entity, (iii) if not wholly owned by such Forward OP Merger Entity, the identity and ownership interest of each of the other owners of such Subsidiary, and (iv) each property owned or leased pursuant to a ground lease by such Forward OP Merger Entity or such Subsidiary (each a "Property"). Such Forward OP Merger Entity Subsidiary has been duly organized and is validly existing and is in good standing under the Laws of its jurisdiction of organization, and has all requisite power and authority to own, lease and/or operate its Property and to carry on its business as presently conducted. Such Forward OP Merger Entity Subsidiary, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its Property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect.

Section 4.02 DUE AUTHORIZATION. The execution, delivery and performance by such Forward OP Merger Entity of this Agreement and the other Formation Transaction Documentation (including any agreement, document and instrument executed and delivered by or on behalf of such Forward OP Merger Entity pursuant to this Agreement or the other Formation Transaction Documentation) to which it is a party have been duly and validly

authorized by all necessary actions required of such Forward OP Merger Entity. This Agreement, the other Formation Transaction Documentation and each agreement, document and instrument executed and delivered by or on behalf of such Forward OP Merger Entity pursuant to this Agreement or the other Formation Transaction Documentation constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of such Forward OP Merger Entity, each enforceable against such Forward OP Merger Entity in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.03 CAPITALIZATION. Schedule 4.03 sets forth as of the date hereof the ownership of such Forward OP Merger Entity. All of the issued and outstanding equity interests of such Forward OP Merger Entity and each Forward OP Merger Entity Subsidiary are duly authorized, validly issued and fully paid; and, to the knowledge of such Forward OP Merger Entity, are not subject to preemptive rights, transfer restrictions, or appraisal, dissenters' or other similar rights under the Organizational Documents of or any contract to which such Forward OP Merger Entity is a party or otherwise bound, except for such preemptive rights, transfer restrictions, or appraisal, dissenters' or other similar rights as would not prevent the Merger. There are no outstanding rights to purchase, subscriptions, warrants, options or any other security convertible into or exchangeable for equity interests in such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries.

Section 4.04 CONSENTS AND APPROVALS. Except as shall have been obtained or satisfied on or prior to the Closing Date, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration or filing with, any Person or any Governmental Authority or under any applicable Laws is required to be obtained by such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries in connection with the execution, delivery and performance of this Agreement, the other Formation Transaction Documentation to which such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries is a party and the transactions contemplated hereby and thereby, except for those consents, waivers, approvals, authorizations, orders, licenses, permits, registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect.

Section 4.05 NO VIOLATION. None of the execution, delivery or performance of this Agreement, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the Organizational Documents of such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries or (B) any agreement, document or instrument to which such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries or any of their respective assets or properties are bound by or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries, except for, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect.

Section 4.06 LICENSES AND PERMITS. To the knowledge of such Forward OP Merger Entity, all notices, licenses, permits, certificates and authorizations required for the continued use, occupancy, management, leasing and operation of the Properties have been obtained or can be obtained without material cost, are in full force and effect, are in good standing and (to the extent required in connection with the transactions contemplated by the Formation Transaction Documentation) are assignable to the Operating Partnership, except in each case for items that, if not so obtained, obtainable and/or transferred, would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect. To the knowledge of such Forward OP Merger Entity neither such Forward OP Merger Entity, nor its Forward OP Merger Entity Subsidiaries, nor any third party has taken any action that (or failed to take any action the omission of which) would result in the revocation of any such notice, license, permit, certificate or authorization where such revocation or revocations would, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect, nor has any one of them received any written notice of violation from any Governmental Authority or written notice of the intention of any entity to revoke any such notice, license, permit, certificate or authorization, that in each case has not been cured or otherwise resolved to the satisfaction of such Governmental Authority or other entity and except as would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Adverse Effect.

Section 4.07 COMPLIANCE WITH LAWS. To the knowledge of such Forward OP Merger Entity, such Forward OP Merger Entity and its Forward OP Merger Entity Subsidiaries have conducted their respective businesses in compliance with all applicable Laws, except for such failures that would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Adverse Effect. To the knowledge of such Forward OP Merger Entity, neither such Forward OP Merger Entity, nor its Forward OP Merger Entity Subsidiaries, nor any third party has been informed in writing of any continuing violation of any such Laws or that any investigation has been commenced and is continuing or is contemplated respecting any such possible violation, except in each case for violations that would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect.

Section 4.08 PROPERTIES.

(a) Except as set forth in Schedule 4.08(a), such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiary is the insured under a policy of title insurance as the owner of, and, to the knowledge of such Forward OP Merger Entity**,** such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiary is the owner of, the fee simple estate (or, in the case of certain Properties, the leasehold estate or the tenancy-in-common estate) to the Property owned by such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiary, in each case free and clear of all Liens except for Permitted Liens. Prior to the effective time of the merger contemplated hereby, neither such Forward OP Merger Entity nor any of its Forward OP Merger Entity Subsidiaries shall take or omit to take any action to cause any Lien to attach to any Property, except for Permitted Liens and Liens, if any, given to secure mortgage indebtedness encumbering such Property.

(b) Except for matters that would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect, to the knowledge of such Forward OP Merger Entity, (1) neither such Forward OP Merger Entity nor its Forward OP Merger Entity Subsidiaries, nor any other party to any material agreement affecting any Property (other than a Lease (as such term is hereinafter defined) for space within such Property), is in breach or default of any such agreement, (2) no event has occurred or has been threatened in writing, which with or without the passage of time or the giving of notice, or both, would, individually or together with all such other events, constitute a default under any such agreement, or would, individually or together with all such other events, reasonably be expected to cause the acceleration of any material obligation of any party thereto or the creation of a Lien upon any asset of such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries, except for Permitted Liens, and (3) all agreements affecting any Property required for the continued use, occupancy, management, leasing and operation of such Property (exclusive of space Leases) are valid and binding and in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

(c) To the knowledge of such Forward OP Merger Entity, as presently conducted, none of the operation of the buildings, fixtures and other improvements comprising a part of the Properties is in violation of any applicable building code, zoning ordinance or other "land use" Law, except for such violations that would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect.

(d) Except for matters that would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect, (1) to the knowledge of such Forward OP Merger Entity, neither such Forward OP Merger Entity, nor its Forward OP Merger Entity Subsidiaries, nor any other party to any Lease, is in breach or default of any such Lease, (2) to the knowledge of such Forward OP Merger Entity, no event has occurred or has been threatened in writing, which with or without the passage of time or the giving of notice, or both, would, individually or together with all such other events, constitute a default under any Lease or would permit termination, modification or acceleration under such Lease, and (3) to the knowledge of such Forward OP Merger Entity, each of the leases (and all amendments thereto or modifications thereof) to which such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries is a party or by which such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries or any Property is bound or subject (collectively, the "Leases") is valid and binding and in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.09 INSURANCE. Such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries has in place the public liability, casualty and other insurance coverage with respect to each Property owned, leased and/or managed by it as such Forward OP Merger Entity reasonably deems necessary and in all cases including such coverage as is required under the terms of any continuing loan or Lease. Each of the insurance policies with respect to each Property is in full force and effect in all material respects and all premiums due and payable thereunder have been fully paid when due. To the knowledge of such Forward OP Merger Entity, neither such Forward OP Merger Entity nor its Forward OP Merger Entity Subsidiaries have received from any insurance company any notices of cancellation or intent to cancel any insurance.

Section 4.10 ENVIRONMENTAL MATTERS. Except for matters that would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect, to the knowledge of such Forward OP Merger Entity, (A) such Forward OP Merger Entity and its Forward OP Merger Entity Subsidiaries are in compliance with all Environmental Laws, (B) neither such Forward OP Merger Entity nor its Forward OP Merger Entity Subsidiaries have received any written notice from any Governmental Authority or third party alleging that such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries or any Property is not in compliance with applicable Environmental Laws, and (C) there has not been a release of a hazardous substance on any of the Properties that would require investigation or remediation under applicable Environmental Laws. The representations and warranties contained in this Section 4.10 constitute the sole and exclusive representations and warranties made by such Forward OP Merger Entity concerning environmental matters.

Section 4.11 EMINENT DOMAIN. There is no existing or, to the knowledge of such Forward OP Merger Entity, proposed or threatened condemnation, eminent domain or similar proceeding, or private purchase in lieu of such a proceeding which would affect any of the Properties, except for such proceedings that would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect.

Section 4.12 EXISTING LOANS. Schedule 4.12 lists, as of the date hereof, all secured loans presently encumbering the Properties or any direct or indirect interest in the applicable Forward OP Merger Entity, and any unsecured loans relating thereto to be assumed by the Operating Partnership or any Subsidiary of the Operating Partnership at Closing (the "Disclosed Loans").

Section 4.13 FRANCHISE AGREEMENTS. To the knowledge of such Forward OP Merger Entity, the hotel franchise agreement set forth on Schedule 4.13 ("Franchise Agreement") is the only hotel franchise agreement in effect for any Property. Except as set forth on Schedule 4.13, neither the applicable Forward OP Merger Entity nor any of its Forward OP Merger Entity Subsidiaries, nor, to the knowledge of such Forward OP Merger Entity, any other party to the Franchise Agreement, is in breach or default of the Franchise Agreement, except for such breach or default that would not, individually or in the aggregate, reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect.

Section 4.14 FINANCIAL STATEMENTS. The financial statements of such Forward OP Merger Entity included in the Prospectus have been prepared in all material respects in accordance with generally accepted accounting principles applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto), subject, in the case of unaudited statements, to normal year-end audit adjustments, and fairly present in all material respects the financial condition and results of operations of such Forward OP Merger Entity as of the dates indicated therein and for the periods ended as indicated therein.

Section 4.15 TAXES. Except as set forth in Schedule 4.15, (i) such Forward OP Merger Entity and each of its Forward OP Merger Entity Subsidiaries have timely and properly filed all Tax returns and reports required to be filed by it (after giving effect to any filing extension properly granted by a Governmental Authority having authority to do so), and all such returns and reports are accurate and complete in all material respects, and has paid (or had paid on its behalf) all Taxes as required to be paid by it, (ii) no income or material non-income Tax returns filed by such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries are the subject of a pending or ongoing audit, and (iii) except as would not have a Forward OP Merger Entity Material Adverse Effect, no deficiencies for any Taxes have been proposed, asserted or assessed against such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries, and no requests for waivers of the time to assess any such Taxes are pending. Except as set forth in Schedule 4.15, since its formation, for U.S. federal income tax purposes, such Forward OP Merger Entity has been treated as a partnership, or an entity disregarded from a partnership, and not as a corporation or an association taxable as a corporation, and each of its Forward OP Merger Entity Subsidiaries has been treated as a partnership or disregarded entity and not as a corporation or an association taxable as a corporation.

Section 4.16 LITIGATION. Except for actions, suits or proceedings covered by policies of insurance, to the knowledge of such Forward OP Merger Entity, there is no action, suit or proceeding pending or, to the knowledge of such Forward OP Merger Entity, threatened against or affecting such Forward OP Merger Entity, its Forward OP Merger Entity Subsidiaries or Properties, or any officer, director, principal, managing member, general partner or Affiliate of any of the foregoing other than actions, suits, proceedings arising in the ordinary course of business from the ownership and operation, which, if adversely determined would not have a Forward OP Merger Entity Material Adverse Effect. There is no action, suit, or proceeding pending or, to the knowledge of such Forward OP Merger Entity, threatened against or affecting such Forward OP Merger Entity, its Forward OP Merger Entity Subsidiaries or any officer, director, principal, managing member, general partner or Affiliate of any of the foregoing which challenges or impairs the ability of such Forward OP Merger Entity to execute or deliver, or materially perform its obligations under this Agreement and the documents executed by it pursuant to this Agreement or to consummate the transactions contemplated hereby or thereby. Except for matters covered by insurance, there is no judgment, decree, injunction, rule or order of a Governmental Authority outstanding against such Forward OP Merger Entity, its Forward OP Merger Entity Subsidiaries or any officer, director, principal, managing member or general partner of any of the foregoing in their capacity as such, which would reasonably be expected to have a Forward OP Merger Entity Material Adverse Effect.

Section 4.17 NO INSOLVENCY PROCEEDINGS. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to such Forward OP Merger Entity's knowledge, threatened against such Forward OP Merger Entity, nor are any such proceedings contemplated by such Forward OP Merger Entity.

Section 4.18 SECURITIES LAW MATTERS. Such Forward OP Merger Entity acknowledges that: (i) the REIT and Operating Partnership intend the offer and issuance of any REIT Shares or OP Units to any Pre-Formation Participants to be exempt from registration under the Securities Act and applicable state securities laws by virtue of the status of such partner or member as an "accredited investor" (within the meaning of Rule 501(a) of Regulation D under the Securities Act) acquiring any REIT Shares or OP Units in a transaction exempt from

registration pursuant to Rule 506 of Regulation D under the Securities Act, and (ii) in issuing any REIT Shares or OP Units pursuant to the terms of this Agreement, the REIT and Operating Partnership are relying on the representations made by each partner or member electing to receive REIT Shares or OP Units as consideration in the Merger, which representations were set forth in Appendix D to the Request for Consent – Accredited Investor Representations Letter.

Section 4.19 NO BROKER. Such Forward OP Merger Entity has not entered into, and it covenants that it will not enter into, any agreement, arrangement or understanding with any Person or firm which will result in the obligation of the Operating Partnership or any Affiliate to pay any finder's fee, brokerage commission or similar payment in connection with the transaction contemplated by this Agreement (other than underwriting discounts, commissions and other fees and expenses to be paid by the REIT in connection with the IPO and any related financing transactions).

Section 4.20 NO IMPLIED REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article IV and any other agreement entered into in connection with the Formation Transactions to which it is a party, such Forward OP Merger Entity shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby.

Section 4.21 OWNERSHIP OF CERTAIN ASSETS. Except as set forth in Schedule 4.21, no such Forward OP Merger Entity nor any Forward OP Merger Entity Subsidiary owns any loan assets or other securities of any issuer except for equity interests in other American Assets Entities.

Section 4.22 SURVIVAL OF REPRESENTATIONS AND WARRANTIES OF THE FORWARD OP MERGER ENTITIES. The parties hereto agree and acknowledge that the representations and warranties set forth in this Article IV (other than Section 4.01, Section 4.02, Section 4.03, Section 4.18 and Section 4.23) shall not survive the Closing.

Section 4.23 NON-FOREIGN STATUS. Neither such Forward OP Merger Entity nor any of its Forward OP Merger Subsidiaries is a foreign person (as defined in the Code).

ARTICLE V

COVENANTS AND OTHER AGREEMENTS

Section 5.01 PRE-CLOSING COVENANTS. During the period from the date hereof to the Closing Date (except as otherwise provided for or contemplated by this Agreement or in connection with the Formation Transactions), each Forward OP Merger Entity shall use commercially reasonable efforts to (and shall cause each of its Forward OP Merger Entity Subsidiaries to) conduct its businesses and operate and maintain the Properties in the ordinary course of business consistent with past practice, pay its debt obligations as they become due and payable, and use commercially reasonable efforts to preserve intact its current business organizations and preserve its relationships with customers, tenants, suppliers, advertisers and

others having business dealings with it, in each case consistent with past practice. In addition, and without limiting the generality of the foregoing, during the period from the date hereof to the Closing Date and except in connection with the Formation Transactions, each Forward OP Merger Entity shall not (and shall not permit any of its Forward OP Merger Entity Subsidiaries to) without the prior written consent of the Operating Partnership, which consent may be withheld by the Operating Partnership in its sole discretion:

(a)(i) other than distributions to the equity holders of such Forward OP Merger Entity in connection with such holders' payment of any Taxes related to their ownership of the equity of the Forward OP Merger Entity or as otherwise contemplated by this Agreement, declare, set aside or pay any distributions in respect of any Forward OP Merger Entity Interests, except in the ordinary course of business consistent with past practice and in accordance with the applicable governing document of such Forward OP Merger Entity, (ii) issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for any Forward OP Merger Entity Interests or make any other changes to the equity capital structure of such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries, or (iii) purchase, redeem or otherwise acquire any Forward OP Merger Entity Interests or interests of its Forward OP Merger Entity Subsidiaries or any other securities thereof;

(b) issue, deliver, sell, transfer, dispose, mortgage, pledge, assign or otherwise encumber, or cause the issuance, delivery, sale, transfer, disposition, mortgage, pledge, assignment or otherwise encumbrance of, any limited liability company, partnership interests or other equity interests of such Forward OP Merger Entity or of its Forward OP Merger Entity Subsidiaries or any other assets of such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries;

(c) amend, modify or terminate any lease, contract or other instruments relating to the Property, except in the ordinary course of business consistent with past practice;

(d) amend its certificate of formation, certificate of organization, limited partnership agreement, limited liability company agreement or operating agreement, as applicable;

(e) adopt a plan of liquidation, dissolution, merger, consolidation, restructuring, recapitalization or reorganization;

(f) materially alter the manner of keeping such Forward OP Merger Entity's or its Forward OP Merger Entity Subsidiaries' books, accounts or records or the accounting practices therein reflected;

(g) file an entity classification election pursuant to Treasury Regulation Section 301.7701-3(c) on Internal Revenue Service Form 8832 (Entity Classification Election) to treat such Forward OP Merger Entity or its Forward OP Merger Entity Subsidiaries as an association taxable as a corporation for United States federal income tax purposes; make or change any other Tax elections; settle or compromise any claim, notice, audit report or assessment in respect of Taxes; change any annual Tax accounting period; adopt or change any method of Tax accounting; file any amended Tax return; enter into any tax allocation agreement, tax sharing agreement, tax indemnity agreement or closing agreement relating to any Tax; surrender of any right to claim a Tax refund; or consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment;

(h) terminate or amend any existing insurance policies affecting any Property that results in a material reduction in insurance coverage for the Property;

(i) knowingly cause or permit such Forward OP Merger Entity to violate, or fail to use commercially reasonable efforts to cure any violation of, any applicable Laws; or

(j) authorize, commit or agree to take any of the foregoing actions.

Section 5.02 CONSENT AND WAIVER OF RIGHTS UNDER ORGANIZATIONAL DOCUMENTS. As of the Closing, each of the Forward OP Merger Entities waives and relinquishes all rights and benefits otherwise afforded to such Forward OP Merger Entity (a) under its Organizational Documents including, without limitation, any rights of appraisal, rights of first offer or first refusal, buy/sell agreements, put, option or similar parallel exit or dissenter rights in connection with the Formation Transactions and the IPO and any right to consent to or approve of the sale or contribution or other transaction undertaken by any partner or member, as applicable, of such Forward OP Merger Entity of their Forward OP Merger Entity Interests to the Operating Partnership or any Affiliate thereof and any and all notice provisions related thereto and (b) for claims against the REIT or the Operating Partnership for breach by any of their respective present or former officers, directors, managing members, general partners or Affiliates of their fiduciary duties or similar obligations (including duties of disclosure) to any of their respective present or former shareholders, members, partners, equity interest holders or Affiliates. Each of the Forward OP Merger Entities acknowledges that the agreements contained herein and the transactions contemplated hereby and any actions taken in contemplation of the transactions contemplated hereby may conflict with, and may not have been contemplated by, the Organizational Documents of each of the Forward OP Merger Entities or other agreements among one or more holders of Forward OP Merger Entities Interests or one or more of the partners or members, as applicable, of any of the Forward OP Merger Entities. With respect to each of the Forward OP Merger Entities and each Property in which the Forward OP Merger Entity Interests represent a direct or indirect interest, each of the Forward OP Merger Entities expressly give all consents (and any consents necessary to authorize the proper parties in interest to give all consents) and waivers it is entitled to give that are necessary or desirable to facilitate the contribution or other Formation Transactions relating to such Forward OP Merger Entity or such Property. In addition, if the transactions contemplated hereby occur, this Agreement shall be deemed to be an amendment to the Organizational Documents of each of the Forward OP Merger Entities to the extent the terms herein conflict with the terms thereof, including without limitation, terms with respect to allocations, distributions and the like. In the event the transactions contemplated by this Agreement do not occur, nothing in this Agreement shall be deemed to be or construed as an amendment or modification of, or commitment of any kind to amend or modify, the Organizational Documents of any of the Forward OP Merger Entities, which shall remain in full force and effect without modification.

Section 5.03 EXCLUDED ASSETS. Prior to or, as specified on Schedule 5.03, as soon as possible following the Closing and after such amounts are reasonably determinable, each Forward OP Merger Entity shall distribute or cause to be distributed or paid out the assets identified on Schedule 5.03 (the "Excluded Assets").

ARTICLE VI

ADDITIONAL AGREEMENTS

Section 6.01 COMMERCIALLY REASONABLE EFFORTS BY THE OPERATING PARTNERSHIP AND THE FORWARD OP MERGER ENTITIES. Each of the Operating Partnership and each Forward OP Merger Entity shall use commercially reasonable efforts and cooperate with each other in (i) promptly determining whether any filings are required to be made or consents, approvals, waivers, permits or authorizations are required to be obtained (under any applicable Law or regulation or from any Governmental Authority or third party) in connection with the transactions contemplated by this Agreement, and (ii) promptly making (or causing to be made) any such filings, in furnishing information required in connection therewith and in timely seeking to obtain any such consents, approvals, waivers, permits and authorizations.

Section 6.02 TAX MATTERS.

(a) Each Forward OP Merger Entity and its Subsidiaries shall timely file or cause to be timely filed when due all Tax returns required to be filed by or with respect to such Person on or prior to the Closing Date and shall pay or cause to be paid all Taxes shown due thereon. All such Tax returns (including, for the avoidance of doubt, any amended Tax returns) shall be prepared in a manner consistent with past practice, except as otherwise required by applicable Law.

(b) The Operating Partnership shall prepare or cause to be prepared and file or cause to be filed all income Tax returns of each Forward OP Merger Entity and each of their Subsidiaries which are due after the Closing Date. All such income Tax returns (including, for the avoidance of doubt, any amended Tax returns) shall be prepared in a manner consistent with past practice, except as otherwise required by applicable Law. No later than ten (10) days prior to the due date (including extensions) for filing such income Tax returns, the Operating Partnership shall deliver such income Tax returns to American Assets, Inc. for its review and approval, which shall not be unreasonably withheld.

(c) The Operating Partnership shall prepare or cause to be prepared all other Tax returns of each Forward OP Merger Entity and each of their respective Subsidiaries.

(d) In accordance with Section 704(c) of the Code, the Operating Partnership shall adopt and use only the so-called “traditional method” described in Treasury Regulation Section 1.704-3(b) with respect to any properties transferred directly or indirectly by a Forward OP Merger Entity to the Operating Partnership as a result of the Formation Transactions, and therefore shall not make any curative or remedial allocations with respect to such properties.

Section 6.03 WITHHOLDING CERTIFICATE. Prior to Closing, each Forward OP Merger Entity shall deliver to the Operating Partnership such forms and certificates, duly executed and acknowledged, in form and substance reasonably satisfactory to the Operating Partnership (including any relevant forms or certificates provided to the Forward OP Merger Entity by the holders of Forward OP Merger Entity Interests), certifying that the payment of consideration in each Merger is exempt from withholding under Section 1445 of the Code and any similar withholding rules under applicable state, local or foreign Tax Laws.

Section 6.04 TAX ADVICE. The Operating Partnership makes no representations or warranties to any Forward OP Merger Entity or any holder of a Forward OP Merger Entity Interest regarding the Tax treatment of the Mergers or the other Formation Transactions, or with respect to any other Tax consequences to any Forward OP Merger Entity or any holder of a Forward OP Merger Entity Interest of this Agreement, the Mergers or the other Formation Transactions. Each Forward OP Merger Entity acknowledges that such Forward OP Merger Entity and the holders of Forward OP Merger Entity Interests are relying solely on their own Tax advisors in connection with this Agreement, the Mergers and the other Formation Transactions and agreements contemplated hereby.

Section 6.05 ALTERNATE TRANSACTION. In the event that the Operating Partnership determines that a structure change is necessary, advisable or desirable, the Operating Partnership may elect, in its sole and absolute discretion, to effect the Alternate Transaction, and in such case each Forward OP Merger Entity hereby agrees and consents to such election, without the need for the Operating Partnership to seek any further consent or action from such Forward OP Merger Entity, and agrees that the parties shall undertake the Alternate Transaction and shall, and it shall cause its members or partners, as applicable, and Subsidiaries to, enter into such agreements as shall be necessary to consummate the Alternate Transaction.

Section 6.06 EXCLUSION OF ENTITIES. The parties hereby agree that the Operating Partnership shall have the right, in its sole discretion, to exclude any of the Forward OP Merger Entities from the Mergers after the date hereof until the Effective Time, provided that the Operating Partnership shall provide prior written notice to such Forward OP Merger Entity regarding such exclusion.

ARTICLE VII

CONDITIONS PRECEDENT

Section 7.01 CONDITION TO EACH PARTY'S OBLIGATIONS. The respective obligation of each party to effect the Mergers and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date is subject to the satisfaction or waiver on or prior to the Effective Time of the following conditions:

(a) REGISTRATION STATEMENT. The Registration Statement shall have become effective under the Securities Act and shall not be the subject of any stop order or proceedings by the SEC seeking a stop order. This condition may not be waived by any party.

(b) NO INJUNCTION. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, judgment, injunction, stay or other order (whether temporary, preliminary or permanent), in any

case which is in effect and which prevents or prohibits consummation of any of the transactions contemplated in this Agreement nor shall any of the same brought by a Governmental Authority of competent jurisdiction be pending or threatened that seeks the foregoing.

(c) OPERATING PARTNERSHIP AGREEMENT. The Operating Partnership Agreement, in substantially the form attached hereto as Exhibit B, shall have been executed and delivered by the partners of the Operating Partnership and shall be in full force and effect and, except as contemplated by Section 2.02 or the other Formation Transaction Documents, shall not have been amended or modified.

Section 7.02 CONDITIONS TO OBLIGATIONS OF THE FORWARD OP MERGER ENTITIES. The obligation of each Forward OP Merger Entity to effect the Mergers and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date are further subject to satisfaction of the following conditions (any of which may be waived by the Forward OP Merger Entity, in whole or in part):

(a) REPRESENTATIONS AND WARRANTIES. Except as would not have an OP Material Adverse Effect, each of the representations and warranties of the Operating Partnership contained in this Agreement shall be true and correct in all material respects at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(b) PERFORMANCE BY THE OPERATING PARTNERSHIP. Except as would not have an OP Material Adverse Effect, the Operating Partnership shall have performed all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) REGISTRATION RIGHTS AGREEMENT. The REIT shall have entered into the registration rights agreement substantially in the form attached as Exhibit C. This condition may not be waived by any party.

(d) TAX PROTECTION AGREEMENT. Solely with respect to any Forward OP Merger Entity the Forward OP Merger Entity Interests of which are held by any Pre-Formation Participant that (1) owns, directly or indirectly, an interest in any property specified in the Tax Protection Agreement or (2) has been provided an opportunity to guarantee debt as set forth in the Tax Protection Agreement, the REIT and the Operating Partnership shall have entered into the Tax Protection Agreement substantially in the form attached as Exhibit E, where applicable.

Section 7.03 CONDITIONS TO OBLIGATION OF THE OPERATING PARTNERSHIP. The obligations of the Operating Partnership to effect the Mergers and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date are further subject to satisfaction of the following conditions (any of which may be waived by the Operating Partnership, in whole or in part):

(a) REPRESENTATIONS AND WARRANTIES. Except as would not have a Forward OP Merger Entity Material Adverse Effect, each of the representations and warranties of the Forward OP Merger Entities contained in this Agreement, as well as those of the Ernest

Rady Trust U/D/T March 10, 1983, as amended (the "Rady Trust"), under the Representation, Warranty and Indemnity Agreement, shall be true and correct in all respects at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(b) PERFORMANCE BY THE FORWARD OP MERGER ENTITIES. Each Forward OP Merger Entity shall have performed in all material respects all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) IPO CLOSING. The closing of the IPO shall occur substantially concurrently with the Closing.

(d) CONSENTS, ETC. All necessary consents or approvals of Governmental Authorities or third parties (including lenders) for each Forward OP Merger Entity to consummate the transactions contemplated hereby shall have been obtained.

(e) NO MATERIAL ADVERSE CHANGE. There shall have not occurred between the date hereof and the Closing Date any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of each Forward OP Merger Entity or Forward OP Merger Entity Subsidiary and the Properties, taken as a whole.

(f) REPRESENTATION, WARRANTY AND INDEMNITY AGREEMENT. The Rady Trust shall have entered into the Representation, Warranty and Indemnity Agreement.

(g) ESCROW AGREEMENT. The parties thereto shall have entered into the Escrow Agreement.

(h) LOCK-UP AGREEMENT. Each of the Pre-Formation Participants owning interests in each Forward OP Merger Entity shall have entered into the Lock-Up Agreement substantially in the form attached as Exhibit F.

(i)(i) TAX PROTECTION AGREEMENT. Solely with respect to each Forward OP Merger Entity (1) that owns, directly or indirectly, an interest in any property specified in the Tax Protection Agreement or (2) the Forward OP Merger Entity Interests of which are held by any Pre-Formation Participant that has been provided an opportunity to guarantee debt as set forth in the Tax Protection Agreement, the holders of the Forward OP Merger Entity Interests thereof shall have entered into the Tax Protection Agreement, substantially in the form attached as Exhibit E.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.01 NOTICES. All notices and other communications under this Agreement shall be in writing and shall be deemed given when (i) delivered personally, (ii) five (5) Business Days after being mailed by certified mail, return receipt requested and postage prepaid, (iii) one (1) Business Day after being sent by a nationally recognized overnight courier

or (iv) transmitted by facsimile if confirmed within twenty-four (24) hours thereafter by a signed original sent in the manner provided in clause (i), (ii) or (iii) to the parties at the following addresses (or at such other address for a party as shall be specified by notice from such party):

if to the Operating Partnership to:

American Assets Trust, L.P.
11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620

if to a Forward OP Merger Entity to:

11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620

Section 8.02 DEFINITIONS. For purposes of this Agreement, the following terms shall have the following meanings.

(a) "Accredited Investor" has the meaning set forth under Regulation D of the Securities Act.

(b) "Affiliate" means, with respect to any Person, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

(c) "Allocated Share" means the amount that would be allocated to a Pre-Formation Participant that is the holder of an interest in an American Assets Entity in accordance with the provisions of the existing Organizational Documents of such entity relating to distributions of distributable net proceeds from sales of directly or indirectly owned properties or assets, and assuming the sale of the relevant Target Asset or Target Assets that are directly or indirectly owned by such entity for a value equal to such Target Asset's or Target Assets' respective Equity Value(s).

Notwithstanding the foregoing, the Allocated Share of any Pre-Formation Participant shall reflect the following adjustments:

1. Intercompany Debt Adjustment. In calculating Allocated Share, all Intercompany Debt shall be taken into account so that the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligor of Intercompany Debt collectively are reduced, and the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligee of such Intercompany Debt collectively are increased, in each case by the amount of such Intercompany Debt (such adjustments being referred to as "Intercompany Debt Adjustments").

2. Entity Specific Debt Adjustment. To the extent that Entity Specific Debt is allocated to a Target Asset, in calculating Allocated Shares of holders of direct or indirect Pre-Formation Interests in the American Assets Entity or Entities owning such Target Asset, the amount of the decrease in Equity Value of such Target Asset attributable to the allocation of such Entity Specific Debt to such Target Asset (through the operation of the formula set forth on Schedule III) (in each case, such decrease being the "Decrease") shall be taken into account so that:

    a. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in any obligor(s) under such Entity Specific Debt collectively shall be (i) reduced by the amount equal to the excess of (w) the amount of the Entity Specific Debt owed by such obligor over (x) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset; or (ii) increased by the amount equal to the excess of (y) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset over (z) the amount of the Entity Specific Debt owed by such obligor; and

    b. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in American Assets Entities owning such Target Asset that are not obligors under such Entity Specific Debt collectively shall be increased by the amount equal to the amount of the Decrease allocated pro rata to such holders as direct or indirect owner of the Target Asset;

with the net effect under the foregoing clauses (a)(i), (a)(ii) and (b) being that the adverse economic impact of the Decrease shall be borne equitably by the holders of direct or indirect Pre-Formation Interests in the actual obligor(s) under such Entity Specific Debt and not by any other holder of direct or indirect Pre-Formation Interests in the American Assets Entities owning such Target Asset.

Illustrative examples of the application of the foregoing Allocated Share adjustments using hypothetical numbers are included as Example 3 and Example 4 in ***Appendix A*** to Schedule III.

(d) "Alternate Transaction" means (i) a contribution of the assets held by a Forward OP Merger Entity to the Operating Partnership in exchange for the amount of cash and the number of OP Units and/or REIT Shares that were to be issued pursuant to this Agreement, (ii) a contribution by each holder of direct or indirect equity interests in a Forward OP Merger Entity to the Operating Partnership in exchange for the amount of cash and the number of OP Units and/or REIT Shares that would have otherwise been received by such holder of direct or indirect equity interests pursuant to this Agreement, (iii) the restructuring of the Merger as either (x) a merger of the Forward OP Merger Entity with and into either the REIT or a wholly owned subsidiary of the REIT or the Operating Partnership or (y) a merger of a wholly owned subsidiary of either the REIT or the Operating Partnership with and into the Forward OP Merger Entity, in each case in exchange for the amount of cash and the number of OP Units and/or REIT Shares that were to be issued pursuant to this Agreement, or (iv) any other transaction pursuant to which the REIT, the Operating Partnership or any of their Subsidiaries acquire the assets held by a Forward OP Merger Entity or each holder of direct or indirect equity interests in such Forward OP Merger Entity in a transaction pursuant to which each holder of direct or indirect interests in such Forward OP Merger Entity receives the amount of cash, the number of OP Units and/or the number of REIT Shares that were to be received by such holder pursuant to this Agreement (or a portion thereof equal in value to the value of the portion of such assets acquired by the REIT, the Operating Partnership or any of their Subsidiaries pursuant to such Alternate Transaction).

(e) "American Assets Entity" means a Forward OP Merger Entity, Forward REIT Merger Entity, OP Sub Reverse Merger Entity, OP Sub Forward Merger Entity, REIT Sub Forward Merger Entity, Contributed Entity or OP Sub Contributed Entity, as applicable. As used herein, "American Assets Entities" refer to each American Assets Entity, collectively.

(f) "Business Day" means any day that is not a Saturday, Sunday or legal holiday in the State of California.

(g) "Code" means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated or issued thereunder.

(h) "Consent Form" means the forms provided to each holder of Pre-Formation Interests to consent to the Formation Transactions and to make such holder's irrevocable elections with respect to consideration to be received in the Formation Transactions.

(i) "Elected OP Unit Percentage" means, for the Merger Consideration to be received with respect to any Forward OP Merger Entity Interest, the percentage of the Allocated Share represented by such Forward OP Merger Entity Interest that the holder thereof has made a Valid Election to receive in the form of OP Units.

(j) "Elected REIT Shares Percentage" means, for the Merger Consideration to be received with respect to any Forward OP Merger Entity Interest, the percentage of the Allocated Share represented by such Forward OP Merger Entity Interest that the holder thereof has made a Valid Election to receive in the form of REIT Shares.

(k) "Environmental Laws" means all federal, state and local Laws governing pollution or the protection of human health or the environment.

(l) "Equity Value" has the meaning set forth in Schedule III hereto.

(m) "Escrow Agreement" means the Indemnity Escrow Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the Rady Trust.

(n) "Formation Transaction Documentation" means all of the agreements and plans of merger (including this Agreement) relating to all target entities and all contribution agreements and related documents and agreements, substantially in the forms accompanying the Request for Consent dated July 31, 2010 and identified in Exhibit A hereto, pursuant to which all of the American Assets Entities and/or the equity interests in the American Assets Entities held by the Pre-Formation Participants are to be acquired by the REIT or the Operating Partnership, directly or indirectly, as part of the Formation Transactions.

(o) "Formation Transactions" means the transactions contemplated by this Agreement and the other Formation Transaction Documentation.

(p) "Forward OP Merger Entity Material Adverse Effect" means any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the applicable Forward OP Merger Entity and each subsidiary of such Forward OP Merger Entity, taken as a whole.

(q) "Governmental Authority" means any government or agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

(r) "Intercompany Debt" means loans or advances among American Assets Entities and/or their Subsidiaries or among holders of Pre-Formation Interests on the one hand and American Assets Entities and/or their Subsidiaries on the other hand, other than those promissory notes set forth on ***Appendix D*** to Schedule III for which Del Monte Center is listed as the associated Target Asset, each of which loans or advances are set forth on Schedule IV hereto. Intercompany Debt shall not be discharged pursuant to the Formation Transactions except to the extent any such Intercompany Debt merges out of existence by operation of law as a result of such transactions (e.g., if the Operating Partnership acquires both the obligor and obligee interest in a loan which reflects an Intercompany Debt). After the closing of the Formation Transactions, and except as provided below, to the extent any such loans are acquired by the REIT, Operating Partnership or their Subsidiaries (e.g., an obligor or obligee with respect to such loans is merged with or into, or acquired by, one of such entities), the REIT, Operating Partnership or their Subsidiaries (as applicable) shall be permitted to take any actions (including repayment) with respect to such Intercompany Debt as they deem appropriate. Intercompany Debt with respect to which either the obligor or the obligee (but not both such parties) under such Intercompany Debt is acquired, directly or indirectly, by the REIT, Operating Partnership or their Subsidiaries, shall be deemed to be discharged immediately after the Formation Transactions by (i) the REIT, Operating Partnership or their Subsidiaries (as applicable) as obligor, or (ii) the obligor to the REIT, Operating Partnership or their Subsidiaries (as applicable) as obligee, in each case in exchange for the consideration payable as set forth in the applicable Formation Transaction Documentation. The amounts payable and receivable with respect to each item of Intercompany Debt shall be determined by the REIT, for purposes of determining the Intercompany Debt Adjustments, within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

(s) "IPO Closing Date" means the closing date of the IPO.

(t) "IPO Price" means the initial public offering price of a REIT Share in the IPO.

(u) "Laws" means laws, statutes, rules, regulations, codes, orders, ordinances, judgments, injunctions, decrees and policies of any Governmental Authority, including, without limitation, zoning, land use or other similar rules or ordinances.

(v) "Liens" means all pledges, claims, liens, charges, restrictions, controls, easements, rights of way, exceptions, reservations, leases, licenses, grants, covenants and conditions, encumbrances and security interests of any kind or nature whatsoever.

(w) "Lock-Up Agreement" means that certain Lock-Up Agreement, by and between the underwriters and each investor of the REIT and/or the Operating Partnership.

(x) "OP Material Adverse Effect" means any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the Operating Partnership and each Operating Partnership Subsidiary, taken as a whole.

(y) "Operating Partnership Agreement" means the agreement of limited partnership of the Operating Partnership, as amended and restated and in effect immediately prior to the Effective Time.

(z) "Organizational Documents" means the certificate of formation, certificate of incorporation and bylaws, certificate of limited partnership and limited partnership agreement, limited liability company agreement or operating agreement, of each Forward OP Merger Entity or Forward OP Merger Entity Subsidiary, as applicable.

(aa) "Permitted Liens" means (i) Liens, or deposits made to secure the release of such Liens, securing Taxes, the payment of which is not delinquent or the payment of which (including, without limitation, the amount or validity thereof) is being contested in good faith by appropriate proceedings for which adequate reserves have been made in accordance with GAAP; (ii) zoning, entitlement, building and other land use Laws imposed by governmental agencies having jurisdiction over the Properties; (iii) covenants, conditions, restrictions, easements for public utilities, encroachments, rights of access or other non-monetary matters that do not materially impair the use of the Properties for the purposes for which they are currently being used or proposed to be used in connection with the relevant Person's business; (iv) Liens securing financing or credit arrangements existing as of the Closing Date; (v) Liens arising under leases in effect as of the Closing Date; (vi) any exceptions contained in any title policy (including any policy issued to a secured lender) relating to the Properties as of the Closing Date; (vii) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the ordinary course of business that are not yet due and payable and which are not, in the aggregate, material to the business, operations and financial condition of the Properties so encumbered; and (viii) any matters that would not have a Forward OP Merger Entity Material Adverse Effect.

(bb) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

(cc) "Pre-Formation Interests" means the interests held by the Pre-Formation Participants in the American Assets Entities.

(dd) "Pre-Formation Participants" means the holders of the direct and indirect equity interests in the relevant American Assets Entities immediately prior to the Formation Transactions.

(ee) "Prospectus" means the REIT's final prospectus as filed with the SEC.

(ff) "Representation, Warranty and Indemnity Agreement" means the Representation, Warranty and Indemnity Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the Rady Trust.

(gg) "Securities Act" means the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder.

(hh) "Subsidiary" of any Person means any corporation, partnership, limited liability company, joint venture, trust or other legal entity of which such Person owns (either directly or through or together with another Subsidiary of such Person) either (i) a general partner, managing member or other similar interest, or (ii)(A) ten percent (10%) or more of the voting power of the voting capital stock or other equity interests, or (B) ten percent (10%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other legal entity.

(ii) "Target Asset" has the meaning set forth in Schedule III hereto.

(jj) "Tax" means all federal, state, local and foreign income, gross receipts, license, property, withholding, sales, franchise, employment, payroll, goods and services, stamp, environmental, customs duties, capital stock, social security, transfer, alternative minimum, excise and other taxes, tariffs or governmental charges of any nature whatsoever, including estimated taxes, together with penalties, interest or additions to Tax with respect thereto, whether or not disputed.

(kk) "Tax Protection Agreement" means that certain Tax Protection Agreement by and among the REIT, the Operating Partnership and the parties identified as a signatory on Schedule A thereto.

(ll) "Underwriting Agreement" means that certain underwriting agreement, by and between the REIT, the Operating Partnership and certain underwriters set forth therein, pursuant to which the REIT will issue and sell shares in the IPO.

(mm) "Valid Election" means, with respect to any Forward OP Merger Entity Interest, an irrevocable election to receive all or a portion of its Allocated Share in the form of OP Units and/or REIT Shares as indicated on the properly completed and timely received Consent Form of the holder of such Forward OP Merger Entity Interest or a Consent Form as to which any deficiencies have been waived by the REIT.

Section 8.03 COUNTERPARTS. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party and delivered to each other party.

Section 8.04 ENTIRE AGREEMENT; THIRD-PARTY BENEFICIARIES. This Agreement, the other Formation Transaction Documentation and the Consent Forms to which the parties hereto are a party, including, without limitation, the exhibits and schedules hereto and thereto, constitute the entire agreement and, except as set forth in Section 1.09, supersede each prior agreement and understanding, whether written or oral, among the parties regarding the subject matter of this Agreement. This Agreement is not intended to confer any rights or remedies on any Person other than the parties hereto.

Section 8.05 GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of California, regardless of any Laws that might otherwise govern under applicable principles of conflicts of laws thereof.

Section 8.06 ASSIGNMENT. This Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns; *provided*, *however*, that this Agreement may not be assigned (except by operation of law) by any party without the prior written consent of the other parties, and any attempted assignment without such consent shall be null and void and of no force and effect, except that the Operating Partnership may assign its rights and obligations hereunder to an Affiliate.

Section 8.07 JURISDICTION. The parties hereto hereby (a) submit to the exclusive jurisdiction of any state or federal court sitting in the County of San Diego, with respect to any dispute arising out of this Agreement or any transaction contemplated hereby to the extent such courts would have subject matter jurisdiction with respect to such dispute and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, or that the venue of the action is improper.

Section 8.08 DISPUTE RESOLUTION. The parties intend that this Section 8.08 will be valid, binding, enforceable, exclusive and irrevocable and that it shall survive any termination of this Agreement.

(a) Upon any dispute, controversy or claim arising out of or relating to this Agreement or the enforcement, breach, termination or validity thereof ("Dispute"), the party raising the Dispute will give written notice to the other parties to the Dispute describing the nature of the Dispute following which the parties to such Dispute shall attempt for a period of ten (10) Business Days from receipt by the parties of notice of such Dispute to resolve such Dispute by negotiation between representatives of the parties hereto who have authority to settle such Dispute. All such negotiations shall be confidential and any statements or offers made therein shall be treated as compromise and settlement negotiations for purposes of any applicable rules of evidence and shall not be admissible as evidence in any subsequent proceeding for any purpose. The statute of limitations applicable to the commencement of a lawsuit shall apply to the commencement of an arbitration hereunder, except that no defense based on the running of the statute of limitations will be available based upon the passage of time during any such negotiation. Regardless of the foregoing, a party shall have the right to seek immediate injunctive relief pursuant to Section 8.08(c) below without regard to any such ten (10) Business Day negotiation period.

(b) Any Dispute (including the determination of the scope or applicability of this agreement to arbitrate) that is not resolved pursuant to Section 8.08(a) above shall be submitted to final and binding arbitration in California before one neutral and impartial arbitrator, in accordance with the Laws of the State of California for agreements made in and to be performed in that State. The arbitration shall be administered by JAMS, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. Each of the Operating Partnership, on the one hand, and any Forward OP Merger Entity, on the other hand, shall appoint one arbitrator within fifteen (15) days of a demand for arbitration. If the Operating Partnership and any Forward OP Merger Entity cannot mutually agree upon an arbitrator within such 15-day period, the arbitrator shall be appointed by JAMS in accordance

with its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. The arbitrator shall designate the place and time of the hearing. The hearing shall be scheduled to begin as soon as practicable and no later than sixty (60) days after the appointment of the arbitrator (unless such period is extended by the arbitrator for good cause shown) and shall be conducted as expeditiously as possible. The award, which shall set forth the arbitrator's findings of fact and conclusions of law, shall be filed with JAMS and mailed to the parties no later than thirty (30) days after the close of the arbitration hearing. The arbitration award shall be final and binding on the parties and not subject to collateral attack. Judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(c) Notwithstanding the parties' agreement to submit all Disputes to final and binding arbitration before JAMS, the parties shall have the right to seek and obtain temporary or preliminary injunctive relief in any court having jurisdiction thereof. Such courts shall have authority to, among other things, grant temporary or provisional injunctive relief in order to protect any party's rights under this Agreement. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitral tribunal shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitral tribunal's orders to that effect.

(d) The prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, and the non-prevailing party shall pay all expenses and fees of JAMS, all costs of the stenographic record, all expenses of witnesses or proofs that may have been produced at the direction of the arbitrator, and the fees, costs, and expenses of the arbitrator. The arbitrator shall allocate such costs and designate the prevailing party or parties for these purposes.

Section 8.09 SEVERABILITY. Each provision of this Agreement will be interpreted so as to be effective and valid under applicable law, but if any provision is held invalid, illegal or unenforceable under applicable law in any jurisdiction, then such invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been included herein.

Section 8.10 RULES OF CONSTRUCTION.

(a) The parties hereto agree that they have had the opportunity to be represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(b) The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." All

terms defined in this Agreement shall have the defined meanings contained herein when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Unless explicitly stated otherwise herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time, amended, qualified or supplemented, including (in the case of agreements and instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 8.11 EQUITABLE REMEDIES. The parties agree that irreparable damage would occur to the Operating Partnership in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Operating Partnership shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by any Forward OP Merger Entity and to enforce specifically the terms and provisions hereof in any federal or state court located in California, this being in addition to any other remedy to which the Operating Partnership is entitled under this Agreement or otherwise at law or in equity.

Section 8.12 WAIVER OF SECTION 1542 PROTECTIONS. As of the Closing, each Forward OP Merger Entity expressly acknowledges that it has had, or has had and waived, the opportunity to be advised by independent legal counsel and hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the California Civil Code and does so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542 which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Section 8.13 TIME OF THE ESSENCE. Time is of the essence with respect to all obligations under this Agreement.

Section 8.14 DESCRIPTIVE HEADINGS. The descriptive headings herein are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Section 8.15 NO PERSONAL LIABILITY CONFERRED. This Agreement shall not create or permit any personal liability or obligation on the part of any officer, director, partner, employee or shareholder of the Operating Partnership or any Forward OP Merger Entity.

Section 8.16 AMENDMENTS. This Agreement may be amended by appropriate instrument, without the consent of any Forward OP Merger Entity, at any time prior to the Effective Time; *provided*, that no such amendment, modification or supplement shall be made that alters the amount or changes the form of the consideration to be delivered to a Forward OP Merger Agreement Entity, without the prior written consent of the Forward OP Merger Agreement Entity adversely affected by such proposed amendment, modification or supplement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized officers, all as of the date first written above.

AMERICAN ASSETS TRUST, L.P.,
a Maryland limited partnership

By: AMERICAN ASSETS TRUST, INC.,
a Maryland corporation
Its: General Partner

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

[Signature Page to OP Forward Merger Agreement]

SOLANA BEACH TOWNE CENTRES INVESTMENTS, L.P.,
a California limited partnership

By: PACIFIC TOWNE CENTRE ASSETS, INC.,
a California corporation
Its: General Partner

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

[Signature Page to OP Forward Merger Agreement]

PACIFIC SAN JOSE HOLDINGS, L.P.,
a California limited partnership

By: PACIFIC SAN JOSE ASSETS, INC.,
a California corporation
Its: General Partner

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

[Signature Page to OP Forward Merger Agreement]

PACIFIC SORRENTO MESA HOLDINGS, L.P.,
a California limited partnership

By: PACIFIC SORRENTO MESA ASSETS, INC.,
a California corporation
Its: General Partner

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

[Signature Page to OP Forward Merger Agreement]

HILLSIDE 104,
a California limited partnership

By: AMERICAN ASSETS, INC.,
a California corporation
Its: General Partner

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: Chief Executive Officer

[Signature Page to OP Forward Merger Agreement]

HILLSIDE 276,
a California limited partnership

By: AMERICAN ASSETS, INC.,
a California corporation
Its: General Partner

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: Chief Executive Officer

[Signature Page to OP Forward Merger Agreement]

DESERT HILLSIDE HOLDINGS, LLC,
a Delaware limited partnership

By: HILLSIDE 380,
a California general partnership
Its: General Partner

By: AMERICAN ASSETS TRUST, INC.,
a Maryland corporation
Its: Attorney-in-Fact

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

[Signature Page to OP Forward Merger Agreement]

BWH HOLDINGS, LLC,
a Delaware limited liability company

By: PACIFIC SORRENTO MESA HOLDINGS, L.P.,
a California limited partnership
Its: Member

By: PACIFIC SORRENTO MESA ASSETS, INC.,
a California corporation
Its: General Partner

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

BWH HOLDINGS, LLC,
a Delaware limited liability company

By: PACIFIC STONECREST HOLDINGS, L.P.,
a California limited partnership
Its: Member

By: PACIFIC STONECREST ASSETS, INC.,
a California corporation
Its: General Partner

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

WAIKELE CENTER HOLDINGS, LP,
a California limited partnership

By: WAIKELE CENTER ASSETS, INC.,
a California corporation
Its: General Partner

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

[Signature Page to OP Forward Merger Agreement]

Schedule I

List of Forward OP Merger Entities:

1. Solana Beach Towne Centres Investments, L.P.
2. Pacific San Jose Holdings, L.P.
3. Pacific Sorrento Mesa Holdings, L.P.
4. Hillside 104, a California limited partnership
5. Hillside 276, a California limited partnership
6. Desert Hillside Holdings, LLC
7. BWH Holdings, LLC
8. Waikele Center Holdings, LP

List of Forward REIT Merger Entities:

1. Pacific Stonecrest Assets, Inc.
2. Pacific National City Assets, Inc.
3. Western Assets, Inc.
4. Pacific Towne Centre Assets, Inc.
5. Pacific Oceanside Assets, Inc.
6. Pacific San Jose Assets, Inc.
7. KMBC Assets, Inc.
8. Hero Retail, Inc.
9. Pacific Sorrento Valley Assets I, Inc.
10. Pacific Sorrento Mesa Assets, Inc.
11. Beach Walk Assets, Inc.
12. ICW Plaza, Inc. [d/b/a Delaware ICW Plaza, Inc.]
13. ICW Valencia, Inc.
14. Pacific Torrey Reserve Assets, Inc.
15. Landmark Assets, Inc.
16. Landmark One Market, Inc.
17. Pacific Novato Assets, Inc.
18. Waikele Center Assets, Inc.

List of OP Sub Forward Merger Entities:

1. Pacific Stonecrest Holdings, L.P.
2. Rancho Carmel Plaza, a California limited partnership
3. Pacific Oceanside Holdings, L.P.
4. Kearny Mesa Business Center, a California limited partnership
5. Del Monte Center Holdings, LP
6. Beach Walk Holdings, LP
7. ICW Plaza, L.P., a California limited partnership
8. ICW Valencia, L.P.
9. Desert Oceanside Holdings, LLC
10. San Diego Loma Palisades, L.P.

List of OP Sub Reverse Merger Entities:

1. Pacific Waikiki Holdings, L.P.
2. ABW Lewers LLC

3. King Street Holdings, LP
4. Loma Palisades, a California general partnership

List of REIT Sub Forward Merger Entities:

1. Pacific Del Mar Assets, Inc.
2. Pacific Carmel Mountain Assets, Inc.
3. Pacific Solana Beach Assets, Inc.
4. Pacific Waikiki Assets, Inc.
5. King Street Assets, Inc.
6. Pacific Sorrento Valley Assets II, Inc.
7. Pacific Santa Fe Assets, Inc.

List of Contributed Entities:

1. American Assets Trust Management, LLC
2. Winrad Vista Hacienda, a California general partnership
3. Vista Hacienda, a California limited partnership
4. Pacific American Assets Holdings, L.P., a California limited partnership
5. Carmel Country Plaza, L.P.
6. Pacific Carmel Mountain Holdings, L.P.
7. Pacific National City Holdings, L.P.
8. Pacific Solana Beach Holdings, L.P.
9. Pacific San Jose Holdings, L.P.
10. Winrad Kearny Mesa Business Center, a California general partnership
11. Pacific Sorrento Valley Holdings I, L.P.
12. Pacific Sorrento Mesa Holdings, L.P.
13. Beach Walk Holdings, LP
14. ICW Plaza, L.P., a California limited partnership
15. ICW Valencia, L.P.
16. Pacific Sorrento Valley Holdings II, L.P.
17. EBW Hotel LLC
18. Imperial Strand, a California limited partnership
19. Winrad Imperial Strand, a California general partnership
20. San Diego Loma Palisades, L.P.
21. Mariner’s Point, LLC
22. Pacific Santa Fe Holdings, L.P.

Schedule II

Reimbursement Agreements

1. Letter Agreement by and among American Assets, Inc. and the Property Entities (as defined therein) dated May 17, 2010

Schedule III

Calculation of Equity Value

For purposes of all Formation Transaction Documentation, "Equity Value" of any Target Asset directly or indirectly owned by the American Assets Entity subject to such agreement shall be calculated pursuant to the formula set forth below. Capitalized terms used in this Schedule III shall have the meanings set forth below and capitalized terms used herein without definition shall have the meanings assigned to such terms in the Agreement.

$$EV = EP \times [TFTV\text{-}TPA]+AA;$$

where:

EV = Equity Value;
EP = Equity Percentage;
TFTV= Total Formation Transaction Value;
TPA = Total Portfolio Adjustment; and
AA = Asset Adjustment;

provided, however, that if the resulting Equity Value for a Target Asset is a negative amount (a "Net Deficit"), then the REIT shall exercise one of the following options, as determined by the REIT in its sole and absolute discretion: (i) select the Target Asset as an Eliminated Asset or (ii) if one or more entities that are subject to the Formation Transaction Documentation that are the direct or indirect owners of such Target Asset would otherwise possess Excluded Assets the value of which in the aggregate would equal or exceed the amount of such Net Deficit, increase the Target Net Working Capital with respect to such entity or entities by the absolute value of such Net Deficit; and *provided further* that if the REIT shall have exercised option (ii) with respect to any Target Asset, the Equity Value with respect to such Target Asset shall be deemed to be equal to zero;

provided further, that if the Equity Value for ICW Valencia/Valencia Corporate Center as calculated above would result in the holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. having an amount of Allocated Shares, prior to the application of the Intercompany Debt Adjustments, that is less than the value of the Intercompany Debt owed by ICW Valencia, L.P. to ICW Plaza, L.P. (such shortfall being referred to as the "Intercompany Debt Shortfall"), then (i) Western Insurance Holdings, Inc. shall issue a promissory note with a term of three years to ICW Valencia, L.P. which shall be treated as an Asset Adjustment with respect to ICW Valencia/Valencia Corporate Center and such promissory note (the "WIH Note") shall have such face amount as shall be necessary to increase the Equity Value of ICW Valencia/Valencia Corporate Center such that the Allocated Shares of holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. shall increase by an amount, prior to the application of the Intercompany Debt Adjustments, equal to the Intercompany Debt Shortfall and (ii) the Equity Value for ICW Valencia/Valencia Corporate Center shall be recalculated to give effect to the Asset Adjustment attributable to the issuance of the WIH Note.

Attached as ***Appendix A*** to this Schedule III are illustrative calculations of Equity Value for a hypothetical portfolio of Target Assets.

"Actual Balance" shall mean: (i) with respect to each Existing Loan to be assumed in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such assumption and all assumption fees and any related expenses with respect to such Existing Loan; and (ii) with respect to each Existing Loan to be prepaid, repaid or refinanced in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such prepayment, repayment or refinancing and any related prepayment penalties and any related expenses; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Actual Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed. With respect to each Existing Loan to be assumed, prepaid, repaid or refinanced in connection with the Formation Transactions, the Actual Balance as of the Closing Date shall be determined by the REIT within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

"Asset Adjustment" shall mean with respect to each Target Asset and any Existing Loan relating to such Target Asset, an amount equal to the Base Balance minus the Actual Balance (expressed as a positive or negative number, as applicable) with respect to all Existing Loans relating to such Target Asset, and in the case of ICW Valencia/Valencia Corporate Center, the face value of the WIH Note shall be deemed to reduce the Actual Balance of the Existing Loan relating to ICW Valencia/Valencia Corporate Center.

"Base Balance" shall mean with respect to each Existing Loan, the principal amount of such Existing Loan set forth on ***Appendix C*** to this Schedule III; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Base Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Eliminated Asset" shall mean any Target Asset subject to the Formation Transaction Documentation that is excluded pursuant to the terms of the Formation Transaction Documentation from the Formation Transactions.

"Equity Percentage" shall mean with respect to each Target Asset, the percentage (expressed as a decimal) set forth opposite the name of such Target Asset on ***Appendix B*** to this Schedule III (which percentage is based on the Fairness Opinion of Duff & Phelps, LLC and represents such

Target Asset's percentage of the net asset values of the Target Assets (other than the Management Company) and the net equity value of the Management Company, taken as a whole); *provided, however*, that in the event a Target Asset is selected as or otherwise becomes for any reason an Eliminated Asset, then: (i) the Equity Percentage for each remaining Target Asset shall be recalculated as a fraction, the numerator of which is the original Equity Percentage for such remaining Target Asset and the denominator of which is (A) 100 minus (B) the original Equity Percentage of the Eliminated Asset; and (ii) the Equity Percentage of the Eliminated Asset shall be zero; and *provided*, *further*, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then, after giving effect to any Eliminated Assets pursuant to the preceding proviso, the Equity Percentage for such Target Asset and for each other remaining Target Asset subject directly or indirectly to the Formation Transaction Documentation shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Excluded Assets" has the meaning set forth in Section 5.03 to the Agreement.

"Existing Loan" shall mean (i) each mortgage or mezzanine loan secured by a Target Asset listed on ***Appendix C*** to this Schedule III and (ii) all unsecured indebtedness of an American Assets Entity or of an entity in which an American Assets Entity has a direct or indirect interest that will be assumed, prepaid, repaid or refinanced in connection with the IPO and that is set forth on ***Appendix D*** to this Schedule III (all indebtedness falling within the scope of this clause (ii) shall be referred to as "Entity Specific Debt"); for the avoidance of doubt, no Intercompany Debt shall constitute an Existing Loan (in order to avoid double counting, as Intercompany Debt is adjusted for through the definition of "Allocated Share"). Existing Entity Specific Debt will be deemed to relate to the Target Asset(s) and, if to multiple Target Assets, in the proportions set forth opposite the name of such Entity Specific Debt on ***Appendix D*** to this Schedule III, and all such Entity Specific Debt will be deemed to have a Base Balance of zero (because "Equity Percentage" as determined by Duff & Phelps, LLC was determined at the property level and did not take into account Entity Specific Debt, Entity Specific Debt is deemed to be zero in order to cause a readjustment of "Equity Value" of all Target Assets after taking into account such Entity Specific Debt).

"Target Asset" shall mean each property set forth on Appendix B to this Schedule III and the property management business of American Assets, Inc. (the "Management Company").

"Target Net Working Capital" has the meaning set forth in Schedule 5.03 to the Agreement.

"Total Portfolio Adjustment" shall mean the sum (which may be a positive or negative number) of all Asset Adjustments for every Target Asset, excluding Eliminated Assets.

"Total Formation Transaction Value" shall mean the aggregate dollar value of (i) the cash, (ii) the REIT Shares and (iii) the OP Units that are issued or issuable to all Pre-Formation Participants in the Formation Transactions as set forth in the Prospectus. Total Formation Transaction Value will be determined valuing REIT Shares and OP Units at a value per REIT Share or OP Unit equal to the IPO Price.

EXHIBITS

Exhibit A: **Formation Transaction Documentation**

Exhibit B: **Operating Partnership Agreement**

Exhibit C: **Form of Registration Rights Agreement**

Exhibit D: **Order of Mergers**

Exhibit E: **Form of Tax Protection Agreement**

Exhibit F: **Lock-Up Agreement**

Exhibit A

Formation Transaction Documentation

Form of Forward REIT Merger Agreement

Form of REIT Sub Forward Merger Agreement

Form of Forward OP Merger Agreement

Form of OP Sub Forward Merger Agreement

Form of OP Sub Reverse Merger Agreement

Form of OP Contribution Agreement

Form of OP Sub Contribution Agreement

Form of Alternate Contribution Agreement

Form of Tax Protection Agreement

Amended and Restated Agreement of Limited Partnership of American Assets Trust, L.P.

Registration Rights Agreement

Representation, Warranty and Indemnity Agreement

Indemnity Escrow Agreement

Lock-Up Agreement

Articles of Amendment and Restatement of American Assets Trust, Inc.

Bylaws of American Assets Trust, Inc.

Management Business Contribution Agreement

Exhibit B

Operating Partnership Agreement

See Attached.

Exhibit C

Form of Registration Rights Agreement

See Attached.

Exhibit D

Order of Mergers

Each step within each "Transaction Step" below must be completed before the transactions in the following "Transaction Step" may be completed. All transactions within each "Transaction Step" may be completed simultaneously or in any order.

Transaction Step 1

All Forward REIT Mergers

All REIT Sub Forward Mergers

Transaction Step 2

All Contributions to the OP (including the REIT's contribution to the OP of the assets acquired in Step 1)

Transaction Step 3

All Contributions to subsidiaries of the OP (including, where applicable, the OP's contribution to the applicable subsidiary of assets acquired in Step 2)

Transaction Step 4

All OP Forward Mergers ***except*** the OP Forward Merger set forth in Transaction Step 5 and Transaction Step 7 below

Transaction Step 5

Forward Merger of Desert Hillside Holdings LLC with and into the Operating Partnership

Transaction Step 6

All OP Sub Forward Mergers ***except*** the OP Sub Forward Merger set forth in Transaction Step 7 below

Transaction Step 7

Forward Merger of BWH Holdings LLC with and into the Operating Partnership

Forward Merger of Desert Oceanside Holdings LLC with and into Pacific Oceanside Holdings LLC.

Transaction Step 8

All OP Sub Reverse Mergers

Exhibit E

Form of Tax Protection Agreement

See Attached.

Exhibit E

Lock-Up Agreement

See Attached.

Exhibit 10.10

AGREEMENT AND PLAN OF MERGER

DATED AS OF SEPTEMBER 13, 2010

BY AND AMONG

AMERICAN ASSETS TRUST, INC.,
a Maryland corporation

AND

THE FORWARD REIT MERGER ENTITIES
as set forth on Schedule I hereto

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of September 13, 2010, by and among American Assets Trust, Inc., a Maryland corporation (the "REIT") and the entities identified on Schedule I hereto as "Forward REIT Merger Entities" (each a "Forward REIT Merger Entity" and, collectively the "Forward REIT Merger Entities").

RECITALS

WHEREAS, the REIT desires to consolidate the ownership of a portfolio of properties currently owned, directly or indirectly, by certain entities each as described on Schedule I hereto;

WHEREAS, pursuant to this Agreement, each Forward REIT Merger Entity will merge with and into the REIT (the "Mergers") and the equity interest in each Forward REIT Merger Entity (the "Forward REIT Merger Entity Interests") will be converted automatically as set forth herein into the right to receive cash, without interest, or shares of common stock of the REIT, par value $.01 per share (the "REIT Shares");

WHEREAS, concurrently with the execution of this Agreement, the REIT will enter into agreements and plans of merger with certain American Assets Entities identified as "REIT Sub Forward Merger Entities" on Schedule I hereto (collectively, the "REIT Sub Forward Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, each REIT Sub Forward Merger Entity will merge with and into wholly-owned subsidiaries of the REIT;

WHEREAS, immediately following the completion of the mergers described in the preceding paragraphs, the REIT will contribute to American Assets Trust, L.P., a Maryland limited partnership (the "Operating Partnership"), (i) all of the assets, rights and obligations of the Forward REIT Merger Entities acquired by the REIT as a result of the mergers between it and the Forward REIT Merger Entities and (ii) all of the REIT's interests in the surviving entities of the mergers of the REIT Sub Forward Merger Entities with and into wholly owned subsidiaries of the REIT;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, will enter into a contribution agreement with certain holders (the "Contributors") of interests in certain American Assets Entities identified as "Contributed Entities" on Schedule I hereto, pursuant to which, immediately following the completion of the mergers and contributions described in the preceding paragraphs, each Contributor shall contribute to the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, respectively, all of the Contributor's interests in the applicable American Assets Entity (the "Contributed Interest"), and the Operating Partnership, or such subsidiary, as applicable, shall acquire from each Contributor all of each Contributor's right, title and interest as a holder of the Contributed Interests;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into an agreement and plan of merger with certain American Assets

Entities identified as "Forward OP Merger Entities" on Schedule I hereto (collectively, the "Forward OP Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraphs, each Forward OP Merger Entity will merge with and into the Operating Partnership in the order set forth in the merger agreement for such entities;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Assets Entities identified as "OP Sub Forward Merger Entities" on Schedule I hereto (collectively, the "OP Sub Forward Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraphs, each OP Sub Forward Merger Entity will merge with and into a separate wholly-owned subsidiary of the Operating Partnership;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Assets Entities identified as "OP Sub Reverse Merger Entities" on Schedule I hereto (collectively, the "OP Sub Reverse Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraphs, a separate wholly-owned subsidiary of the Operating Partnership will merge with and into each OP Sub Reverse Merger Entity;

WHEREAS, in lieu of one or more of the mergers described in the preceding paragraphs and at the same time as such mergers would have otherwise occurred, certain holders (the "Consenting Holders") of interests in certain American Assets Entities shall contribute to the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, all of their interests in the applicable American Assets Entity, and the Operating Partnership, or such subsidiary, shall acquire from each Consenting Holder, all of each Consenting Holder's right, title and interest as a holder of interests in such American Assets Entities;

WHEREAS, the Formation Transactions relate to the proposed initial public offering (the "IPO") of the REIT Shares, following which the REIT will operate as a self-administered and self-managed real estate investment trust within the meaning of Section 856 of the Code;

WHEREAS, in accordance with applicable state law for each of the Forward REIT Merger Entities, each Forward REIT Merger Entity may be merged with another entity, subject to the requisite approvals as provided in applicable state law;

WHEREAS, the board of directors of the REIT has determined that it is advisable and in the best interest of the REIT to proceed with the Mergers, and the board of directors of the REIT and its sole stockholder have approved and authorized the Mergers and the other Formation Transactions in accordance with Maryland General Corporation Law (the "MGCL") and its charter and bylaws;

WHEREAS, the board of directors of each Forward REIT Merger Entity has each determined that it is advisable and in the best interests of such Forward REIT Merger Entity and its respective equity holders to proceed with the Mergers and the other Formation Transactions on the terms described in this Agreement; and

WHEREAS, each Forward REIT Merger Entity has obtained the requisite approval of its respective stockholders (and lenders, as applicable) to the Mergers and the other Formation Transactions, applicable to each Forward REIT Merger Entity.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and other terms contained in this Agreement, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I
THE MERGERS

Section 1.01 THE MERGERS. At the Effective Time (as defined below), and subject to and upon the terms and conditions of this Agreement and in accordance with applicable Laws, each Forward REIT Merger Entity shall be merged with and into the REIT in the order specified in Exhibit D, whereby the separate existence of each Forward REIT Merger Entity shall cease, and the REIT shall continue its existence under Maryland law as the surviving entity (hereinafter sometimes referred to as the "Surviving Entity").

Section 1.02 EFFECTIVE TIME. Subject to and upon the terms and conditions of this Agreement, concurrently with or as soon as practicable after (i) the execution by the REIT and the Operating Partnership of the Underwriting Agreement and (ii) the satisfaction or waiver of the conditions set forth in Article VII, the REIT and each of the Forward REIT Merger Entities shall file articles of merger or similar documents with respect to each Merger (the "Certificates of Merger") as may be required by applicable Laws, with the State Department of Assessments and Taxation of Maryland ("SDAT"), the Secretary of State of the State of Delaware, and each other jurisdiction applicable to each Forward REIT Merger Entity providing that each Merger shall become effective upon filing or at such later date and time set forth in the Certificate of Merger with respect to such Merger that is not more than thirty (30) days after the acceptance of the Certificate of Merger by the SDAT for record (the "Effective Time"), together with any certificates and other filings or recordings related thereto, in such forms as are required by, and executed in accordance with the relevant provisions of applicable Laws.

Section 1.03 EFFECT OF THE MERGERS. At the Effective Times, which shall be in the order specified in Exhibit D, the effect of the Mergers shall be as provided in this Agreement, the Certificates of Merger and applicable Laws.

Section 1.04 ORGANIZATIONAL DOCUMENTS. At the Effective Time, (i) the charter of the REIT, as in effect immediately prior to the Effective Time (the "REIT Charter"), shall be the charter of the Surviving Entity until thereafter amended as provided therein or in accordance with the MGCL, and (ii) the bylaws of the REIT, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Entity until thereafter amended as provided therein or in accordance with the MGCL.

Section 1.05 CONVERSION OF FORWARD REIT MERGER ENTITY INTERESTS.

(a) Under and subject to the terms and conditions of the respective Formation Transaction Documentation each Pre-Formation Participant is irrevocably bound to accept and

entitled to receive, as a result of and upon consummation of the Mergers or other Formation Transactions, a specified share of the sponsors' value of the American Assets Entities as a whole in the form of the right to receive cash or REIT Shares as calculated in this Section 1.05.

At the Effective Time, by virtue of the Mergers and without any action on the part of the parties hereto, except as set forth in Section 1.05(b), each Forward REIT Merger Entity Interest shall be converted automatically into the right to receive cash or REIT Shares (or OP Units, as provided in clause (ii) of the following sentence) with an aggregate value equal to the portion of Equity Value represented by such Forward REIT Merger Entity Interest (collectively referred to as the "Merger Consideration") and each holder that receives OP Units in the Mergers shall, upon receipt of such OP Units and the delivery of a Consent Form or a counterpart signature page to the Operating Partnership Agreement and such other documents and instruments as may be required in the sole discretion of the REIT to effect such holder's admission as a limited partner of the Operating Partnership, be admitted as a limited partner of the Operating Partnership in accordance with the Maryland Revised Uniform Limited Partnership Act and the Operating Partnership Agreement.

Subject to Section 1.07 and Section 2.02(c), the amount of cash or REIT Shares comprising the Merger Consideration for each Forward REIT Merger Entity Interest so converted shall be as follows:

(i) Cash: One hundred percent (100%) of the Allocated Share for each Forward REIT Merger Entity Interest held by a Pre-Formation Participant who is not an Accredited Investor shall be paid in cash.

(ii) REIT Shares. The Allocated Share for each Forward REIT Merger Entity Interest held by a Pre-Formation Participant who is an Accredited Investor shall be distributed in the form of a number of REIT Shares equal to the Allocated Share divided by the IPO Price; *provided that*, subject to Section 7.02(d), to the extent such distribution of REIT Shares to the holder of the Forward REIT Merger Entity Interests would result in a violation of the restrictions on ownership and transfer set forth in Section 6.3 of the REIT's charter (the "Ownership Limits"), such holder shall receive (x) the maximum number of whole REIT Shares that would not result in such a violation of the Ownership Limits, and (y) that number of common units of partnership interests in the Operating Partnership (the "OP Units") equal to the remaining number of REIT Shares not distributed as a result of the application of the foregoing clause (x)**.**

(b) Each Forward REIT Merger Entity Interest issued and outstanding immediately prior to the Effective Time that is owned by the REIT, the Operating Partnership or any of their direct or indirect wholly-owned Subsidiaries (having been previously acquired by the REIT, the Operating Partnership or any such Subsidiary thereof pursuant to the other Formation Transactions) shall remain issued and outstanding, and no consideration shall be delivered hereunder in exchange therefor.

Section 1.06 CANCELLATION AND RETIREMENT OF FORWARD REIT MERGER ENTITY INTERESTS . From and after the Effective Time, (i) each Forward REIT Merger Entity Interest converted into the right to receive the Merger

Consideration pursuant to Section 1.05(a) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of such Forward REIT Merger Entity Interest so converted shall thereafter cease to have any rights as a partner or member of any Forward REIT Merger Entity except the right to receive the Merger Consideration applicable thereto, and (ii) each Forward REIT Merger Entity Interest issued and outstanding that is owned by the REIT, the Operating Partnership or any of their direct or indirect wholly-owned Subsidiaries shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist and no consideration shall be delivered hereunder in exchange therefor.

Section 1.07 FRACTIONAL INTERESTS. No fractional REIT Shares or OP Units shall be issued in the Mergers. All fractional REIT Shares that a holder of Forward REIT Merger Entity Interests would otherwise be entitled to receive as a result of the Mergers and the other Formation Transactions shall be aggregated, and each holder shall receive the number of whole REIT Shares resulting from such aggregation and, in lieu of any fractional REIT Share resulting from such aggregation, an amount in cash determined by multiplying that fraction of a REIT Share to which such holder would otherwise have been entitled, by the IPO Price. All fractional OP Units that a holder of Forward REIT Merger Entity Interests would otherwise be entitled to receive as a result of the Mergers and the other Formation Transactions shall be aggregated, and each holder shall receive the number of whole OP Units resulting from such aggregation and, in lieu of any fractional OP Unit resulting from such aggregation, an amount in cash determined by multiplying that fraction of an OP Unit to which such holder would otherwise have been entitled, by the IPO Price. No interest will be paid or will accrue on any cash paid or payable in lieu of any fractional REIT Share.

Section 1.08 CALCULATION OF MERGER CONSIDERATION. As soon as practicable following the determination of the IPO Price and prior to the Effective Time, all calculations relating to the Merger Consideration shall be performed in good faith by, or under the direction of, the REIT, and, absent manifest error, shall be final and binding upon the holders of Forward REIT Merger Entity Interests.

Section 1.09 TRANSACTION COSTS. If the Closing occurs, the REIT and the Operating Partnership shall be solely responsible for all transaction costs and expenses of the REIT, the Operating Partnership and the American Assets Entities in connection with the Formation Transactions and the IPO, which include, but are not limited to, the underwriting discounts and commissions. In the event the Closing does not occur, each party shall be responsible for its allocable portion of such costs and expenses in accordance with the terms of those certain letter agreements identified on Schedule II.

ARTICLE II

CLOSING; TERM OF AGREEMENT

Section 2.01 CLOSING. Unless this Agreement shall have been terminated pursuant to Section 2.05, and subject to the satisfaction or waiver of the conditions in Article VII, the filing of the Certificates of Merger, the Effective Time and the closing of the other transactions contemplated by this Agreement shall occur substantially concurrently with the receipt by the REIT of the proceeds from the IPO from the underwriters (the "Closing" or the

"Closing Date") in the order set forth on Exhibit D. The Closing shall take place at the offices of Latham & Watkins LLP, 12636 High Bluff Drive, Suite 400 San Diego, California 92130 or such other place as determined by the REIT in its sole discretion. The Closing hereunder and the closing of the IPO shall be deemed concurrent for all purposes.

Section 2.02 PAYMENT OF MERGER CONSIDERATION.

(a) As soon as reasonably practicable after the Effective Time, the Surviving Entity (or its successor in interest) shall deliver to each holder of Forward REIT Merger Entity Interests, whose Forward REIT Merger Entity Interests have been converted into the right to receive the Merger Consideration pursuant to Section 1.05(a) hereof, the Merger Consideration payable to such holder in the amounts and form provided in Section 1.05(a) hereof. The issuance of any OP Units and admission of the recipients thereof as limited partners of the Operating Partnership pursuant to Section 1.05(a) shall be evidenced by an amendment to Exhibit A to the Operating Partnership Agreement, and the Operating Partnership shall deliver, or cause to be delivered, an executed copy of such amendment to each Pre-Formation Participant receiving OP Units hereunder. Any certificate representing REIT Shares issuable as Merger Consideration shall bear the following legend:

> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS THE TRANSFEROR DELIVERS TO THE CORPORATION AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION, TO THE EFFECT THAT THE PROPOSED SALE, TRANSFER OR OTHER DISPOSITION MAY BE EFFECTED WITHOUT REGISTRATION UNDER THE ACT AND UNDER APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.
>
> THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON BENEFICIAL AND CONSTRUCTIVE OWNERSHIP AND TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). SUBJECT TO CERTAIN FURTHER RESTRICTIONS AND EXCEPT AS EXPRESSLY PROVIDED IN THE CORPORATION'S CHARTER, (I) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF THE CORPORATION'S COMMON STOCK IN EXCESS OF [__]% (IN VALUE OR NUMBER OF SHARES) OF THE OUTSTANDING SHARES OF COMMON STOCK OF THE CORPORATION UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN

WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (II) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK OF THE CORPORATION IN EXCESS OF [__]% OF THE VALUE OF THE TOTAL OUTSTANDING SHARES OF CAPITAL STOCK OF THE CORPORATION, UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (III) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN CAPITAL STOCK THAT WOULD RESULT IN THE CORPORATION BEING "CLOSELY HELD" UNDER SECTION 856(h) OF THE CODE OR OTHERWISE CAUSE THE CORPORATION TO FAIL TO QUALIFY AS A REIT; AND (IV) NO PERSON MAY TRANSFER SHARES OF CAPITAL STOCK IF SUCH TRANSFER WOULD RESULT IN THE CAPITAL STOCK OF THE CORPORATION BEING OWNED BY FEWER THAN 100 PERSONS. ANY PERSON WHO BENEFICIALLY OR CONSTRUCTIVELY OWNS OR ATTEMPTS TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK WHICH CAUSES OR WILL CAUSE A PERSON TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK IN EXCESS OR IN VIOLATION OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE CORPORATION. IF ANY OF THE RESTRICTIONS ON TRANSFER OR OWNERSHIP SET FORTH IN (I) THROUGH (III) ABOVE ARE VIOLATED, THE SHARES OF CAPITAL STOCK REPRESENTED HEREBY WILL BE AUTOMATICALLY TRANSFERRED TO A TRUSTEE OF A TRUST FOR THE BENEFIT OF ONE OR MORE CHARITABLE BENEFICIARIES. IN ADDITION, THE CORPORATION MAY TAKE OTHER ACTIONS, INCLUDING REDEEMING SHARES UPON THE TERMS AND CONDITIONS SPECIFIED BY THE BOARD OF DIRECTORS IN ITS SOLE AND ABSOLUTE DISCRETION IF THE BOARD OF DIRECTORS DETERMINES THAT OWNERSHIP OR A TRANSFER OR OTHER EVENT MAY VIOLATE THE RESTRICTIONS DESCRIBED ABOVE. FURTHERMORE, UPON THE OCCURRENCE OF CERTAIN EVENTS, ATTEMPTED TRANSFERS IN VIOLATION OF THE RESTRICTIONS DESCRIBED ABOVE MAY BE VOID *AB INITIO*. ALL UNDERLINED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN THE CHARTER OF THE CORPORATION, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER AND OWNERSHIP, WILL BE FURNISHED TO EACH HOLDER OF CAPITAL STOCK OF THE CORPORATION ON REQUEST AND WITHOUT CHARGE. REQUESTS FOR SUCH A COPY MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL OFFICE.

(b) The Surviving Entity (or its successor in interest) shall not be liable to any holder of a Forward REIT Merger Entity Interest for any portion of the Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(c) It is intended that the Merger contemplated by this Agreement shall be treated as a "reorganization" within the meaning of Section 368(a) of the Code, and the regulations promulgated thereunder, and that this Agreement will be, and is, adopted as a plan of reorganization.

Section 2.03 TAX WITHHOLDING. The REIT and each Forward REIT Merger Entity shall be entitled to deduct and withhold from the consideration payable pursuant to this Agreement to any holder of a Forward REIT Merger Entity Interest such amounts required to be deducted and withheld with respect to the making of such payment under the Code or any provision of state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the Forward REIT Merger Entity Interests in respect of which such deduction and withholding was made.

Section 2.04 FURTHER ACTION. If, at any time after the Effective Time, the Surviving Entity shall determine or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Entity the right, title or interest in, to or under any of the rights, properties or assets of any Forward REIT Merger Entity acquired or to be acquired by the Surviving Entity as a result of, or in connection with, the Mergers or otherwise to carry out this Agreement, the Surviving Entity shall be authorized to execute and deliver, in the name and on behalf of any Forward REIT Merger Entity or otherwise, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of any Forward REIT Merger Entity or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Entity or otherwise to carry out this Agreement.

Section 2.05 TERM OF THE AGREEMENT. This Agreement shall terminate automatically if (i) the initial registration statement of the REIT for the IPO (the "Registration Statement") has not been filed with the Securities and Exchange Commission ("SEC") by March 31, 2011, or (ii) the Mergers shall not have been consummated on or prior to December 31, 2011 (such date is hereinafter referred to as the "Outside Date").

Section 2.06 EFFECT OF TERMINATION. In the event of termination of this Agreement for any reason, all obligations on the part of the REIT and each Forward REIT Merger Entity under this Agreement shall terminate, except that the obligations set forth in Article VIII shall survive; it being understood and agreed, however, for the avoidance of doubt, that if this Agreement is terminated because one or more of the conditions to a non-breaching party's obligations under this Agreement are not satisfied by the Outside Date as a result of the other party's material breach of a covenant, representation, warranty or other obligation under this Agreement or any other Formation Transaction Documentation, the non-breaching party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE REIT

The REIT hereby represents and warrants to each Forward REIT Merger Entity as follows:

Section 3.01 ORGANIZATION; AUTHORITY.

(a) The REIT has been duly incorporated and is validly existing and in good standing under the Laws of its jurisdiction of incorporation and upon the effectiveness of the REIT Charter, will have has all requisite power and authority to enter into this Agreement and the other Formation Transaction Documentation and to carry out the transactions contemplated hereby and thereby, and to own, lease and/or operate its property and to carry on its business as presently conducted and, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have a REIT Material Adverse Effect.

(b) Schedule 3.01(b) sets forth as of the date hereof, (i) each Subsidiary of the REIT (each a "REIT Subsidiary"), (ii) the ownership interest therein of the REIT, and (iii) if not wholly owned by the REIT, the identity and ownership interest of each of the other owners of such REIT Subsidiary. Each REIT Subsidiary has been duly organized or formed and is validly existing and is in good standing under the Laws of its jurisdiction of organization or formation, as applicable, has all requisite power and authority to own, lease and/or operate its property and to carry on its business as presently conducted and, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have a REIT Material Adverse Effect.

Section 3.02 DUE AUTHORIZATION. The execution, delivery and performance of this Agreement and the other Formation Transaction Documentation (including each agreement, document and instrument executed and delivered by or on behalf of the REIT pursuant to this Agreement or the other Formation Transaction Documentation) by the REIT will have been duly and validly authorized by all necessary actions required of the REIT prior to the Closing. This Agreement, the other Formation Transaction Documentation and each agreement, document and instrument executed and delivered by or on behalf of the REIT pursuant to this Agreement or the other Formation Transaction Documentation constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of the REIT, enforceable against the REIT in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.03 CONSENTS AND APPROVALS. Except for the filing of the Certificates of Merger in accordance with Section 1.02 hereof or in connection with the IPO and the consummation of the other Formation Transactions, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration or filing with, any Person or Governmental Authority or under any applicable Laws is required to be obtained by the REIT in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby and thereby, except for (i) those consents, waivers, approvals, authorizations, orders, licenses, permits, registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have a REIT Material Adverse Effect,

or (ii) those consents of the Pre-Formation Participants under the Organizational Documents of the applicable American Assets Entity, the failure of which to obtain would not, individually or in the aggregate, reasonably be expected to have a REIT Material Adverse Effect.

Section 3.04 NO VIOLATION. None of the execution, delivery or performance of this Agreement, the other Formation Transaction Documentation, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the organizational documents of the REIT, (B) any agreement, document or instrument to which the REIT or any of its assets are bound or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on the REIT, except for, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a REIT Material Adverse Effect.

Section 3.05 VALIDITY OF REIT SHARES. The REIT Shares to be issued pursuant to this Agreement will have been duly authorized by the REIT and, when issued against the consideration therefor, will be validly issued, fully paid and non-assesable, free and clear of all Liens created by the by the REIT (other than any Liens created by the REIT Charter).

Section 3.06 REIT Charter. Attached as Exhibit B hereto is a true and correct copy of the REIT Charter in substantially final form.

Section 3.07 LIMITED ACTIVITIES. Except for activities in connection with the IPO, the Formation Transactions or in the ordinary course of business, the REIT and the REIT Subsidiaries have not engaged in any material business or incurred any material obligations.

Section 3.08 LITIGATION. Except for actions, suits or proceedings covered by policies of insurance there is no action, suit or proceeding pending or, to the knowledge of the REIT, threatened against the REIT or any REIT Subsidiary, other than actions, suits, proceedings arising in the ordinary course of business from the ownership and operation of the REIT, that individually or in the aggregate, would not reasonably be expected, (a) if adversely determined, to have a REIT Material Adverse Effect, or (b) to challenge or impair the ability of the REIT to execute or deliver, or materially perform its obligations under, this Agreement and the documents executed by it pursuant to this Agreement or to consummate the transactions contemplated hereby or thereby to such an extent as would result in a REIT Material Adverse Effect.

Section 3.09 NO BROKER. The REIT has not entered into, and covenants that it will not enter into, any agreement, arrangement or understanding with any Person or firm which will result in the obligation of any Forward REIT Merger Entity or any Affiliates thereof to pay any finder’s fee, brokerage commission or similar payment in connection with the transaction contemplated by this Agreement (other than underwriting discounts, commissions and other fees and expenses to be paid by the REIT in connection with the IPO and any related financing transactions).

Section 3.10 NO IMPLIED REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article III, the REIT, shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby. All representations, warranties and covenants of the REIT contained in this Agreement shall expire at the Closing.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE FORWARD REIT MERGER ENTITIES

Except as disclosed in the Prospectus or the schedules attached hereto, each Forward REIT Merger Entity represents and warrants to the REIT that the following statements are true and correct solely with respect to such Forward REIT Merger Entity as of the Closing Date:

Section 4.01 ORGANIZATION; AUTHORITY.

(a) Each Forward REIT Merger Entity has been duly organized and is validly existing and in good standing under the Laws of its jurisdiction of incorporation or formation and has all requisite power and authority to enter into this Agreement, each agreement contemplated hereby and the other Formation Transaction Documentation to which it is a party (including any agreement, document and instrument executed and delivered by or on behalf of such Forward REIT Merger Entity pursuant to this Agreement or the other Formation Transaction Documentation) and to carry out the transactions contemplated hereby and thereby, and to own, lease and/or operate any Property owned, leased and/or operated by it and to carry on its business as presently conducted. Each Forward REIT Merger Entity, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of a Property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect.

(b) Schedule 4.01(b) sets forth as of the date hereof with respect to such Forward REIT Merger Entity (i) each Subsidiary of such Forward REIT Merger Entity (each a "Forward REIT Merger Entity Subsidiary"), (ii) the ownership interest therein of such Forward REIT Merger Entity, (iii) if not wholly owned by such Forward REIT Merger Entity, the identity and ownership interest of each of the other owners of such Subsidiary, and (iv) each property owned or leased pursuant to a ground lease by such Forward REIT Merger Entity or such Subsidiary (each a "Property"). Such Forward REIT Merger Entity Subsidiary has been duly organized and is validly existing and is in good standing under the Laws of its jurisdiction of organization, and has all requisite power and authority to own, lease and/or operate its Property and to carry on its business as presently conducted. Such Forward REIT Merger Entity Subsidiary, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its Property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect.

Section 4.02 DUE AUTHORIZATION. The execution, delivery and performance by such Forward REIT Merger Entity of this Agreement and the other Formation Transaction Documentation (including any agreement, document and instrument executed and delivered by or on behalf of such Forward REIT Merger Entity pursuant to this Agreement or the other Formation Transaction Documentation) to which it is a party have been duly and validly authorized by all necessary actions required of such Forward REIT Merger Entity. This Agreement, the other Formation Transaction Documentation and each agreement, document and instrument executed and delivered by or on behalf of such Forward REIT Merger Entity pursuant to this Agreement or the other Formation Transaction Documentation constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of such Forward REIT Merger Entity, each enforceable against such Forward REIT Merger Entity in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.03 CAPITALIZATION. Schedule 4.03 sets forth as of the date hereof the ownership of such Forward REIT Merger Entity. All of the issued and outstanding equity interests of such Forward REIT Merger Entity and each Forward REIT Merger Entity Subsidiary are duly authorized, validly issued and fully paid; and, to the knowledge of such Forward REIT Merger Entity, are not subject to preemptive rights, transfer restrictions, or appraisal, dissenters' or other similar rights under the Organizational Documents of or any contract to which such Forward REIT Merger Entity is a party or otherwise bound, except for such preemptive rights, transfer restrictions, or appraisal, dissenters' or other similar rights as would not prevent the Merger. There are no outstanding rights to purchase, subscriptions, warrants, options or any other security convertible into or exchangeable for equity interests in such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries.

Section 4.04 CONSENTS AND APPROVALS. Except as shall have been obtained or satisfied on or prior to the Closing Date, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration or filing with, any Person or any Governmental Authority or under any applicable Laws is required to be obtained by such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries in connection with the execution, delivery and performance of this Agreement, the other Formation Transaction Documentation to which such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries is a party and the transactions contemplated hereby and thereby, except for those consents, waivers, approvals, authorizations, orders, licenses, permits, registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect.

Section 4.05 NO VIOLATION. None of the execution, delivery or performance of this Agreement, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the Organizational Documents of such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries or (B) any agreement, document or instrument to which such Forward REIT Merger Entity or its Forward REIT Merger Entity

Subsidiaries or any of their respective assets or properties are bound by or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries, except for, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect.

Section 4.06 LICENSES AND PERMITS. To the knowledge of such Forward REIT Merger Entity, all notices, licenses, permits, certificates and authorizations required for the continued use, occupancy, management, leasing and operation of the Properties have been obtained or can be obtained without material cost, are in full force and effect, are in good standing and (to the extent required in connection with the transactions contemplated by the Formation Transaction Documentation) are assignable to the REIT, except in each case for items that, if not so obtained, obtainable and/or transferred, would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect. To the knowledge of such Forward REIT Merger Entity neither such Forward REIT Merger Entity, nor its Forward REIT Merger Entity Subsidiaries, nor any third party has taken any action that (or failed to take any action the omission of which) would result in the revocation of any such notice, license, permit, certificate or authorization where such revocation or revocations would, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect, nor has any one of them received any written notice of violation from any Governmental Authority or written notice of the intention of any entity to revoke any such notice, license, permit, certificate or authorization, that in each case has not been cured or otherwise resolved to the satisfaction of such Governmental Authority or other entity and except as would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Adverse Effect.

Section 4.07 COMPLIANCE WITH LAWS. To the knowledge of such Forward REIT Merger Entity, such Forward REIT Merger Entity and its Forward REIT Merger Entity Subsidiaries have conducted their respective businesses in compliance with all applicable Laws, except for such failures that would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Adverse Effect. To the knowledge of such Forward REIT Merger Entity, neither such Forward REIT Merger Entity, nor its Forward REIT Merger Entity Subsidiaries, nor any third party has been informed in writing of any continuing violation of any such Laws or that any investigation has been commenced and is continuing or is contemplated respecting any such possible violation, except in each case for violations that would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect.

Section 4.08 PROPERTIES.

(a) Except as set forth in Schedule 4.08(a), such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiary is the insured under a policy of title insurance as the owner of, and, to the knowledge of such Forward REIT Merger Entity**,** such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiary is the owner of, the fee simple estate (or, in the case of certain Properties, the leasehold estate or tenancy-in-common estate) to the Property owned by such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiary, in each case free and clear of all Liens except for Permitted Liens. Prior to the

effective time of the merger contemplated hereby, neither such Forward REIT Merger Entity nor any of its Forward REIT Merger Entity Subsidiaries shall take or omit to take any action to cause any Lien to attach to any Property, except for Permitted Liens and Liens, if any, given to secure mortgage indebtedness encumbering such Property.

(b) Except for matters that would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect, to the knowledge of such Forward REIT Merger Entity, (1) neither such Forward REIT Merger Entity nor its Forward REIT Merger Entity Subsidiaries, nor any other party to any material agreement affecting any Property (other than a Lease (as such term is hereinafter defined) for space within such Property), is in breach or default of any such agreement, (2) no event has occurred or has been threatened in writing, which with or without the passage of time or the giving of notice, or both, would, individually or together with all such other events, constitute a default under any such agreement, or would, individually or together with all such other events, reasonably be expected to cause the acceleration of any material obligation of any party thereto or the creation of a Lien upon any asset of such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries, except for Permitted Liens, and (3) all agreements affecting any Property required for the continued use, occupancy, management, leasing and operation of such Property (exclusive of space Leases) are valid and binding and in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

(c) To the knowledge of such Forward REIT Merger Entity, as presently conducted, none of the operation of the buildings, fixtures and other improvements comprising a part of the Properties is in violation of any applicable building code, zoning ordinance or other "land use" Law, except for such violations that would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect.

(d) Except for matters that would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect, (1) to the knowledge of such Forward REIT Merger Entity, neither such Forward REIT Merger Entity, nor its Forward REIT Merger Entity Subsidiaries, nor any other party to any Lease, is in breach or default of any such Lease, (2) to the knowledge of such Forward REIT Merger Entity, no event has occurred or has been threatened in writing, which with or without the passage of time or the giving of notice, or both, would, individually or together with all such other events, constitute a default under any Lease or would permit termination, modification or acceleration under such Lease, and (3) to the knowledge of such Forward REIT Merger Entity, each of the leases (and all amendments thereto or modifications thereof) to which such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries is a party or by which such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries or any Property is bound or subject (collectively, the "Leases") is valid and binding and in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.09 INSURANCE. Such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries has in place the public liability, casualty and other insurance coverage with respect to each Property owned, leased and/or managed by it as such Forward

REIT Merger Entity reasonably deems necessary and in all cases including such coverage as is required under the terms of any continuing loan or Lease. Each of the insurance policies with respect to each Property is in full force and effect in all material respects and all premiums due and payable thereunder have been fully paid when due. To the knowledge of such Forward REIT Merger Entity, neither such Forward REIT Merger Entity nor its Forward REIT Merger Entity Subsidiaries have received from any insurance company any notices of cancellation or intent to cancel any insurance.

Section 4.10 ENVIRONMENTAL MATTERS. Except for matters that would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect, to the knowledge of such Forward REIT Merger Entity, (A) such Forward REIT Merger Entity and its Forward REIT Merger Entity Subsidiaries are in compliance with all Environmental Laws, (B) neither such Forward REIT Merger Entity nor its Forward REIT Merger Entity Subsidiaries have received any written notice from any Governmental Authority or third party alleging that such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries or any Property is not in compliance with applicable Environmental Laws, and (C) there has not been a release of a hazardous substance on any of the Properties that would require investigation or remediation under applicable Environmental Laws. The representations and warranties contained in this Section 4.10 constitute the sole and exclusive representations and warranties made by such Forward REIT Merger Entity concerning environmental matters.

Section 4.11 EMINENT DOMAIN. There is no existing or, to the knowledge of such Forward REIT Merger Entity, proposed or threatened condemnation, eminent domain or similar proceeding, or private purchase in lieu of such a proceeding which would affect any of the Properties, except for such proceedings that would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect.

Section 4.12 EXISTING LOANS. Schedule 4.12 lists, as of the date hereof, all secured loans presently encumbering the Properties or any direct or indirect interest in the applicable Forward REIT Merger Entity, and any unsecured loans relating thereto to be assumed by the REIT or any Subsidiary of the REIT at Closing (the "Disclosed Loans").

Section 4.13 FRANCHISE AGREEMENTS. To the knowledge of such Forward REIT Merger Entity, the franchise agreement set forth on Schedule 4.13 ("Franchise Agreement") is the only hotel franchise agreement in effect for any Property. Except as set forth on Schedule 4.13, neither the applicable Forward REIT Merger Entity nor any of its Forward REIT Merger Entity Subsidiaries, nor, to the knowledge of such Forward REIT Merger Entity, any other party to the Franchise Agreement, is in breach or default of the Franchise Agreement, except for such breach or default that would not, individually or in the aggregate, reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect.

Section 4.14 FINANCIAL STATEMENTS. The financial statements of such Forward REIT Merger Entity included in the Prospectus have been prepared in all material respects in accordance with generally accepted accounting principles applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto), subject, in the case of unaudited statements, to normal year-end audit adjustments, and fairly present in all material respects the financial condition and results of operations of such Forward REIT Merger Entity as of the dates indicated therein and for the periods ended as indicated therein.

Section 4.15 TAXES. Except as set forth in Schedule 4.15, (i) such Forward REIT Merger Entity and each of its Forward REIT Merger Entity Subsidiaries have timely and properly filed all Tax returns and reports required to be filed by it (after giving effect to any filing extension properly granted by a Governmental Authority having authority to do so), and all such returns and reports are accurate and complete in all material respects, and has paid (or had paid on its behalf) all Taxes as required to be paid by it, (ii) no income or material non-income Tax returns filed by such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries are the subject of a pending or ongoing audit, and (iii) except as would not have a Forward OP Merger Entity Material Adverse Effect, no deficiencies for any Taxes have been proposed, asserted or assessed against such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries, and no requests for waivers of the time to assess any such Taxes are pending. Except as set forth on Schedule 4.15, at all times since its formation, such Forward REIT Merger Entity (including any "predecessor corporation" (within the meaning of Treasury Regulations Section 1.1374-1(e)) to such Forward REIT Merger Entity) has continuously qualified as an "S corporation" within the meaning of Section 1361(a)(1) of the Code and all applicable corresponding provisions of state and local law, and no Tax authority has claimed in writing that such Forward REIT Merger Entity does not qualify as an S corporation.

Section 4.16 LITIGATION. Except for actions, suits or proceedings covered by policies of insurance, to the knowledge of such Forward REIT Merger Entity, there is no action, suit or proceeding pending or, to the knowledge of such Forward REIT Merger Entity, threatened against or affecting such Forward REIT Merger Entity, its Forward REIT Merger Entity Subsidiaries or Properties, or any officer, director, principal, managing member, general partner or Affiliate of any of the foregoing other than actions, suits, proceedings arising in the ordinary course of business from the ownership and operation, which, if adversely determined would not have a Forward REIT Merger Entity Material Adverse Effect. There is no action, suit, or proceeding pending or, to the knowledge of such Forward REIT Merger Entity, threatened against or affecting such Forward REIT Merger Entity, its Forward REIT Merger Entity Subsidiaries or any officer, director, principal, managing member, general partner or Affiliate of any of the foregoing which challenges or impairs the ability of such Forward REIT Merger Entity to execute or deliver, or materially perform its obligations under this Agreement and the documents executed by it pursuant to this Agreement or to consummate the transactions contemplated hereby or thereby. Except for matters covered by insurance, there is no judgment, decree, injunction, rule or order of a Governmental Authority outstanding against such Forward REIT Merger Entity, its Forward REIT Merger Entity Subsidiaries or any officer, director, principal, managing member or general partner of any of the foregoing in their capacity as such, or which would reasonably be expected to have a Forward REIT Merger Entity Material Adverse Effect.

Section 4.17 NO INSOLVENCY PROCEEDINGS. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to such Forward REIT Merger Entity's knowledge, threatened against such Forward REIT Merger Entity, nor are any such proceedings contemplated by such Forward REIT Merger Entity.

Section 4.18 SECURITIES LAW MATTERS. Such Forward REIT Merger Entity acknowledges that: (i) the REIT intends the offer and issuance of REIT Shares to any Pre-Formation Participants to be exempt from registration under the Securities Act and applicable state securities laws by virtue of the status of such equity holder as an "accredited investor" (within the meaning of Rule 501(a) of Regulation D under the Securities Act) acquiring any REIT Shares in a transaction exempt from registration pursuant to Rule 506 of Regulation D under the Securities Act, and (ii) in issuing any REIT Shares pursuant to the terms of this Agreement, the REIT is relying on the representations made by each equity holder receiving REIT Shares as consideration in the Merger, which representations were set forth in Appendix D to the Request for Consent – Accredited Investor Representations Letter.

Section 4.19 NO BROKER. Such Forward REIT Merger Entity has not entered into, and it covenants that it will not enter into, any agreement, arrangement or understanding with any Person or firm which will result in the obligation of the REIT or any Affiliate to pay any finder's fee, brokerage commission or similar payment in connection with the transaction contemplated by this Agreement (other than underwriting discounts, commissions and other fees and expenses to be paid by the REIT in connection with the IPO and any related financing transactions).

Section 4.20 NO IMPLIED REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article IV and any other agreement entered into in connection with the Formation Transactions to which it is a party, such Forward REIT Merger Entity shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby.

Section 4.21 OWNERSHIP OF CERTAIN ASSETS. Except as set forth in Schedule 4.21, no such Forward REIT Merger Entity nor any Forward REIT Merger Entity Subsidiary owns any loan assets or other securities of any issuer except for equity interests in other American Assets Entities.

Section 4.22 SURVIVAL OF REPRESENTATIONS AND WARRANTIES OF THE FORWARD REIT MERGER ENTITIES. The parties hereto agree and acknowledge that the representations and warranties set forth in this Article IV (other than Section 4.01, Section 4.02, Section 4.03, Section 4.18 and Section 4.23) shall not survive the Closing.

Section 4.23 NON-FOREIGN STATUS. Neither the Forward REIT Merger Entity nor any Forward REIT Merger Entity Subsidiary is not a foreign person (as defined in the Code).

ARTICLE V

COVENANTS AND OTHER AGREEMENTS

Section 5.01 PRE-CLOSING COVENANTS. During the period from the date hereof to the Closing Date (except as otherwise provided for or contemplated by this Agreement or in connection with the Formation Transactions), each Forward REIT Merger Entity shall use

commercially reasonable efforts to (and shall cause each of its Forward REIT Merger Entity Subsidiaries to) conduct its businesses and operate and maintain the Properties in the ordinary course of business consistent with past practice, pay its debt obligations as they become due and payable, and use commercially reasonable efforts to preserve intact its current business organizations and preserve its relationships with customers, tenants, suppliers, advertisers and others having business dealings with it, in each case consistent with past practice. In addition, and without limiting the generality of the foregoing, during the period from the date hereof to the Closing Date and except in connection with the Formation Transactions, each Forward REIT Merger Entity shall not (and shall not permit any of its Forward REIT Merger Entity Subsidiaries to) without the prior written consent of the REIT, which consent may be withheld by the REIT in its sole discretion:

(a) (i) other than distributions to the shareholders of such Forward REIT Merger Entity in connection with such holders' payment of any Taxes related to their ownership of the stock of the Forward REIT Merger Entity or as otherwise contemplated by this Agreement, declare, set aside or pay any dividends or distributions in respect of any Forward REIT Merger Entity Interests, except in the ordinary course of business consistent with past practice and in accordance with the applicable governing document of such Forward REIT Merger Entity, (ii) issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for any Forward REIT Merger Entity Interests or make any other changes to the equity capital structure of such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries, or (iii) purchase, redeem or otherwise acquire any Forward REIT Merger Entity Interests or interests of its Forward REIT Merger Entity Subsidiaries or any other securities thereof;

(b) issue, deliver, sell, transfer, dispose, mortgage, pledge, assign or otherwise encumber, or cause the issuance, delivery, sale, transfer, disposition, mortgage, pledge, assignment or otherwise encumbrance of, any limited liability company, partnership interests or other equity interests of such Forward REIT Merger Entity or of its Forward REIT Merger Entity Subsidiaries or any other assets of such Forward REIT Merger Entity or its Forward REIT Merger Entity Subsidiaries;

(c) amend, modify or terminate any lease, contract or other instruments relating to the Property, except in the ordinary course of business consistent with past practice;

(d) amend its certificate of formation, certificate of organization, limited partnership agreement, limited liability company agreement or operating agreement, as applicable;

(e) adopt a plan of liquidation, dissolution, merger, consolidation, restructuring, recapitalization or reorganization;

(f) materially alter the manner of keeping such Forward REIT Merger Entity's or its Forward REIT Merger Entity Subsidiaries' books, accounts or records or the accounting practices therein reflected;

(g) make or change any Tax elections (except that, if applicable, such Forward REIT Merger Entity may, without the consent of the REIT, (i) terminate its election to be taxed as an S corporation up to three days prior to the expected pricing of the IPO and (ii) cause any Forward REIT Merger Entity Subsidiary that is a qualified subchapter S subsidiary to convert or merge into a wholly-owned limited liability company subsidiary of such Forward REIT Merger Entity that is a disregarded entity for federal Tax purposes); settle or compromise any claim, notice, audit report or assessment in respect of Taxes; change any annual Tax accounting period; adopt or change any method of Tax accounting; file any amended Tax return; enter into any tax allocation agreement, tax sharing agreement, tax indemnity agreement or closing agreement relating to any Tax; surrender of any right to claim a Tax refund; or consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment;

(h) terminate or amend any existing insurance policies affecting any Property that results in a material reduction in insurance coverage for the Property;

(i) knowingly cause or permit such Forward REIT Merger Entity to violate, or fail to use commercially reasonable efforts to cure any violation of, any applicable Laws; or

(j) authorize, commit or agree to take any of the foregoing actions.

Section 5.02 CONSENT AND WAIVER OF RIGHTS UNDER ORGANIZATIONAL DOCUMENTS. As of the Closing, each of the Forward REIT Merger Entities waives and relinquishes all rights and benefits otherwise afforded to such Forward REIT Merger Entity (a) under its Organizational Documents including, without limitation, any rights of appraisal, rights of first offer or first refusal, buy/sell agreements, put, option or similar parallel exit or dissenter rights in connection with the Formation Transactions and the IPO and any right to consent to or approve of the sale or contribution or other transaction undertaken by any equity holder of such Forward REIT Merger Entity of their Forward REIT Merger Entity Interests to the REIT or any Affiliate thereof and any and all notice provisions related thereto and (b) for claims against the REIT or the Operating Partnership for breach by any of their respective present or former officers, directors, managing members, general partners or Affiliates of their fiduciary duties or similar obligations (including duties of disclosure) to any of their respective present or former shareholders, members, partners, equity interest holders or Affiliates. Each of the Forward REIT Merger Entities acknowledges that the agreements contained herein and the transactions contemplated hereby and any actions taken in contemplation of the transactions contemplated hereby may conflict with, and may not have been contemplated by, the Organizational Documents of each of the Forward REIT Merger Entities or other agreements among one or more holders of Forward REIT Merger Entities Interests or one or more of the partners or members, as applicable, of any of the Forward REIT Merger Entities. With respect to each of the Forward REIT Merger Entities and each Property in which the Forward REIT Merger Entity Interests represent a direct or indirect interest, each of the Forward REIT Merger Entities expressly give all consents (and any consents necessary to authorize the proper parties in interest to give all consents) and waivers it is entitled to give that are necessary or desirable to facilitate the contribution or other Formation Transactions relating to such Forward REIT Merger Entity or such Property. In addition, if the transactions contemplated hereby occur, this Agreement shall be deemed to be an amendment to the Organizational

Documents of each of the Forward REIT Merger Entities to the extent the terms herein conflict with the terms thereof, including without limitation, terms with respect to allocations, distributions and the like. In the event the transactions contemplated by this Agreement do not occur, nothing in this Agreement shall be deemed to be or construed as an amendment or modification of, or commitment of any kind to amend or modify, the Organizational Documents of any of the Forward REIT Merger Entities, which shall remain in full force and effect without modification.

Section 5.03 EXCLUDED ASSETS. Prior to or, as specified on Schedule 5.03, as soon as possible following the Closing and after such amounts are reasonably determinable, each Forward REIT Merger Entity shall distribute or cause to be distributed or paid out the assets identified on Schedule 5.03 (the "Excluded Assets").

ARTICLE VI

ADDITIONAL AGREEMENTS

Section 6.01 COMMERCIALLY REASONABLE EFFORTS BY THE REIT AND THE FORWARD REIT MERGER ENTITIES. Each of the REIT and each Forward REIT Merger Entity shall use commercially reasonable efforts and cooperate with each other in (i) promptly determining whether any filings are required to be made or consents, approvals, waivers, permits or authorizations are required to be obtained (under any applicable Law or regulation or from any Governmental Authority or third party) in connection with the transactions contemplated by this Agreement, and (ii) promptly making (or causing to be made) any such filings, in furnishing information required in connection therewith and in timely seeking to obtain any such consents, approvals, waivers, permits and authorizations.

Section 6.02 TAX MATTERS.

(a) Each Forward REIT Merger Entity and its Subsidiaries shall timely file or cause to be timely filed when due all Tax returns required to be filed by or with respect to such Person on or prior to the Closing Date and shall pay or cause to be paid all Taxes shown due thereon. All such Tax returns (including, for the avoidance of doubt, any amended Tax returns) shall be prepared in a manner consistent with past practice, except as otherwise required by applicable Law.

(b) The REIT shall prepare or cause to be prepared and file or cause to be filed all income Tax returns of each Forward REIT Merger Entity and each of their Subsidiaries which are due after the Closing Date. All such income Tax returns (including, for the avoidance of doubt, any amended Tax returns) shall be prepared in a manner consistent with past practice, except as otherwise required by applicable Law. No later than ten (10) days prior to the due date (including extensions) for filing such income Tax returns, the REIT shall deliver such income Tax returns to American Assets, Inc. for its review and approval, which shall not be unreasonably withheld.

(c) The REIT shall prepare or cause to be prepared all other Tax returns of each Forward REIT Merger Entity and each of their respective Subsidiaries.

(d) The REIT and each Forward REIT Merger Entity will each use its reasonable best efforts to cause the Merger to qualify, and will use its reasonable best efforts not to, and not to permit or cause any of its Subsidiaries to, take any action that could reasonably be expected to prevent or impede the Merger from qualifying, as a reorganization within the meaning of Section 368 of the Code.

(e) Unless otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code, each of the REIT and each Forward REIT Merger Entity shall report the Merger as a "reorganization" within the meaning of Section 368(a) of the Code for federal income tax purposes.

(f) Following the Merger, the REIT will comply with the record-keeping and information filing requirements of Treasury Regulation Section 1.368-3.

Section 6.03 WITHHOLDING CERTIFICATE. Prior to Closing, each Forward REIT Merger Entity shall deliver to the REIT such forms and certificates, duly executed and acknowledged, in form and substance reasonably satisfactory to the REIT (including any relevant forms or certificates provided to the Forward REIT Merger Entity by the holders of Forward REIT Merger Entity Interests), certifying that the payment of consideration in each Merger is exempt from withholding under Section 1445 of the Code and any similar withholding rules under applicable state, local or foreign Tax Laws.

Section 6.04 TAX ADVICE. The REIT makes no representations or warranties to any Forward REIT Merger Entity or any holder of a Forward REIT Merger Entity Interest regarding the Tax treatment of the Mergers or the other Formation Transactions, or with respect to any other Tax consequences to any Forward REIT Merger Entity or any holder of a Forward REIT Merger Entity Interest of this Agreement, the Mergers or the other Formation Transactions. Each Forward REIT Merger Entity acknowledges that such Forward REIT Merger Entity and the holders of Forward REIT Merger Entity Interests are relying solely on their own Tax advisors in connection with this Agreement, the Mergers and the other Formation Transactions and agreements contemplated hereby.

Section 6.05 ALTERNATE TRANSACTION. In the event that the REIT determines that a structure change is necessary, advisable or desirable, the REIT may elect, in its sole and absolute discretion, to effect the Alternate Transaction, and in such case each Forward REIT Merger Entity hereby agrees and consents to such election, without the need for the REIT to seek any further consent or action from such Forward REIT Merger Entity, and agrees that the parties shall undertake the Alternate Transaction and shall, and it shall cause its members or partners, as applicable, and Subsidiaries to, enter into such agreements as shall be necessary to consummate the Alternate Transaction.

Section 6.06 EXCLUSION OF ENTITIES. The parties hereby agree that the REIT shall have the right, in its sole discretion, to exclude any of the Forward REIT Merger Entities from the Mergers after the date hereof until the Effective Time, provided that the REIT shall provide prior written notice to such Forward REIT Merger Entity regarding such exclusion.

ARTICLE VII

CONDITIONS PRECEDENT

Section 7.01 CONDITION TO EACH PARTY'S OBLIGATIONS. The respective obligation of each party to effect the Mergers and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date is subject to the satisfaction or waiver on or prior to the Effective Time of the following conditions:

(a) REGISTRATION STATEMENT. The Registration Statement shall have become effective under the Securities Act and shall not be the subject of any stop order or proceedings by the SEC seeking a stop order. This condition may not be waived by any party.

(b) NO INJUNCTION. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, judgment, injunction, stay or other order (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of any of the transactions contemplated in this Agreement nor shall any of the same brought by a Governmental Authority of competent jurisdiction be pending or threatened that seeks the foregoing.

(c) OPERATING PARTNERSHIP AGREEMENT. The Operating Partnership Agreement, in substantially the form attached hereto as Exhibit F, shall have been executed and delivered by the partners of the Operating Partnership and shall be in full force and effect and, except as contemplated by Section 2.02 or the other Formation Transaction Documents, shall not have been amended or modified.

Section 7.02 CONDITIONS TO OBLIGATIONS OF THE FORWARD REIT MERGER ENTITIES. The obligation of each Forward REIT Merger Entity to effect the Mergers and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date are further subject to satisfaction of the following conditions (any of which may be waived by the Forward REIT Merger Entity, in whole or in part):

(a) REPRESENTATIONS AND WARRANTIES. Except as would not have a REIT Material Adverse Effect, each of the representations and warranties of the REIT contained in this Agreement shall be true and correct in all material respects at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(b) PERFORMANCE BY THE REIT. Except as would not have a REIT Material Adverse Effect, the REIT shall have performed all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) REGISTRATION RIGHTS AGREEMENT. The REIT shall have entered into the registration rights agreement substantially in the form attached as Exhibit C. This condition may not be waived by any party.

(d) OWNERSHIP WAIVER. Solely with respect to Ernest S. Rady, or his Affiliates, immediate family members, trusts of immediate family members, estates or heirs or successors or assigns or the Ernest Rady Trust U/D/T March 10, 1983, as amended, or its Affiliates, successors or assigns (collectively, the "Rady Group"), based on the shareholder representation letter described in Section 7.03(i), the Board of Directors of the REIT shall have granted an exception to the Common Stock Ownership Limit and the Aggregate Stock Ownership Limit set forth in the REIT Charter, providing the Rady Group with an Excepted Holder Limit (as defined in the REIT Charter) of [__]%.

(e) FIREMAN'S FUND HEADQUARTERS. Solely with respect to the merger of Pacific Novato Assets, Inc. with and into the REIT, (i) thirty (30) days shall have passed since the execution of this Agreement and (ii) Novato FF PT Investor, LLC, a Delaware limited liability company, shall have not exercised the right of first refusal granted to it pursuant to that certain Amended and Restated Limited Liability Company Agreement of Novato FF Venture, LLC, dated as of May 15, 2007, as amended.

Section 7.03 CONDITIONS TO OBLIGATION OF THE REIT. The obligations of the REIT to effect the Mergers and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date are further subject to satisfaction of the following conditions (any of which may be waived by the REIT, in whole or in part):

(a) REPRESENTATIONS AND WARRANTIES. Except as would not have a Forward REIT Merger Entity Material Adverse Effect, each of the representations and warranties of the Forward REIT Merger Entities contained in this Agreement, as well as those of the Ernest Rady Trust U/D/T March 10, 1983, as amended (the "Rady Trust"), under the Representation, Warranty and Indemnity Agreement, shall be true and correct in all respects at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(b) PERFORMANCE BY THE FORWARD REIT MERGER ENTITIES. Each Forward REIT Merger Entity shall have performed in all material respects all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) IPO CLOSING. The closing of the IPO shall occur substantially concurrently with the Closing.

(d) CONSENTS, ETC. All necessary consents or approvals of Governmental Authorities or third parties (including lenders) for each Forward REIT Merger Entity to consummate the transactions contemplated hereby shall have been obtained.

(e) NO MATERIAL ADVERSE CHANGE. There shall have not occurred between the date hereof and the Closing Date any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of each Forward REIT Merger Entity or Forward REIT Merger Entity Subsidiary and the Properties, taken as a whole.

(f) REPRESENTATION, WARRANTY AND INDEMNITY AGREEMENT. The Rady Trust shall have entered into the Representation, Warranty and Indemnity Agreement.

(g) ESCROW AGREEMENT. The parties thereto shall have entered into the Escrow Agreement.

(h) LOCK-UP AGREEMENT. Each of the Pre-Formation Participants owning interests in each Forward REIT Merger Entity shall have entered into the Lock-Up Agreement substantially in the form attached as Exhibit E.

(i) SHAREHOLDER REPRESENTATION LETTER. The Rady Group shall have executed and delivered a letter to the REIT setting forth certain representations and undertakings related to the Rady Group's ownership of REIT Shares in a form reasonably acceptable to the Board of Directors of the REIT and which allows the Board of Directors of the REIT to reasonably conclude that the ownership waiver and Excepted Holder Limit granted in Section 7.02(d) will not jeopardize the REIT's status as a real estate investment trust under the Code and make the other determinations required by the REIT Charter in connection with granting such waiver and Excepted Holder Limit.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.01 NOTICES. All notices and other communications under this Agreement shall be in writing and shall be deemed given when (i) delivered personally, (ii) five (5) Business Days after being mailed by certified mail, return receipt requested and postage prepaid, (iii) one (1) Business Day after being sent by a nationally recognized overnight courier or (iv) transmitted by facsimile if confirmed within twenty-four (24) hours thereafter by a signed original sent in the manner provided in clause (i), (ii) or (iii) to the parties at the following addresses (or at such other address for a party as shall be specified by notice from such party):

if to the REIT to:

American Assets Trust, Inc.
11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620

if to a Forward REIT Merger Entity to:

11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620

Section 8.02 DEFINITIONS. For purposes of this Agreement, the following terms shall have the following meanings.

(a) "Accredited Investor" has the meaning set forth under Regulation D of the Securities Act.

(b) "Affiliate" means, with respect to any Person, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

(c) "Allocated Share" means the amount that would be allocated to a Pre-Formation Participant that is the holder of an interest in an American Assets Entity in accordance with the provisions of the existing Organizational Documents of such entity relating to distributions of distributable net proceeds from sales of directly or indirectly owned properties or assets, and assuming the sale of the relevant Target Asset or Target Assets that are directly or indirectly owned by such entity for a value equal to such Target Asset's or Target Assets' respective Equity Value(s).

Notwithstanding the foregoing, the Allocated Share of any Pre-Formation Participant shall reflect the following adjustments:

1. Intercompany Debt Adjustment. In calculating Allocated Share, all Intercompany Debt shall be taken into account so that the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligor of Intercompany Debt collectively are reduced, and the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligee of such Intercompany Debt collectively are increased, in each case by the amount of such Intercompany Debt (such adjustments being referred to as "Intercompany Debt Adjustments").

2. Entity Specific Debt Adjustment. To the extent that Entity Specific Debt is allocated to a Target Asset, in calculating Allocated Shares of holders of direct or indirect Pre-Formation Interests in the American Assets Entity or Entities owning such Target Asset, the amount of the decrease in Equity Value of such Target Asset attributable to the allocation of such Entity Specific Debt to such Target Asset (through the operation of the formula set forth on Schedule III) (in each case, such decrease being the "Decrease") shall be taken into account so that:

    a. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in any obligor(s) under such Entity Specific Debt collectively shall be (i) reduced by the amount equal to the excess of (w) the amount of the Entity Specific Debt owed by such obligor over (x) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset; or (ii) increased by the amount equal to the excess of (y) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset over (z) the amount of the Entity Specific Debt owed by such obligor; and

b. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in American Assets Entities owning such Target Asset that are not obligors under such Entity Specific Debt collectively shall be increased by the amount equal to the amount of the Decrease allocated pro rata to such holders as direct or indirect owner of the Target Asset;

with the net effect under the foregoing clauses (a)(i), (a)(ii) and (b) being that the adverse economic impact of the Decrease shall be borne equitably by the holders of direct or indirect Pre-Formation Interests in the actual obligor(s) under such Entity Specific Debt and not by any other holder of direct or indirect Pre-Formation Interests in the American Assets Entities owning such Target Asset.

Illustrative examples of the application of the foregoing Allocated Share adjustments using hypothetical numbers are included as Example 3 and Example 4 in ***Appendix A*** to Schedule III.

(d) "Alternate Transaction" means (i) a contribution of the assets held by a Forward REIT Merger Entity to the REIT in exchange for the amount of cash and the number of REIT Shares that were to be issued pursuant to this Agreement, (ii) a contribution of the assets held by a Forward REIT Merger Entity to the Operating Partnership in exchange for the amount of cash and a number of OP Units equal to the number of REIT Shares that were to be issued pursuant to this Agreement, (iii) a contribution by each holder of direct or indirect equity interests in a Forward Merger Entity to the Operating Partnership or the REIT in exchange for the amount of cash and the number of OP Units and/or REIT Shares that would have otherwise been received by such holder of direct or indirect equity interests pursuant to this Agreement, (iv) the restructuring of the Merger as either (x) a merger of the Forward REIT Merger Entity with and into either the Operating Partnership or a wholly owned subsidiary of the REIT or the Operating Partnership or (y) a merger of a wholly owned subsidiary of either the REIT or the Operating Partnership with and into the Forward REIT Merger Entity, in each case in exchange for the amount of cash and the number of REIT Shares that were to be issued pursuant to this Agreement (or the amount of cash and a number OP Units equal to the number of REIT Shares that were to be issued pursuant to this Agreement), or (v) any other transaction pursuant to which the REIT, the Operating Partnership or any of their Subsidiaries acquire the assets held by a Forward REIT Merger Entity or each holder of direct or indirect equity interests in such Forward REIT Merger Entity in a transaction pursuant to which each holder of direct or indirect interests in such Forward REIT Merger Entity receives the amount of cash, the number of OP Units and/or the number of REIT Shares that were to be received by such holder pursuant to this Agreement (or a portion thereof equal in value to the value of the portion of such assets acquired by the REIT, the Operating Partnership or any of their Subsidiaries pursuant to such Alternate Transaction).

(e) "American Assets Entity" means a Forward OP Merger Entity, Forward REIT Merger Entity, OP Sub Reverse Merger Entity, OP Sub Forward Merger Entity, REIT Sub Forward Merger Entity, or Contributed Entity, as applicable. As used herein, "American Assets Entities" refer to each American Assets Entity, collectively.

(f) "Business Day" means any day that is not a Saturday, Sunday or legal holiday in the State of California.

(g) "Code" means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated or issued thereunder.

(h) "Consent Form" means the forms provided to each holder of Pre-Formation Interests to consent to the Formation Transactions and to make such holder's irrevocable elections with respect to consideration to be received in the Formation Transactions.

(i) "Environmental Laws" means all federal, state and local Laws governing pollution or the protection of human health or the environment.

(j) "Escrow Agreement" means the Indemnity Escrow Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the Rady Trust.

(k) "Equity Value" has the meaning set forth in Schedule III hereto.

(l) "Formation Transaction Documentation" means all of the agreements and plans of merger (including this Agreement) relating to all target entities and all contribution agreements and related documents and agreements, substantially in the forms accompanying the Request for Consent dated July 31, 2010 and identified in Exhibit A hereto, pursuant to which all of the American Assets Entities and/or the equity interests in the American Assets Entities held by the Pre-Formation Participants are to be acquired by the REIT or the Operating Partnership, directly or indirectly, as part of the Formation Transactions.

(m) "Formation Transactions" means the transactions contemplated by this Agreement and the other Formation Transaction Documentation.

(n) "Forward REIT Merger Entity Material Adverse Effect" means any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the applicable Forward REIT Merger Entity and each subsidiary of such Forward REIT Merger Entity, taken as a whole.

(o) "Governmental Authority" means any government or agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

(p) "IPO Closing Date" means the closing date of the IPO.

(q) "Intercompany Debt" means loans or advances among American Assets Entities and/or their Subsidiaries or among holders of Pre-Formation Interests on the one hand and American Assets Entities and/or their Subsidiaries on the other hand, other than those promissory notes set forth on *Appendix D* to Schedule III for which Del Monte Center is listed as the associated Target Asset, each of which loans or advances are set forth on Schedule IV hereto. Intercompany Debt shall not be discharged pursuant to the Formation Transactions except to the extent any such Intercompany Debt merges out of existence by operation of law as a result of such transactions (e.g., if the Operating Partnership acquires both the obligor and obligee interest in a loan which reflects an Intercompany Debt). After the closing of the Formation Transactions, and except as provided below, to the extent any such loans are acquired by the REIT, Operating Partnership or their Subsidiaries (e.g., an obligor or obligee with respect to such loans is merged with or into, or acquired by, one of such entities), the REIT, Operating Partnership or their Subsidiaries (as applicable) shall be permitted to take any actions (including repayment) with respect to such Intercompany Debt as they deem appropriate. Intercompany Debt with respect to which either the obligor or the obligee (but not both such parties) under such Intercompany Debt is acquired, directly or indirectly, by the REIT, Operating Partnership or their Subsidiaries, shall be deemed to be discharged immediately after the Formation Transactions by (i) the REIT, Operating Partnership or their Subsidiaries (as applicable) as obligor, or (ii) the obligor to the

REIT, Operating Partnership or their Subsidiaries (as applicable) as obligee, in each case in exchange for the consideration payable as set forth in the applicable Formation Transaction Documentation. The amounts payable and receivable with respect to each item of Intercompany Debt shall be determined by the REIT, for purposes of determining the Intercompany Debt Adjustments, within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

(r) "IPO Price" means the initial public offering price of a REIT Share in the IPO.

(s) "Laws" means laws, statutes, rules, regulations, codes, orders, ordinances, judgments, injunctions, decrees and policies of any Governmental Authority, including, without limitation, zoning, land use or other similar rules or ordinances.

(t) "Liens" means all pledges, claims, liens, charges, restrictions, controls, easements, rights of way, exceptions, reservations, leases, licenses, grants, covenants and conditions, encumbrances and security interests of any kind or nature whatsoever.

(u) "Lock-Up Agreement" means that certain Lock-Up Agreement, by and between the underwriters and each investor of the REIT and/or the Operating Partnership.

(v) "Operating Partnership Agreement" means the agreement of limited partnership of the Operating Partnership, as amended and restated and in effect immediately prior to the Effective Time.

(w) "Organizational Documents" means the certificate of formation, certificate of incorporation and bylaws, certificate of limited partnership and limited partnership agreement, limited liability company agreement or operating agreement, of each Forward REIT Merger Entity or Forward REIT Merger Entity Subsidiary, as applicable.

(x) "Permitted Liens" means (i) Liens, or deposits made to secure the release of such Liens, securing Taxes, the payment of which is not delinquent or the payment of which (including, without limitation, the amount or validity thereof) is being contested in good faith by appropriate proceedings for which adequate reserves have been made in accordance with GAAP; (ii) zoning, entitlement, building and other land use Laws imposed by governmental agencies having jurisdiction over the Properties; (iii) covenants, conditions, restrictions, easements for public utilities, encroachments, rights of access or other non-monetary matters that do not materially impair the use of the Properties for the purposes for which they are currently being used or proposed to be used in connection with the relevant Person's business; (iv) Liens securing financing or credit arrangements existing as of the Closing Date; (v) Liens arising under leases in effect as of the Closing Date; (vi) any exceptions contained in any title policy (including any policy issued to a secured lender) relating to the Properties as of the Closing Date; (vii) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the ordinary course of business that are not yet due and payable and which are not, in the aggregate, material to the business, operations and financial condition of the Properties so encumbered; and (viii) any matters that would not have a Forward REIT Merger Entity Material Adverse Effect.

(y) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

(z) "Pre-Formation Interests" means the interests held by the Pre-Formation Participants in the American Assets Entities.

(aa) "Pre-Formation Participants" means the holders of the direct and indirect equity interests in the relevant American Assets Entities immediately prior to the Formation Transactions.

(bb) "Prospectus" means the REIT's final prospectus as filed with the SEC.

(cc) "REIT Material Adverse Effect" means any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the REIT and each REIT Subsidiary, taken as a whole.

(dd) "Representation, Warranty and Indemnity Agreement" means the Representation, Warranty and Indemnity Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the Rady Trust.

(ee) "Securities Act" means the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder.

(ff) "Subsidiary" of any Person means any corporation, partnership, limited liability company, joint venture, trust or other legal entity of which such Person owns (either directly or through or together with another Subsidiary of such Person) either (i) a general partner, managing member or other similar interest, or (ii)(A) ten percent (10%) or more of the voting power of the voting capital stock or other equity interests, or (B) ten percent (10%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other legal entity.

(gg) "Target Asset" has the meaning set forth in Schedule III hereto.

(hh) "Tax" means all federal, state, local and foreign income, gross receipts, license, property, withholding, sales, franchise, employment, payroll, goods and services, stamp, environmental, customs duties, capital stock, social security, transfer, alternative minimum, excise and other taxes, tariffs or governmental charges of any nature whatsoever, including estimated taxes, together with penalties, interest or additions to Tax with respect thereto, whether or not disputed.

(ii) "Underwriting Agreement" means that certain underwriting agreement, by and between the REIT, the Operating Partnership and certain underwriters set forth therein, pursuant to which the REIT will issue and sell shares in the IPO.

Section 8.03 COUNTERPARTS. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party and delivered to each other party.

Section 8.04 ENTIRE AGREEMENT; THIRD-PARTY BENEFICIARIES. This Agreement, the other Formation Transaction Documentation and the Consent Forms to which the parties hereto are a party, including, without limitation, the exhibits and schedules hereto and thereto, constitute the entire agreement and, except as set forth in Section 1.09, supersede each prior agreement and understanding, whether written or oral, among the parties regarding the subject matter of this Agreement. This Agreement is not intended to confer any rights or remedies on any Person other than the parties hereto.

Section 8.05 GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of California, regardless of any Laws that might otherwise govern under applicable principles of conflicts of laws thereof.

Section 8.06 ASSIGNMENT. This Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns; *provided, however*, that this Agreement may not be assigned (except by operation of law) by any party without the prior written consent of the other parties, and any attempted assignment without such consent shall be null and void and of no force and effect, except that the REIT may assign its rights and obligations hereunder to an Affiliate.

Section 8.07 JURISDICTION. The parties hereto hereby (a) submit to the exclusive jurisdiction of any state or federal court sitting in the County of San Diego, with respect to any dispute arising out of this Agreement or any transaction contemplated hereby to the extent such courts would have subject matter jurisdiction with respect to such dispute and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, or that the venue of the action is improper.

Section 8.08 DISPUTE RESOLUTION. The parties intend that this Section 8.08 will be valid, binding, enforceable, exclusive and irrevocable and that it shall survive any termination of this Agreement.

(a) Upon any dispute, controversy or claim arising out of or relating to this Agreement or the enforcement, breach, termination or validity thereof ("Dispute"), the party raising the Dispute will give written notice to the other parties to the Dispute describing the nature of the Dispute following which the parties to such Dispute shall attempt for a period of ten (10) Business Days from receipt by the parties of notice of such Dispute to resolve such Dispute by negotiation between representatives of the parties hereto who have authority to settle such Dispute. All such negotiations shall be confidential and any statements or offers made therein shall be treated as compromise and settlement negotiations for purposes of any applicable rules of evidence and shall not be admissible as evidence in any subsequent proceeding for any purpose. The statute of limitations applicable to the commencement of a lawsuit shall apply to the commencement of an arbitration hereunder, except that no defense based on the running of the statute of limitations will be available based upon the passage of time during any such negotiation. Regardless of the foregoing, a party shall have the right to seek immediate injunctive relief pursuant to Section 8.08(c) below without regard to any such ten (10) Business Day negotiation period.

(b) Any Dispute (including the determination of the scope or applicability of this agreement to arbitrate) that is not resolved pursuant to Section 8.08(a) above shall be submitted to final and binding arbitration in California before one neutral and impartial arbitrator, in accordance with the Laws of the State of California for agreements made in and to be performed in that State. The arbitration shall be administered by JAMS, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. Each of the REIT, on the one hand, and any Forward REIT Merger Entity, on the other hand, shall appoint one arbitrator within fifteen (15) days of a demand for arbitration. If the REIT and any Forward REIT Merger Entity cannot mutually agree upon an arbitrator within such 15-day period, the arbitrator shall be appointed by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. The arbitrator shall designate the place and time of the hearing. The hearing shall be scheduled to begin as soon as practicable and no later than sixty (60) days after the appointment of the arbitrator (unless such period is extended by the arbitrator for good cause shown) and shall be conducted as expeditiously as possible. The award, which shall set forth the arbitrator's findings of fact and conclusions of law, shall be filed with JAMS and mailed to the parties no later than thirty (30) days after the close of the arbitration hearing. The arbitration award shall be final and binding on the parties and not subject to collateral attack. Judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(c) Notwithstanding the parties' agreement to submit all Disputes to final and binding arbitration before JAMS, the parties shall have the right to seek and obtain temporary or preliminary injunctive relief in any court having jurisdiction thereof. Such courts shall have authority to, among other things, grant temporary or provisional injunctive relief in order to protect any party's rights under this Agreement. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitral tribunal shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitral tribunal's orders to that effect.

(d) The prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, and the non-prevailing party shall pay all expenses and fees of JAMS, all costs of the stenographic record, all expenses of witnesses or proofs that may have been produced at the direction of the arbitrator, and the fees, costs, and expenses of the arbitrator. The arbitrator shall allocate such costs and designate the prevailing party or parties for these purposes.

Section 8.09 SEVERABILITY. Each provision of this Agreement will be interpreted so as to be effective and valid under applicable law, but if any provision is held invalid, illegal or unenforceable under applicable law in any jurisdiction, then such invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been included herein.

Section 8.10 RULES OF CONSTRUCTION.

(a) The parties hereto agree that they have had the opportunity to be represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(b) The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." All terms defined in this Agreement shall have the defined meanings contained herein when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Unless explicitly stated otherwise herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time, amended, qualified or supplemented, including (in the case of agreements and instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 8.11 EQUITABLE REMEDIES. The parties agree that irreparable damage would occur to the REIT in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the REIT shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by any Forward REIT Merger Entity and to enforce specifically the terms and provisions hereof in any federal or state court located in California, this being in addition to any other remedy to which the REIT is entitled under this Agreement or otherwise at law or in equity.

Section 8.12 WAIVER OF SECTION 1542 PROTECTIONS. As of the Closing, each Forward REIT Merger Entity expressly acknowledges that it has had, or has had and waived, the opportunity to be advised by independent legal counsel and hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the California Civil Code and does so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542 which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Section 8.13 TIME OF THE ESSENCE. Time is of the essence with respect to all obligations under this Agreement.

Section 8.14 DESCRIPTIVE HEADINGS. The descriptive headings herein are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Section 8.15 NO PERSONAL LIABILITY CONFERRED. This Agreement shall not create or permit any personal liability or obligation on the part of any officer, director, partner, employee or shareholder of the REIT or any Forward REIT Merger Entity.

Section 8.16 AMENDMENTS. This Agreement may be amended by appropriate instrument, without the consent of any Forward REIT Merger Entity, at any time prior to the Effective Time; *provided*, that no such amendment, modification or supplement shall be made that alters the amount or changes the form of the consideration to be delivered to a Forward REIT Merger Agreement Entity, without the prior written consent of the Forward REIT Merger Agreement Entity adversely affected by such proposed amendment, modification or supplement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized officers, all as of the date first written above.

AMERICAN ASSETS TRUST, INC.,
a Maryland corporation

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

EACH FORWARD REIT MERGER ENTITY
LISTED ON SCHEDULE I HERETO

By: AMERICAN ASSETS TRUST, INC.,
a Maryland corporation, its attorney-in-fact

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

[Signature Page to Forward REIT Merger Agreement]

Schedule I

List of Forward OP Merger Entities:

1. Solana Beach Towne Centres Investments, L.P.
2. Pacific San Jose Holdings, L.P.
3. Pacific Sorrento Mesa Holdings, L.P.
4. Hillside 104, a California limited partnership
5. Hillside 276, a California limited partnership
6. Desert Hillside Holdings, LLC
7. BWH Holdings, LLC
8. Waikele Center Holdings, LP

List of Forward REIT Merger Entities:

1. Pacific Stonecrest Assets, Inc.
2. Pacific National City Assets, Inc.
3. Western Assets, Inc.
4. Pacific Towne Centre Assets, Inc.
5. Pacific Oceanside Assets, Inc.
6. Pacific San Jose Assets, Inc.
7. KMBC Assets, Inc.
8. Hero Retail, Inc.
9. Pacific Sorrento Valley Assets I, Inc.
10. Pacific Sorrento Mesa Assets, Inc.
11. Beach Walk Assets, Inc.
12. ICW Plaza, Inc. [d/b/a Delaware ICW Plaza, Inc.]
13. ICW Valencia, Inc.
14. Pacific Torrey Reserve Assets, Inc.
15. Landmark Assets, Inc.
16. Landmark One Market, Inc.
17. Pacific Novato Assets, Inc.
18. Waikele Center Assets, Inc.

List of OP Sub Forward Merger Entities:

1. Pacific Stonecrest Holdings, L.P.
2. Rancho Carmel Plaza, a California limited partnership
3. Pacific Oceanside Holdings, L.P.
4. Kearny Mesa Business Center, a California limited partnership
5. Del Monte Center Holdings, LP
6. Beach Walk Holdings, LP
7. ICW Plaza, L.P., a California limited partnership
8. ICW Valencia, L.P.
9. Desert Oceanside Holdings, LLC
10. San Diego Loma Palisades, L.P.

List of OP Sub Reverse Merger Entities:

1. Pacific Waikiki Holdings, L.P.
2. ABW Lewers LLC
3. King Street Holdings, LP
4. Loma Palisades, a California general partnership

List of REIT Sub Forward Merger Entities:

1. Pacific Del Mar Assets, Inc.
2. Pacific Carmel Mountain Assets, Inc.
3. Pacific Solana Beach Assets, Inc.
4. Pacific Waikiki Assets, Inc.
5. King Street Assets, Inc.
6. Pacific Sorrento Valley Assets II, Inc.
7. Pacific Santa Fe Assets, Inc.

List of Contributed Entities:

1. American Assets Trust Management, LLC
2. Winrad Vista Hacienda, a California general partnership

3. Vista Hacienda, a California limited partnership
4. Pacific American Assets Holdings, L.P., a California limited partnership
5. Carmel Country Plaza, L.P.
6. Pacific Carmel Mountain Holdings, L.P.
7. Pacific National City Holdings, L.P.
8. Pacific Solana Beach Holdings, L.P.
9. Pacific San Jose Holdings, L.P.
10. Winrad Kearny Mesa Business Center, a California general partnership
11. Pacific Sorrento Valley Holdings I, L.P.
12. Pacific Sorrento Mesa Holdings, L.P.
13. Beach Walk Holdings, LP
14. ICW Plaza, L.P., a California limited partnership
15. ICW Valencia, L.P.
16. Pacific Sorrento Valley Holdings II, L.P.
17. EBW Hotel LLC
18. Imperial Strand, a California limited partnership
19. Winrad Imperial Strand, a California general partnership
20. San Diego Loma Palisades, L.P.
21. Mariner’s Point, LLC
22. Pacific Santa Fe Holdings, L.P.

Schedule II

Reimbursement Agreements

1. Letter Agreement by and among American Assets, Inc. and the Property Entities (as defined therein) dated May 17, 2010

Schedule III

Calculation of Equity Value

For purposes of all Formation Transaction Documentation, "Equity Value" of any Target Asset directly or indirectly owned by the American Assets Entity subject to such agreement shall be calculated pursuant to the formula set forth below. Capitalized terms used in this Schedule III shall have the meanings set forth below and capitalized terms used herein without definition shall have the meanings assigned to such terms in the Agreement.

$$EV = EP \times [TFTV\text{-}TPA]+AA;$$

where:

EV = Equity Value;
EP = Equity Percentage;
TFTV= Total Formation Transaction Value;
TPA = Total Portfolio Adjustment; and
AA = Asset Adjustment;

provided, however, that if the resulting Equity Value for a Target Asset is a negative amount (a "Net Deficit"), then the REIT shall exercise one of the following options, as determined by the REIT in its sole and absolute discretion: (i) select the Target Asset as an Eliminated Asset or (ii) if one or more entities that are subject to the Formation Transaction Documentation that are the direct or indirect owners of such Target Asset would otherwise possess Excluded Assets the value of which in the aggregate would equal or exceed the amount of such Net Deficit, increase the Target Net Working Capital with respect to such entity or entities by the absolute value of such Net Deficit; and *provided further* that if the REIT shall have exercised option (ii) with respect to any Target Asset, the Equity Value with respect to such Target Asset shall be deemed to be equal to zero;

provided further, that if the Equity Value for ICW Valencia/Valencia Corporate Center as calculated above would result in the holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. having an amount of Allocated Shares, prior to the application of the Intercompany Debt Adjustments, that is less than the value of the Intercompany Debt owed by ICW Valencia, L.P. to ICW Plaza, L.P. (such shortfall being referred to as the "Intercompany Debt Shortfall"), then (i) Western Insurance Holdings, Inc. shall issue a promissory note with a term of three years to ICW Valencia, L.P. which shall be treated as an Asset Adjustment with respect to ICW Valencia/Valencia Corporate Center and such promissory note (the "WIH Note") shall have such face amount as shall be necessary to increase the Equity Value of ICW Valencia/Valencia Corporate Center such that the Allocated Shares of holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. shall increase by an amount, prior to the application of the Intercompany Debt Adjustments, equal to the Intercompany Debt Shortfall and (ii) the Equity Value for ICW Valencia/Valencia Corporate Center shall be recalculated to give effect to the Asset Adjustment attributable to the issuance of the WIH Note.

Attached as ***Appendix A*** to this Schedule III are illustrative calculations of Equity Value for a hypothetical portfolio of Target Assets.

"Actual Balance" shall mean: (i) with respect to each Existing Loan to be assumed in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such assumption and all assumption fees and any related expenses with respect to such Existing Loan; and (ii) with respect to each Existing Loan to be prepaid, repaid or refinanced in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such prepayment, repayment or refinancing and any related prepayment penalties and any related expenses; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Actual Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed. With respect to each Existing Loan to be assumed, prepaid, repaid or refinanced in connection with the Formation Transactions, the Actual Balance as of the Closing Date shall be determined by the REIT within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

"Asset Adjustment" shall mean with respect to each Target Asset and any Existing Loan relating to such Target Asset, an amount equal to the Base Balance minus the Actual Balance (expressed as a positive or negative number, as applicable) with respect to all Existing Loans relating to such Target Asset, and in the case of ICW Valencia/Valencia Corporate Center, the face value of the WIH Note shall be deemed to reduce the Actual Balance of the Existing Loan relating to ICW Valencia/Valencia Corporate Center.

"Base Balance" shall mean with respect to each Existing Loan, the principal amount of such Existing Loan set forth on ***Appendix C*** to this Schedule III; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Base Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Eliminated Asset" shall mean any Target Asset subject to the Formation Transaction Documentation that is excluded pursuant to the terms of the Formation Transaction Documentation from the Formation Transactions.

"Equity Percentage" shall mean with respect to each Target Asset, the percentage (expressed as a decimal) set forth opposite the name of such Target Asset on ***Appendix B*** to this Schedule III (which percentage is based on the Fairness Opinion of Duff & Phelps, LLC and represents such

Target Asset's percentage of the net asset values of the Target Assets (other than the Management Company) and the net equity value of the Management Company, taken as a whole); *provided, however*, that in the event a Target Asset is selected as or otherwise becomes for any reason an Eliminated Asset, then: (i) the Equity Percentage for each remaining Target Asset shall be recalculated as a fraction, the numerator of which is the original Equity Percentage for such remaining Target Asset and the denominator of which is (A) 100 minus (B) the original Equity Percentage of the Eliminated Asset; and (ii) the Equity Percentage of the Eliminated Asset shall be zero; and *provided, further*, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then, after giving effect to any Eliminated Assets pursuant to the preceding proviso, the Equity Percentage for such Target Asset and for each other remaining Target Asset subject directly or indirectly to the Formation Transaction Documentation shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Excluded Assets" has the meaning set forth in Section 5.03 to the Agreement.

"Existing Loan" shall mean (i) each mortgage or mezzanine loan secured by a Target Asset listed on ***Appendix C*** to this Schedule III and (ii) all unsecured indebtedness of an American Assets Entity or of an entity in which an American Assets Entity has a direct or indirect interest that will be assumed, prepaid, repaid or refinanced in connection with the IPO and that is set forth on ***Appendix D*** to this Schedule III (all indebtedness falling within the scope of this clause (ii) shall be referred to as "Entity Specific Debt"); for the avoidance of doubt, no Intercompany Debt shall constitute an Existing Loan (in order to avoid double counting, as Intercompany Debt is adjusted for through the definition of "Allocated Share"). Existing Entity Specific Debt will be deemed to relate to the Target Asset(s) and, if to multiple Target Assets, in the proportions set forth opposite the name of such Entity Specific Debt on ***Appendix D*** to this Schedule III, and all such Entity Specific Debt will be deemed to have a Base Balance of zero (because "Equity Percentage" as determined by Duff & Phelps, LLC was determined at the property level and did not take into account Entity Specific Debt, Entity Specific Debt is deemed to be zero in order to cause a readjustment of "Equity Value" of all Target Assets after taking into account such Entity Specific Debt).

"Target Asset" shall mean each property set forth on Appendix B to this Schedule III and the property management business of American Assets, Inc. (the "Management Company").

"Target Net Working Capital" has the meaning set forth in Schedule 5.03 to the Agreement.

"Total Portfolio Adjustment" shall mean the sum (which may be a positive or negative number) of all Asset Adjustments for every Target Asset, excluding Eliminated Assets.

"Total Formation Transaction Value" shall mean the aggregate dollar value of (i) the cash, (ii) the REIT Shares and (iii) the OP Units that are issued or issuable to all Pre-Formation Participants in the Formation Transactions as set forth in the Prospectus. Total Formation Transaction Value will be determined valuing REIT Shares and OP Units at a value per REIT Share or OP Unit equal to the IPO Price.

EXHIBITS

Exhibit A: Formation Transaction Documentation

Exhibit B: REIT Charter

Exhibit C: Form of Registration Rights Agreement

Exhibit D: Order of Mergers

Exhibit E: Lock-Up Agreement

Exhibit F: Operating Partnership Agreement

Exhibit A

Formation Transaction Documentation

Form of Forward REIT Merger Agreement

Form of REIT Sub Forward Merger Agreement

Form of Forward OP Merger Agreement

Form of OP Sub Forward Merger Agreement

Form of OP Sub Reverse Merger Agreement

Form of OP Contribution Agreement

Form of OP Sub Contribution Agreement

Form of Alternate Contribution Agreement

Form of Tax Protection Agreement

Amended and Restated Agreement of Limited Partnership of American Assets Trust, L.P.

Registration Rights Agreement

Representation, Warranty and Indemnity Agreement

Indemnity Escrow Agreement

Lock-Up Agreement

Articles of Amendment and Restatement of American Assets Trust, Inc.

Bylaws of American Assets Trust, Inc.

Management Business Contribution Agreement

Exhibit B

REIT Charter

See Attached.

Exhibit C

Form of Registration Rights Agreement

See Attached.

Exhibit D

Order of Mergers

Each step within each "Transaction Step" below must be completed before the transactions in the following "Transaction Step" may be completed. All transactions within each "Transaction Step" may be completed simultaneously or in any order.

Transaction Step 1

All Forward REIT Mergers
All REIT Sub Forward Mergers

Transaction Step 2

All Contributions to the OP (including the REIT's contribution to the OP of the assets acquired in Step 1)

Transaction Step 3

All Contributions to subsidiaries of the OP (including, where applicable, the OP's contribution to the applicable subsidiary of assets acquired in Step 2)

Transaction Step 4

All OP Forward Mergers ***except*** the OP Forward Merger set forth in Transaction Step 5 and Transaction Step 7 below

Transaction Step 5

Forward Merger of Desert Hillside Holdings LLC with and into the Operating Partnership

Transaction Step 6

All OP Sub Forward Mergers ***except*** the OP Sub Forward Merger set forth in Transaction Step 7 below

Transaction Step 7

Forward Merger of BWH Holdings LLC with and into the Operating Partnership

Forward Merger of Desert Oceanside Holdings LLC with and into Pacific Oceanside Holdings LLC.

Transaction Step 8

All OP Sub Reverse Mergers

Exhibit E

Lock-Up Agreement

See Attached.

Exhibit F

Operating Partnership Agreement

See Attached.

Exhibit 10.11

AGREEMENT AND PLAN OF MERGER

DATED AS OF SEPTEMBER 13, 2010

BY AND AMONG

AMERICAN ASSETS TRUST, L.P.,
a Maryland limited partnership

[OP SUB FORWARD MERGER ENTITY MERGER SUB]
a Delaware limited liability company

AND

[OP SUB FORWARD MERGER ENTITY]
a [_____]

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of September 13, 2010, by and among American Assets Trust, L.P., a Maryland limited partnership (the "Operating Partnership") and a subsidiary of American Assets Trust, Inc., a Maryland corporation (the "REIT"), **[OP Sub Forward Merger Entity]**, a **[_____]** (the "SPE"), and **[OP Sub Forward Merger Entity Merger Sub]**, a Delaware limited liability company to be formed prior to the Effective Time (defined below) and to be wholly-owned by the Operating Partnership ("Merger Sub").

RECITALS

WHEREAS, the REIT desires to consolidate the ownership of a portfolio of properties currently owned, directly or indirectly, by certain entities each as described on Schedule I hereto;

WHEREAS, concurrently with the execution of this Agreement, each of the entities identified on Schedule I hereto as "Forward REIT Merger Entities" (the "Forward REIT Merger Entities") will enter into an agreement and plans of merger with the REIT pursuant to which each such Forward REIT Merger Entity will merge with and into the REIT and the equity interest in each Forward REIT Merger Entity will be converted automatically into the right to receive cash, without interest, or shares of common stock of the REIT, par value $.01 per share (the "REIT Shares");

WHEREAS, concurrently with the execution of this Agreement, the REIT will enter into agreements and plans of merger with certain American Assets Entities identified as "REIT Sub Forward Merger Entities" on Schedule I hereto (the "REIT Sub Forward Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, each of the REIT Sub Forward Merger Entities will merge with and into wholly owned subsidiaries of the REIT;

WHEREAS, immediately following the completion of the mergers described in the preceding paragraphs, the REIT will contribute to the Operating Partnership, (i) all of the assets, rights and obligations of the Forward REIT Merger Entities acquired by the REIT as a result of the mergers between it and the Forward REIT Merger Entities and (ii) all of the REIT's interests in the surviving entities of the mergers of the REIT Sub Forward Merger Entities with and into wholly owned subsidiaries of the REIT;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, will enter into a contribution agreement with certain holders (the "Contributors") of interests in certain American Assets Entities identified as "Contributed Entities" on Schedule I hereto, pursuant to which, immediately following the completion of the mergers and contributions described in the preceding paragraphs, each Contributor shall contribute to the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, respectively, all of the Contributor's interests in the applicable American Assets Entity (the "Contributed Interest"), and the Operating Partnership, or such subsidiary, as applicable, shall acquire from each Contributor all of each Contributor's right, title and interest as a holder of the Contributed Interests;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into an agreement and plan of merger with certain American Assets Entities identified as "Forward OP Merger Entities" on Schedule I hereto (collectively, the "Forward OP Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraphs, each Forward OP Merger Entity will merge with and into the Operating Partnership in the order set forth in the merger agreement for such entities;

WHEREAS, pursuant to this Agreement, immediately following the mergers identified in the preceding paragraph, the SPE will merge with and into the Merger Sub, with the Merger Sub as the surviving entity (the "Merger"), pursuant to which each membership interest in the SPE (the "SPE Equity Interest") will be converted automatically as set forth herein into the right to receive cash, without interest, common units of partnership interest in the Operating Partnership (the "OP Units"), REIT Shares, or a combination of the foregoing;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain other American Assets Entities identified as "OP Sub Forward Merger Entities" on Schedule I hereto (collectively with the SPE, the "OP Sub Forward Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, each of the other OP Sub Forward Merger Entities will merge with and into wholly owned subsidiaries of the Operating Partnership;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Assets Entities identified as "OP Sub Reverse Merger Entities" on Schedule I hereto (collectively, the "OP Sub Reverse Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraphs, a separate wholly-owned subsidiary of the Operating Partnership will merge with and into each OP Sub Reverse Merger Entity;

WHEREAS, in lieu of one or more of the mergers described in the preceding paragraphs and at the same time as such mergers would have otherwise occurred, certain holders (the "Consenting Holders") of interests in certain American Assets Entities shall contribute to the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, all of their interests in the applicable American Assets Entity, and the Operating Partnership, or such subsidiary, shall acquire from each Consenting Holder, all of each Consenting Holder's right, title and interest as a holder of interests in such American Assets Entities;

WHEREAS, the Formation Transactions relate to the proposed initial public offering (the "IPO") of the REIT Shares, following which the REIT will operate as a self-administered and self-managed real estate investment trust within the meaning of Section 856 of the Code;

WHEREAS, in accordance with applicable Law, the SPE may be merged with another entity, subject to the requisite approval of the equity holders as required by applicable Law;

WHEREAS, the REIT, as the general partner of the Operating Partnership, has approved and authorized the Merger and the other Formation Transactions in accordance with the Maryland Revised Uniform Limited Partnership Act (the "MLPA") and the Operating Partnership Agreement;

WHEREAS, the managing member, manager, board of directors or general partner, as applicable, of the SPE has determined that it is advisable and in the best interests of the SPE, and its equity holders to proceed with the Merger and the other Formation Transactions on the terms described in this Agreement; and

WHEREAS, the SPE has obtained the requisite approval of its equity holders (and lenders, as applicable) to the Merger and the other Formation Transactions, applicable to the SPE.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and other terms contained in this Agreement, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I
THE MERGER

Section 1.01 THE MERGER. At the Effective Time (as defined below) in the order specified in Exhibit F, and subject to and upon the terms and conditions of this Agreement and in accordance with applicable Laws, the SPE shall be merged with and into the Merger Sub, whereby the separate existence of the SPE shall cease, and the Merger Sub shall continue its existence under Delaware law as the surviving entity (hereinafter sometimes referred to as the "Surviving Entity").

Section 1.02 EFFECTIVE TIME. Subject to and upon the terms and conditions of this Agreement, concurrently with or as soon as practicable after (i) the execution by the REIT and the Operating Partnership of the Underwriting Agreement and (ii) the satisfaction or waiver of the conditions set forth in Article VII, the Merger Sub and the SPE shall file a certificate of merger or similar document with respect to the Merger (the "Certificate of Merger") as may be required by applicable Law with the Secretary of State of each applicable jurisdiction, providing that the Merger shall become effective upon filing or at such later date and time set forth in the Certificate of Merger that is not more than thirty (30) days after the acceptance of such Certificate of Merger by the Secretary of State of the applicable jurisdiction for record (the "Effective Time"), together with any certificates and other filings or recordings related thereto, in such forms as are required by, and executed in accordance with, the relevant provisions of applicable laws.

Section 1.03 EFFECT OF THE MERGER. At the Effective Time, which shall be in the order specified in Exhibit F, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and applicable Laws.

Section 1.04 ORGANIZATIONAL DOCUMENTS. At the Effective Time, the Organizational Documents of the Merger Sub, as in effect immediately prior to the Effective Time, shall be the Organizational Documents of the Surviving Entity until thereafter amended as provided therein or in accordance with applicable Law.

Section 1.05 CONVERSION OF SPE EQUITY INTERESTS.

(a) Under and subject to the terms and conditions of the respective Formation Transaction Documentation, as the result of an irrevocable election indicated on a Consent Form submitted by a Pre-Formation Participant or as a result of the failure of a Pre-Formation Participant to submit a Consent Form, each Pre-Formation Participant is irrevocably bound to accept and entitled to receive, as a result of and upon consummation of the Merger or other Formation Transactions, a specified share of the sponsors' value of the American Assets Entities as a whole in the form of the right to receive cash, REIT Shares and/or OP Units as calculated in Section 1.05(b).

(b) At the Effective Time, by virtue of the Merger and without any action on the part of the Operating Partnership, the SPE or the holders of any interest in the SPE, except as set forth in Section 1.05(c), each SPE Equity Interest shall be converted automatically into the right to receive cash, OP Units and/or REIT Shares with an aggregate value equal to the portion of Equity Value represented by such SPE Equity Interest (collectively referred to as the "Merger Consideration") and each holder that receives OP Units in the Merger shall upon receipt of such OP Units and the delivery of a Consent Form or a counterpart signature page to the Operating Partnership Agreement and such other documents and instruments as may be required in the sole discretion of the REIT to effect such holder's admission as a limited partner of the Operating Partnership, be admitted as a limited partner of the Operating Partnership in accordance with the MLPA and the Operating Partnership Agreement.

Subject to Section 1.07 and Section 2.02(c), the amount of cash, number of OP Units and/or REIT Shares comprising the Merger Consideration for each SPE Equity Interest so converted shall be as follows:

(i) Cash: One hundred percent (100%) of the Allocated Share for each SPE Equity Interest held by a Pre-Formation Participant who is not an Accredited Investor shall be paid in cash.

(ii) OP Units. The Elected OP Unit Percentage of the Allocated Share for each SPE Equity Interest or portion thereof held by a Pre-Formation Participant who is an Accredited Investor shall be distributed in the form of a number of OP Units equal to the applicable portion of such Allocated Share divided by the IPO Price.

(iii) REIT Shares. The Elected REIT Shares Percentage of the Allocated Share for each SPE Equity Interest or portion thereof held by a Pre-Formation Participant who is an Accredited Investor shall be distributed in the form of a number of REIT Shares equal to the applicable portion of such Allocated Share divided by the IPO Price; *provided* that, to the extent such distribution of REIT Shares to the holder of the SPE Equity Interests would result in a violation of the restrictions on ownership and transfer set forth in Section 6.3 of the REIT's charter (the "Ownership Limits"), such holder shall receive (x) the maximum number of whole REIT Shares that would not result in a violation of the Ownership Limits, and (y) that number of OP Units equal to the remaining number of REIT Shares not distributed as a result of the application of the foregoing clause (x).

(c) Each SPE Equity Interest issued and outstanding immediately prior to the Effective Time that is owned by the REIT, the Operating Partnership or any of their direct or indirect wholly-owned Subsidiaries (having been previously acquired by the REIT, the Operating Partnership or any such Subsidiary thereof pursuant to the other Formation Transactions) shall remain issued and outstanding, and no consideration shall be delivered hereunder in exchange therefor.

Section 1.06 CANCELLATION AND RETIREMENT OF SPE EQUITY INTERESTS. From and after the Effective Time, (i) each SPE Equity Interest converted into the right to receive the Merger Consideration pursuant to Section 1.05(b) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of such SPE Equity Interest so converted shall thereafter cease to have any rights as an equity holder of the SPE, except the right to receive the Merger Consideration applicable thereto, and (ii) each SPE Equity Interest issued and outstanding that is owned by the REIT, the Operating Partnership or any of their direct or indirect wholly-owned Subsidiaries shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist and no consideration shall be delivered hereunder in exchange therefor.

Section 1.07 FRACTIONAL INTERESTS. No fractional OP Units or REIT Shares shall be issued in the Merger. All fractional OP Units that a holder of SPE Equity Interests would otherwise be entitled to receive as a result of the Merger and the other Formation Transactions shall be aggregated, and each holder shall receive the number of whole OP Units resulting from such aggregation and, in lieu of any fractional OP Unit resulting from such aggregation, an amount in cash determined by multiplying that fraction of an OP Unit to which such holder would otherwise have been entitled, by the IPO Price. All fractional REIT Shares that a holder of SPE Equity Interests would otherwise be entitled to receive as a result of the Mergers and the other Formation Transactions shall be aggregated, and each holder shall receive the number of whole REIT Shares resulting from such aggregation and, in lieu of any fractional REIT Share resulting from such aggregation, an amount in cash determined by multiplying that fraction of a REIT Share to which such holder would otherwise have been entitled, by the IPO Price. No interest will be paid or will accrue on any cash paid or payable in lieu of any fractional OP Unit or REIT Share.

Section 1.08 CALCULATION OF MERGER CONSIDERATION.

(a) As soon as practicable following the determination of the IPO Price and prior to the Effective Time, all calculations relating to the Merger Consideration shall be performed in good faith by, or under the direction of, the REIT, and, absent manifest error, shall be final and binding upon the holders of SPE Equity Interests.

Section 1.09 TRANSACTION COSTS. If the Closing occurs, the REIT and the Operating Partnership shall be solely responsible for all transaction costs and expenses of the REIT, the Operating Partnership and the American Assets Entities in connection with the Formation Transactions and the IPO, which include, but are not limited to, the underwriting discounts and commissions. In the event the Closing does not occur, such costs and expenses shall be paid in accordance with the terms of that certain letter agreement entered into by the Property Entities (as defined therein) and American Assets, Inc., a California corporation, dated as of May 17, 2010.

ARTICLE II
CLOSING; TERM OF AGREEMENT

Section 2.01 CLOSING. Unless this Agreement shall have been terminated pursuant to Section 2.05, and subject to the satisfaction or waiver of the conditions in Article VII, the filing of the Certificate of Merger, the Effective Time and the closing of the other transactions contemplated by this Agreement shall occur substantially concurrently with the receipt by the REIT of the proceeds from the IPO from the underwriters (the "Closing" or the "Closing Date") in the order set forth on Exhibit F. The Closing shall take place at the offices of Latham & Watkins LLP, 12636 High Bluff Drive, Suite 400 San Diego, California 92130 or such other place as determined by the REIT in its sole discretion. The Closing hereunder and the closing of the IPO shall be deemed concurrent for all purposes.

Section 2.02 PAYMENT OF MERGER CONSIDERATION.

(a) As soon as reasonably practicable after the Effective Time, the Surviving Entity (or its successor in interest) shall deliver to each holder of SPE Equity Interests, whose SPE Equity Interests have been converted into the right to receive the Merger Consideration pursuant to Section 1.05(a) hereof, the Merger Consideration payable to such holder in the amounts and form provided in Section 1.05(a) hereof. The issuance of the OP Units and admission of the recipients thereof as limited partners of the Operating Partnership pursuant to Section 1.05(a) shall be evidenced by an amendment to Exhibit A to the Operating Partnership Agreement, and the Operating Partnership shall deliver, or cause to be delivered, an executed copy of such amendment to each Pre-Formation Participant receiving OP Units hereunder. Any certificate representing REIT Shares issuable as Merger Consideration shall bear the following legend:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS THE TRANSFEROR DELIVERS TO THE CORPORATION AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION, TO THE EFFECT THAT THE PROPOSED SALE, TRANSFER OR OTHER DISPOSITION MAY BE EFFECTED WITHOUT REGISTRATION UNDER THE ACT AND UNDER APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON BENEFICIAL AND CONSTRUCTIVE OWNERSHIP AND TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). SUBJECT TO CERTAIN FURTHER RESTRICTIONS AND

EXCEPT AS EXPRESSLY PROVIDED IN THE CORPORATION'S CHARTER, (I) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF THE CORPORATION'S COMMON STOCK IN EXCESS OF [__]% (IN VALUE OR NUMBER OF SHARES) OF THE OUTSTANDING SHARES OF COMMON STOCK OF THE CORPORATION UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (II) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK OF THE CORPORATION IN EXCESS OF [__]% OF THE VALUE OF THE TOTAL OUTSTANDING SHARES OF CAPITAL STOCK OF THE CORPORATION, UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (III) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN CAPITAL STOCK THAT WOULD RESULT IN THE CORPORATION BEING "CLOSELY HELD" UNDER SECTION 856(h) OF THE CODE OR OTHERWISE CAUSE THE CORPORATION TO FAIL TO QUALIFY AS A REIT; AND (IV) NO PERSON MAY TRANSFER SHARES OF CAPITAL STOCK IF SUCH TRANSFER WOULD RESULT IN THE CAPITAL STOCK OF THE CORPORATION BEING OWNED BY FEWER THAN 100 PERSONS. ANY PERSON WHO BENEFICIALLY OR CONSTRUCTIVELY OWNS OR ATTEMPTS TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK WHICH CAUSES OR WILL CAUSE A PERSON TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK IN EXCESS OR IN VIOLATION OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE CORPORATION. IF ANY OF THE RESTRICTIONS ON TRANSFER OR OWNERSHIP SET FORTH IN (I) THROUGH (III) ABOVE ARE VIOLATED, THE SHARES OF CAPITAL STOCK REPRESENTED HEREBY WILL BE AUTOMATICALLY TRANSFERRED TO A TRUSTEE OF A TRUST FOR THE BENEFIT OF ONE OR MORE CHARITABLE BENEFICIARIES. IN ADDITION, THE CORPORATION MAY TAKE OTHER ACTIONS, INCLUDING REDEEMING SHARES UPON THE TERMS AND CONDITIONS SPECIFIED BY THE BOARD OF DIRECTORS IN ITS SOLE AND ABSOLUTE DISCRETION IF THE BOARD OF DIRECTORS DETERMINES THAT OWNERSHIP OR A TRANSFER OR OTHER EVENT MAY VIOLATE THE RESTRICTIONS DESCRIBED ABOVE. FURTHERMORE, UPON THE OCCURRENCE OF CERTAIN EVENTS, ATTEMPTED TRANSFERS IN VIOLATION OF THE RESTRICTIONS DESCRIBED ABOVE MAY BE VOID *AB INITIO*. ALL UNDERLINED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN THE CHARTER OF THE CORPORATION, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER AND OWNERSHIP, WILL BE FURNISHED TO EACH HOLDER OF CAPITAL STOCK OF THE CORPORATION ON REQUEST AND WITHOUT CHARGE. REQUESTS FOR SUCH A COPY MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL OFFICE.

(b) The Surviving Entity (or its successor in interest) shall not be liable to any holder of an SPE Equity Interests for any portion of the Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(c) So long as some portion of the Merger Consideration with respect to an American Assets Entity is in the form of OP Units, the parties hereto intend and agree that, for United States federal income tax purposes, the Merger of such entity shall constitute an "assets-over" partnership merger within the meaning of Treasury Regulations Section 1.708-1(c)(3)(i), and, as a result, that (i) any payment of cash or REIT Shares for SPE Equity Interests of such holder in such entity shall be treated as a sale of such SPE Equity Interests by the holder and a purchase of such SPE Equity Interests by the Operating Partnership for the cash and/or REIT Shares so paid under the terms of this Agreement in accordance with Treasury Regulations Section 1.708-1(c)(4), and (ii) each such holder of SPE Equity Interests who accepts cash and/or REIT Shares shall explicitly agree and consent (the "Sale Consent") to such treatment in their Consent Form as a condition to electing such consideration. To the extent the Operating Partnership acquires any SPE Equity Interests as described above, or previously acquired such interest, for United States federal income tax purposes the receipt by the Operating Partnership of the portion of property attributable to such SPE Equity Interests shall be treated as a distribution by the SPE Equity in redemption of such SPE Equity Interests. Notwithstanding Section 1.05(a) and any holder's election as to the form of their Merger Consideration, if any holder (other than a non-accredited investor) fails to execute a Sale Consent prior to the Closing, such holder's Merger Consideration shall consist solely of OP Units. Any cash paid as the Merger Consideration to a non-accredited investor for an SPE Equity Interests shall be paid only after the receipt of a Sale Consent from such holder.

Section 2.03 TAX WITHHOLDING. The Operating Partnership, Merger Sub and the SPE, as applicable, shall be entitled to deduct and withhold from the consideration payable pursuant to this Agreement to any holder of SPE Equity Interests such amounts required to be deducted and withheld with respect to the making of such payment under the Code or any provision of state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the SPE Equity Interests in respect of which such deduction and withholding was made.

Section 2.04 FURTHER ACTION. If, at any time after the Effective Time, the Surviving Entity shall determine or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Entity the right, title or interest in, to or under any of the rights, properties or assets of the SPE acquired or to be acquired by the Surviving Entity as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the Surviving Entity shall be authorized to execute and deliver, in the name and on behalf of the SPE or otherwise, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of the SPE or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Entity or otherwise to carry out this Agreement.

Section 2.05 TERM OF THE AGREEMENT. This Agreement shall terminate automatically if (i) the initial registration statement of the REIT for the IPO (the "Registration Statement") has not been filed with the Securities and Exchange Commission ("SEC") by March 31, 2011, or (ii) the Merger shall not have been consummated on or prior to December 31, 2011 (such date is hereinafter referred to as the "Outside Date").

Section 2.06 EFFECT OF TERMINATION. In the event of termination of this Agreement for any reason, all obligations on the part of the Operating Partnership, the Merger Sub and the SPE under this Agreement shall terminate, except that the obligations set forth in Article VIII shall survive; it being understood and agreed, however, for the avoidance of doubt, that if this Agreement is terminated because one or more of the conditions to a non-breaching party's obligations under this Agreement are not satisfied by the Outside Date as a result of the other party's material breach of a covenant, representation, warranty or other obligation under this Agreement or any other Formation Transaction Documentation, the non-breaching party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE OPERATING PARTNERSHIP AND MERGER SUB

Each of the Operating Partnership and Merger Sub hereby represents and warrants to the SPE as follows:

Section 3.01 ORGANIZATION; AUTHORITY.

(a) Each of the Operating Partnership and Merger Sub has been duly incorporated or formed and is validly existing and in good standing under the Laws of its jurisdiction of incorporation or formation, as applicable, and upon the effectiveness of the Operating Partnership Agreement, will have all requisite power and authority to enter into this Agreement and the other Formation Transaction Documentation and to carry out the transactions contemplated hereby and thereby, and to own, lease and/or operate its property and to carry on its business as presently conducted and each of the Operating Partnership and Merger Sub, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

(b) Schedule 3.01(b) sets forth as of the date hereof, (i) each Subsidiary of the Operating Partnership (each an "Operating Partnership Subsidiary"), (ii) the ownership interest therein of the Operating Partnership, and (iii) if not wholly owned by the Operating Partnership, the identity and ownership interest of each of the other owners of such Operating Partnership Subsidiary. Each Operating Partnership Subsidiary has been duly organized or formed and is validly existing and is in good standing under the Laws of its jurisdiction of organization or formation, as applicable, has all requisite power and authority to own, lease and/or operate its property and to carry on its business as presently conducted and, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which

the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.02 DUE AUTHORIZATION. The execution, delivery and performance of this Agreement and the other Formation Transaction Documentation (including each agreement, document and instrument executed and delivered by or on behalf of the Operating Partnership and Merger Sub pursuant to this Agreement or the other Formation Transaction Documentation) by the Operating Partnership and Merger Sub, have been duly and validly authorized by all necessary actions required of each of the Operating Partnership and Merger Sub, respectively. This Agreement, the other Formation Transaction Documentation and each agreement, document and instrument executed and delivered by or on behalf of each of the Operating Partnership and Merger Sub pursuant to this Agreement or the other Formation Transaction Documentation constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of each of the Operating Partnership and Merger Sub, each enforceable against each of the Operating Partnership and Merger Sub, in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.03 CONSENTS AND APPROVALS. Except for the filing of the Certificate of Merger in accordance with Section 1.02 hereof or in connection with the IPO and the consummation of the other Formation Transactions, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration or filing with, any Person or Governmental Authority or under any applicable Laws is required to be obtained by the Operating Partnership or Merger Sub in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby and thereby, except for (i) those consents, waivers, approvals, authorizations, orders, licenses, permits, registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect, or (ii) those consents of the Pre-Formation Participants under the Organizational Documents of the applicable American Assets Entity, the failure of which to obtain would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.04 NO VIOLATION. None of the execution, delivery or performance of this Agreement, the other Formation Transaction Documentation, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the organizational documents of any of the Operating Partnership or Merger Sub, (B) any agreement, document or instrument to which the Operating Partnership or Merger Sub or any of their respective assets are bound or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on any of the Operating Partnership or Merger Sub, except for, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.05 VALIDITY OF OP UNITS. Any OP Units to be issued pursuant to this Agreement will have been duly authorized and, when issued against the consideration therefor, will be validly issued by the Operating Partnership, free and clear of all Liens created by the Operating Partnership (other than any Liens created by the Operating Partnership Agreement).

Section 3.06 OPERATING PARTNERSHIP AGREEMENT. Attached as Exhibit C hereto is a true and correct copy of the Operating Partnership Agreement in substantially final form.

Section 3.07 LIMITED ACTIVITIES. Except for activities in connection with the IPO, the Formation Transactions or in the ordinary course of business, neither the Operating Partnership, the Operating Partnership Subsidiaries nor the Merger Sub has engaged in any material business or incurred any material obligations.

Section 3.08 LITIGATION. Except for actions, suits or proceedings covered by policies of insurance, there is no action, suit or proceeding pending or, to the knowledge of the Operating Partnership or Merger Sub, threatened against the Operating Partnership or any Operating Partnership Subsidiary, other than actions, suits, proceedings arising in the ordinary course of business from the ownership and operation of the Operating Partnership, that individually or in the aggregate, would not reasonably be expected, (a) if adversely determined, to have an OP Material Adverse Effect, or (b) to challenge or impair the ability of the Operating Partnership or Merger Sub to execute or deliver, or materially perform its obligations under, this Agreement and the documents executed by it pursuant to this Agreement or to consummate the transactions contemplated hereby or thereby to such an extent as would result in an OP Material Adverse Effect.

Section 3.09 NO BROKER. Neither the Operating Partnership nor the Merger Sub has entered into, each of the Operating Partnership and the Merger Sub covenants that it will not enter into, any agreement, arrangement or understanding with any Person or firm which will result in the obligation of the SPE or any Affiliates thereof to pay any finder's fee, brokerage commission or similar payment in connection with the transaction contemplated by this Agreement (other than underwriting discounts, commissions and other fees and expenses to be paid by the REIT in connection with the IPO and any related financing transactions).

Section 3.10 NO IMPLIED REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article III, the Operating Partnership and Merger Sub shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby. All representations, warranties and covenants of the Operating Partnership and Merger Sub contained in this Agreement shall expire at the Closing.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE SPE

Except as disclosed in the Prospectus or the schedules attached hereto, the SPE represents and warrants to the Operating Partnership that the following statements are true and correct as of the Closing Date:

Section 4.01 ORGANIZATION; AUTHORITY.

(a) The SPE has been duly organized and is validly existing and in good standing under the Laws of its jurisdiction of incorporation or formation, and has all requisite power and authority to enter into this Agreement, each agreement contemplated hereby and the other Formation Transaction Documentation to which it is a party (including any agreement, document and instrument executed and delivered by or on behalf of the SPE pursuant to this Agreement or the other Formation Transaction Documentation) and to carry out the transactions contemplated hereby and thereby, and to own, lease and/or operate any Property owned, leased and/or operated by it and to carry on its business as presently conducted. The SPE, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of a Property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

(b) Schedule 4.01(b) sets forth as of the date hereof with respect to the SPE (i) each Subsidiary of the SPE (each an "SPE Subsidiary"), (ii) the ownership interest therein of the SPE, (iii) if not wholly owned by the SPE, the identity and ownership interest of each of the other owners of such Subsidiary, and (iv) each property owned by the SPE or such Subsidiary or leased pursuant to a ground lease by the SPE of such Subsidiary (each a "Property"). Each SPE Subsidiary has been duly organized and is validly existing and is in good standing under the Laws of its jurisdiction of organization, and has all requisite power and authority to own, lease and/or operate its Property and to carry on its business as presently conducted. Each SPE Subsidiary, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its Property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.02 DUE AUTHORIZATION. The execution, delivery and performance by the SPE of this Agreement and the other Formation Transaction Documentation (including any agreement, document and instrument executed and delivered by or on behalf of the SPE pursuant to this Agreement or the other Formation Transaction Documentation) to which it is a party have been duly and validly authorized by all necessary actions required of the SPE. This Agreement, the other Formation Transaction Documentation and each agreement, document and instrument executed and delivered by or on behalf of the SPE pursuant to this Agreement or the other Formation Transaction Documentation constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of the SPE, each enforceable against the SPE in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.03 CAPITALIZATION. Schedule 4.03 sets forth as of the date hereof the ownership of the SPE. All of the issued and outstanding equity interests of the SPE and each SPE Subsidiary are duly authorized, validly issued and fully paid; and, to the knowledge of the SPE, are not subject to preemptive rights, transfer restrictions, or appraisal, dissenters' or other similar rights under the Organizational Documents of or any contract to which the SPE is a party or otherwise bound, except for such preemptive rights, transfer restrictions, or appraisal,

dissenters' or other similar rights as would not prevent the Merger. There are no outstanding rights to purchase, subscriptions, warrants, options or any other security convertible into or exchangeable for equity interests in the SPE or its SPE Subsidiaries.

Section 4.04 CONSENTS AND APPROVALS. Except as shall have been obtained or satisfied on or prior to the Closing Date, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration or filing with, any Person or any Governmental Authority or under any applicable Laws is required to be obtained by the SPE or any of the SPE Subsidiaries in connection with the execution, delivery and performance of this Agreement, the other Formation Transaction Documentation to which the SPE or any of the SPE Subsidiaries is a party and the transactions contemplated hereby and thereby, except for those consents, waivers, approvals, authorizations, orders, licenses, permits, registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.05 NO VIOLATION. None of the execution, delivery or performance of this Agreement, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the Organizational Documents of the SPE or any SPE Subsidiary (B) any agreement, document or instrument to which the SPE or any SPE Subsidiary or any of their respective assets or properties are bound by or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on the SPE or any SPE Subsidiary, except for, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.06 LICENSES AND PERMITS. To the knowledge of the SPE, all notices, licenses, permits, certificates and authorizations required for the continued use, occupancy, management, leasing and operation of the Properties have been obtained or can be obtained without material cost, are in full force and effect, are in good standing and (to the extent required in connection with the transactions contemplated by the Formation Transaction Documentation) are assignable to the Merger Sub, except in each case for items that, if not so obtained, obtainable and/or transferred, would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect. To the knowledge of the SPE, neither the SPE, nor any SPE Subsidiary, nor any third party has taken any action that (or failed to take any action the omission of which) would result in the revocation of any such notice, license, permit, certificate or authorization where such revocation or revocations would, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect, nor has any one of them received any written notice of violation from any Governmental Authority or written notice of the intention of any entity to revoke any such notice, license, permit, certificate or authorization, that in each case has not been cured or otherwise resolved to the satisfaction of such Governmental Authority or other entity and except as would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.07 COMPLIANCE WITH LAWS. To the knowledge of the SPE, the SPE and each SPE Subsidiary have conducted their respective businesses in compliance with all applicable Laws, except for such failures that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect. To the knowledge of the SPE, neither the SPE, nor any SPE Subsidiary nor any third party has been informed in writing of any continuing violation of any such Laws or that any investigation has been commenced and is continuing or is contemplated respecting any such possible violation, except in each case for violations that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.08 PROPERTIES.

(a) Except as set forth in Schedule 4.08(a), the SPE or an SPE Subsidiary is the insured under a policy of title insurance as the owner of, and, to the knowledge of the SPE, the SPE or an SPE Subsidiary is the owner of, the fee simple estate (or, in the case of certain Properties, the leasehold estate or the tenancy-in-common estate) to the Property owned by the SPE or an SPE Subsidiary, in each case free and clear of all Liens except for Permitted Liens. Prior to the effective time of the merger contemplated hereby, neither the SPE nor any SPE Subsidiary shall take or omit to take any action to cause any Lien to attach to any Property, except for Permitted Liens and Liens, if any, given to secure mortgage indebtedness encumbering such Property.

(b) Except for matters that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect, to the knowledge of the SPE, (1) neither the SPE, nor any SPE Subsidiary, nor any other party to any material agreement affecting any Property (other than a Lease (as such term is hereinafter defined) for space within such Property), is in breach or default of any such agreement, (2) no event has occurred or has been threatened in writing, which with or without the passage of time or the giving of notice, or both, would, individually or together with all such other events, constitute a default under any such agreement, or would, individually or together with all such other events, reasonably be expected to cause the acceleration of any material obligation of any party thereto or the creation of a Lien upon any asset of the SPE or any SPE Subsidiary, except for Permitted Liens, and (3) all agreements affecting any Property required for the continued use, occupancy, management, leasing and operation of such Property (exclusive of space Leases) are valid and binding and in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

(c) To the knowledge of the SPE, as presently conducted, none of the operation of the buildings, fixtures and other improvements comprising a part of the Properties is in violation of any applicable building code, zoning ordinance or other "land use" Law, except for such violations that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

(d) Except for matters that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect, (1) to the knowledge of the SPE, neither the SPE, nor its SPE Subsidiary, nor any other party to any Lease, is in breach or default of any such Lease, (2) to the knowledge of the SPE, no event has occurred or has been

threatened in writing, which with or without the passage of time or the giving of notice, or both, would, individually or together with all such other events, constitute a default under any Lease, or would permit termination, modification or acceleration under such Lease, and (3) to the knowledge of the SPE each of the leases (and all amendments thereto or modifications thereof) to which the SPE or any SPE Subsidiary is a party or by which the SPE or any SPE Subsidiary or any Property is bound or subject (collectively, the "Leases") is valid and binding and in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.09 INSURANCE. The SPE or an SPE Subsidiary has in place the public liability, casualty and other insurance coverage with respect to each Property owned, leased and/or managed by it as the SPE reasonably deems necessary and in all cases including such coverage as is required under the terms of any continuing loan or Lease. Each of the insurance policies with respect to each Property is in full force and effect in all material respects and all premiums due and payable thereunder have been fully paid when due. To the knowledge of the SPE, neither the SPE nor any SPE Subsidiary has received from any insurance company any notices of cancellation or intent to cancel any insurance.

Section 4.10 ENVIRONMENTAL MATTERS. Except for matters that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect, to the knowledge of the SPE, (A) the SPE and the SPE Subsidiaries are in compliance with all Environmental Laws, (B) neither the SPE nor any SPE Subsidiary have received any written notice from any Governmental Authority or third party alleging that the SPE, any SPE Subsidiary or any Property is not in compliance with applicable Environmental Laws, and (C) there has not been a release of a hazardous substance on any of the Properties that would require investigation or remediation under applicable Environmental Laws. The representations and warranties contained in this Section 4.10 constitute the sole and exclusive representations and warranties made by the SPE concerning environmental matters.

Section 4.11 EMINENT DOMAIN. There is no existing or, to the knowledge of the SPE, proposed or threatened condemnation, eminent domain or similar proceeding, or private purchase in lieu of such a proceeding which would affect any of the Properties, except for such proceedings that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.12 EXISTING LOANS. Schedule 4.12 lists, as of the date hereof, all secured loans presently encumbering the Properties or any direct or indirect interest in the SPE, and any unsecured loans relating thereto to be assumed by the Operating Partnership or any Subsidiary of the Operating Partnership at Closing, as of the date hereof (the "Disclosed Loans").

Section 4.13 FRANCHISE AGREEMENTS. To the knowledge of the SPE, the hotel franchise agreement set forth on Schedule 4.13 ("Franchise Agreement") is the only hotel franchise agreement in effect for any Property. Except as set forth on Schedule 4.13, neither the SPE nor any of SPE Subsidiary, nor, to the knowledge of the SPE, any other party to the Franchise Agreement, is in breach or default of the Franchise Agreement, except for such breach or default that would not, individually or in the aggregate, reasonably be expected to have an SPE Merger Entity Material Adverse Effect.

Section 4.14 FINANCIAL STATEMENTS. The financial statements of the SPE included in the Prospectus have been prepared in all material respects in accordance with generally accepted accounting principles applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto), subject, in the case of unaudited statements, to normal year-end audit adjustments, and fairly present in all material respects the financial condition and results of operations of the SPE as of the dates indicated therein and for the periods ended as indicated therein.

Section 4.15 TAXES. Except as set forth in Schedule 4.15, (i) the SPE and each of the SPE Subsidiaries have timely and properly filed all Tax returns and reports required to be filed by it (after giving effect to any filing extension properly granted by a Governmental Authority having authority to do so) and all such returns and reports are accurate and complete in all material respects, and has paid (or had paid on its behalf) all Taxes as required to be paid by it, (ii) no income or material non-income Tax returns filed by the SPE or any SPE Subsidiaries are the subject of a pending or ongoing audit, and (iii) except as would not have an SPE Material Adverse Effect, no deficiencies for any Taxes have been proposed, asserted or assessed against the SPE or any of the SPE Subsidiaries, and no requests for waivers of the time to assess any such Taxes are pending. Except as set forth in Schedule 4.15, since its formation, for U.S. federal income tax purposes, the SPE has been treated as a partnership, or an entity disregarded from a partnership, and not as a corporation or an association taxable as a corporation, and each of the SPE Subsidiaries has been treated as a partnership or disregarded entity and not as a corporation or an association taxable as a corporation.

Section 4.16 LITIGATION. Except for actions, suits or proceedings covered by policies of insurance, to the knowledge of the SPE, there is no action, suit or proceeding pending or, to the knowledge of the SPE, threatened against or affecting the SPE or any SPE Subsidiary, or any officer, director, principal, managing member, general partner or Affiliate of any of the foregoing other than actions, suits, proceedings arising in the ordinary course of business from the ownership and operation, which, if adversely determined, would not have an SPE Material Adverse Effect. There is no action, suit, or proceeding pending or, to the knowledge of the SPE, threatened against or affecting the SPE, any SPE Subsidiary or any officer, director, principal, managing member, general partner or Affiliate of any of the foregoing which challenges or impairs the ability of the SPE to execute or deliver, or materially perform its obligations under, this Agreement and the documents executed by it pursuant to this Agreement or to consummate the transactions contemplated hereby or thereby. Except for matters covered by insurance, there is no judgment, decree, injunction, rule or order of a Governmental Authority outstanding against the SPE, any SPE Subsidiary or any officer, director, principal, managing member or general partner of any of the foregoing in their capacity as such which would reasonably be expected to have an SPE Material Adverse Effect.

Section 4.17 NO INSOLVENCY PROCEEDINGS. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to the SPE's knowledge, threatened against the SPE, nor are any such proceedings contemplated by the SPE.

Section 4.18 SECURITIES LAW MATTERS. The SPE acknowledges that: (i) the REIT and Operating Partnership intend the offer and issuance of any REIT Shares or OP Units to

any Pre-Formation Participants to be exempt from registration under the Securities Act and applicable state securities laws by virtue of the status of such equity holder as an "accredited investor" (within the meaning of Rule 501(a) of Regulation D under the Securities Act) acquiring any REIT Shares or OP Units in a transaction exempt from registration pursuant to Rule 506 of Regulation D under the Securities Act, and (ii) in issuing any REIT Shares or OP Units pursuant to the terms of this Agreement, the REIT and Operating Partnership are relying on the representations made by each equity holder electing to receive REIT Shares or OP Units as consideration in the Merger, which representations were set forth in Appendix D to the Request for Consent - Accredited Investor Representations Letter.

Section 4.19 NO BROKER. The SPE has not entered into, and it covenants that it will not enter into, any agreement, arrangement or understanding with any Person or firm which will result in the obligation of the Operating Partnership or any Affiliate to pay any finder's fee, brokerage commission or similar payment in connection with the transaction contemplated by this Agreement (other than underwriting discounts, commissions and other fees and expenses to be paid by the REIT in connection with the IPO and any related financing transactions).

Section 4.20 NO IMPLIED REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article IV and any other agreement entered into in connection with the Formation Transactions to which it is a party, the SPE shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby.

Section 4.21 OWNERSHIP OF CERTAIN ASSETS. Except as set forth in Section 4.21, neither the SPE nor any SPE Subsidiary owns any loan assets or other securities of any issuer except for equity interests in other American Assets Entities.

Section 4.22 SURVIVAL OF REPRESENTATIONS AND WARRANTIES OF THE SPE. The parties hereto agree and acknowledge that the representations and warranties set forth in this Article IV (other than Section 4.01, Section 4.02, Section 4.03, Section 4.18 and Section 4.23) shall not survive the Closing.

Section 4.23 NON-FOREIGN STATUS. Neither the SPE nor any SPE Subsidiary is a foreign person (as defined in the Code).

ARTICLE V
COVENANTS AND OTHER AGREEMENTS

Section 5.01 PRE-CLOSING COVENANTS. During the period from the date hereof to the Closing Date (except as otherwise provided for or contemplated by this Agreement or in connection with the Formation Transactions), the SPE shall use commercially reasonable efforts to (and shall cause each of the SPE Subsidiaries to) conduct its businesses and operate and maintain the Properties in the ordinary course of business consistent with past practice, pay its debt obligations as they become due and payable, and use commercially reasonable efforts to preserve intact its current business organizations and preserve its relationships with customers, tenants, suppliers, advertisers and others having business dealings with it, in each case consistent with past practice. In addition, and without limiting the generality of the foregoing, during the

period from the date hereof to the Closing Date and except in connection with the Formation Transactions, the SPE shall not (and shall not permit any of the SPE Subsidiaries to) without the prior written consent of the Operating Partnership, which consent may be withheld by the Operating Partnership in its sole discretion:

(a) (i) other than distributions to the equity holders of the SPE in connection with such holders' payment of any Taxes related to their ownership of the equity of the SPE or as otherwise contemplated by this Agreement, declare, set aside or pay any dividends or distributions in respect of any of the SPE Equity Interests, except in the ordinary course of business consistent with past practice and in accordance with the SPE's applicable Organizational Documents, (ii) issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for any SPE Equity Interests or make any other changes to the equity capital structure of the SPE or any SPE Subsidiary, or (iii) purchase, redeem or otherwise acquire any SPE Equity Interests or equity interests of any of the SPE Subsidiaries or any other securities thereof;

(b) issue, deliver, sell, transfer, dispose, mortgage, pledge, assign or otherwise encumber, or cause the issuance, delivery, sale, transfer, disposition, mortgage, pledge, assignment or otherwise encumbrance of, any limited liability company, partnership interests or other equity interests in the SPE or any of the SPE Subsidiaries or any other assets of the SPE or the SPE Subsidiaries;

(c) amend, modify or terminate any lease, contract or other instruments relating to the Property, except in the ordinary course of business consistent with past practice;

(d) amend its Organizational Documents;

(e) adopt a plan of liquidation, dissolution, merger, consolidation, restructuring, recapitalization or reorganization;

(f) materially alter the manner of keeping such SPE or SPE Subsidiary's books, accounts or records or the accounting practices therein reflected;

(g) file an entity classification election pursuant to Treasury Regulation Section 301.7701-3(c) on Internal Revenue Service Form 8832 (Entity Classification Election) to treat the SPE or any of its SPE Subsidiaries as an association taxable as a corporation for United States federal income tax purposes; make or change any other Tax elections; settle or compromise any claim, notice, audit report or assessment in respect of Taxes; change any annual Tax accounting period; adopt or change any method of Tax accounting; file any amended Tax return; enter into any tax allocation agreement, tax sharing agreement, tax indemnity agreement or closing agreement relating to any Tax; surrender of any right to claim a Tax refund; or consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment;

(h) terminate or amend any existing insurance policies affecting any Property that results in a material reduction in insurance coverage for the Property;

(i) knowingly cause or permit the SPE to violate, or fail to use commercially reasonable efforts to cure any violation of, any applicable Laws; or

(j) authorize, commit or agree to take any of the foregoing actions.

Section 5.02 CONSENT AND WAIVER OF RIGHTS UNDER ORGANIZATIONAL DOCUMENTS. As of the Closing, the SPE waives and relinquishes all rights and benefits otherwise afforded to the SPE (a) under its Organizational Documents including, without limitation, any rights of appraisal, rights of first offer or first refusal, buy/sell agreements, put, option or similar parallel exit or dissenter rights in connection with the Formation Transactions and the IPO and any right to consent to or approve of the sale or contribution or other transaction undertaken by any equity holder of the SPE of their SPE Equity Interests to the Operating Partnership or any Affiliate thereof and any and all notice provisions related thereto and (b) for claims against the REIT or the Operating Partnership for breach by any of their respective present or former officers, directors, managing members, general partners or Affiliates of their fiduciary duties or similar obligations (including duties of disclosure) to any of their respective present or former shareholders, members, partners, equity interest holders or Affiliates. The SPE acknowledges that the agreements contained herein and the transactions contemplated hereby and any actions taken in contemplation of the transactions contemplated hereby may conflict with, and may not have been contemplated by, the Organizational Documents of the SPE or other agreements among one or more holders of such SPE Equity Interests or one or more of the equity holders of the SPE. With respect to the SPE and each Property in which an SPE Equity Interest of the SPE represents a direct or indirect interest, the SPE expressly gives all consents (and any consents necessary to authorize the proper parties in interest to give all consents) and waivers it is entitled to give that are necessary or desirable to facilitate the contribution or other Formation Transactions relating to the SPE or such Property. In addition, if the transactions contemplated hereby occur, this Agreement shall be deemed to be an amendment to the Organizational Documents of the SPE to the extent the terms herein conflict with the terms thereof, including without limitation, terms with respect to allocations, distributions and the like. In the event the transactions contemplated by this Agreement do not occur, nothing in this Agreement shall be deemed to be or construed as an amendment or modification of, or commitment of any kind to amend or modify, the Organizational Documents of the SPE, which shall remain in full force and effect without modification.

Section 5.03 EXCLUDED ASSETS. Prior to or, as specified on Schedule 5.03, as soon as possible following the Closing and after such amounts are reasonably determinable, the SPE shall distribute or cause to be distributed or paid out the assets identified on Schedule 5.03 (the "Excluded Assets").

ARTICLE VI
ADDITIONAL AGREEMENTS

Section 6.01 COMMERCIALLY REASONABLE EFFORTS BY THE OPERATING PARTNERSHIP AND THE SPE. Each of the Operating Partnership and the SPE shall use commercially reasonable efforts and cooperate with each other in (i) promptly determining whether any filings are required to be made or consents, approvals, waivers, permits or authorizations are required to be obtained (under any applicable Law or regulation or from any

Governmental Authority or third party) in connection with the transactions contemplated by this Agreement, and (ii) promptly making (or causing to be made) any such filings, in furnishing information required in connection therewith and in timely seeking to obtain any such consents, approvals, waivers, permits and authorizations.

Section 6.02 OBLIGATIONS OF MERGER SUB. Subject to the terms of this Agreement, the Operating Partnership shall take all reasonable action necessary to cause Merger Sub (i) to be formed prior to the Effective Time and become a party to this Agreement by executing a counterpart of this Agreement where indicated on the signature page hereof (the date of such execution, the "Joinder Date") and (ii) to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement. All representations, warranties, covenants, agreements, rights and obligations of Merger Sub herein shall become effective as to Merger Sub as of the Joinder Date.

Section 6.03 TAX MATTERS.

(a) The SPE and the SPE Subsidiaries shall timely file or cause to be timely filed when due all Tax returns required to be filed by or with respect to such Person on or prior to the Closing Date and shall pay or cause to be paid all Taxes shown due thereon. All such Tax returns (including, for the avoidance of doubt, any amended Tax returns) shall be prepared in a manner consistent with past practice, except as otherwise required by applicable Law.

(b) The Operating Partnership shall prepare or cause to be prepared and file or cause to be filed all income Tax returns of the SPE and any of the SPE Subsidiaries which are due after the Closing Date. All such income Tax returns (including, for the avoidance of doubt, any amended Tax returns) shall be prepared in a manner consistent with past practice, except as otherwise required by applicable Law. No later than ten (10) days prior to the due date (including extensions) for filing such income Tax returns, the Operating Partnership shall deliver such income Tax returns to American Assets, Inc. for its review and approval, which shall not be unreasonably withheld.

(c) The Operating Partnership shall prepare or cause to be prepared all other Tax returns of the SPE and any of its Subsidiaries.

(d) In accordance with Section 704(c) of the Code, the Operating Partnership shall adopt and use only the so-called "traditional method" described in Treasury Regulation Section 1.704-3(b) with respect to any properties transferred directly or indirectly by the SPE to the Operating Partnership as a result of the Formation Transactions, and therefore shall not make any curative or remedial allocations with respect to such properties.

Section 6.04 WITHHOLDING CERTIFICATE. Prior to Closing, the SPE shall deliver to the Operating Partnership such forms and certificates, duly executed and acknowledged, in form and substance reasonably satisfactory to the Operating Partnership (including any relevant forms or certificates provided to the SPE by the holder of SPE Equity Interests), certifying that the payment of consideration in the Merger is exempt from withholding under Section 1445 of the Code and any similar withholding rules under applicable state, local or foreign Tax Laws.

Section 6.05 TAX ADVICE. The Operating Partnership makes no representations or warranties to the SPE or any holder of SPE Equity Interests regarding the Tax treatment of the Merger or the other Formation Transactions, or with respect to any other Tax consequences to the SPE or any holder of SPE Equity Interests of this Agreement, the Merger or the other Formation Transactions. The SPE acknowledges that the SPE and the holders of SPE Equity Interests are relying solely on their own Tax advisors in connection with this Agreement, the Merger and the other Formation Transactions and agreements contemplated hereby.

Section 6.06 ALTERNATE TRANSACTION. In the event that the Operating Partnership determines that a structure change is necessary, advisable or desirable, the Operating Partnership may elect, in its sole and absolute discretion, to effect the Alternate Transaction, and in such case the SPE hereby agrees and consents to such election, without the need for the Operating Partnership to seek any further consent or action from the SPE, and agrees that the parties shall undertake the Alternate Transaction and shall, and it shall cause its equity holders and Subsidiaries to, enter into such agreements as shall be necessary to consummate the Alternate Transaction.

Section 6.07 EXCLUSION OF ENTITIES. The parties hereby agree that the Operating Partnership shall have the right, in its sole discretion, to exclude the SPE from the Merger after the date hereof until the Effective Time, provided that the Operating Partnership shall provide prior written notice to the SPE regarding such exclusion.

ARTICLE VII
CONDITIONS PRECEDENT

Section 7.01 CONDITION TO EACH PARTY'S OBLIGATIONS. The respective obligation of each party to effect the Merger and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date is subject to the satisfaction or waiver on or prior to the Effective Time, of the following conditions:

(a) REGISTRATION STATEMENT. The Registration Statement shall have become effective under the Securities Act and shall not be the subject of any stop order or proceedings by the SEC seeking a stop order. This condition may not be waived by any party.

(b) NO INJUNCTION. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, judgment, injunction, stay or other order (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of any of the transactions contemplated in this Agreement nor shall any of the same brought by a Governmental Authority of competent jurisdiction be pending or threatened that seeks the foregoing.

(c) OPERATING PARTNERSHIP AGREEMENT. The Operating Partnership Agreement, in substantially the form attached hereto as Exhibit C, shall have been executed and delivered by the partners of the Operating Partnership and shall be in full force and effect and, except as contemplated by Section 2.02 or the other Formation Transaction Documents, shall not have been amended or modified.

Section 7.02 CONDITIONS TO OBLIGATIONS OF THE SPE. The obligation of the SPE to effect the Merger and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date are further subject to satisfaction of the following conditions (any of which may be waived by the SPE, in whole or in part):

(a) REPRESENTATIONS AND WARRANTIES. Except as would not have an OP Material Adverse Effect, each of the representations and warranties of the Operating Partnership and Merger Sub contained in this Agreement shall be true and correct in all material respects at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(b) PERFORMANCE BY THE OPERATING PARTNERSHIP AND MERGER SUB. Except as would not have an OP Material Adverse Effect, each of the Operating Partnership and Merger Sub shall have performed all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) REGISTRATION RIGHTS AGREEMENT. The REIT shall have entered into the registration rights agreement substantially in the form attached as Exhibit D. This condition may not be waived by any party.

(d) TAX PROTECTION AGREEMENT. In the event that the SPE Equity Interests are held by any Pre-Formation Participant that (1) owns, directly or indirectly, an interest in any property specified in the Tax Protection Agreement or (2) has been provided an opportunity to guarantee debt as set forth in the Tax Protection Agreement, the REIT and the Operating Partnership shall have entered into the Tax Protection Agreement substantially in the form attached as Exhibit A, where applicable.

Section 7.03 CONDITIONS TO OBLIGATION OF THE OPERATING PARTNERSHIP AND MERGER SUB. The obligations of the Operating Partnership and Merger Sub to effect the Merger and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date are further subject to satisfaction of the following conditions (any of which may be waived by the Operating Partnership and Merger Sub, in whole or in part):

(a) REPRESENTATIONS AND WARRANTIES. Except as would not have an SPE Material Adverse Effect, each of the representations and warranties of the SPE contained in this Agreement, as well as those of the Ernest Rady Trust U/D/T March 10, 1983, as amended (the "Rady Trust"), under the Representation, Warranty and Indemnity Agreement, shall be true and correct in all respects at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(b) PERFORMANCE BY THE SPE. The SPE shall have performed in all material respects all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) IPO CLOSING. The closing of the IPO shall occur substantially concurrently with the Closing.

(d) CONSENTS, ETC. All necessary consents or approvals of Governmental Authorities or third parties (including lenders) for the SPE to consummate the transactions contemplated hereby shall have been obtained.

(e) NO MATERIAL ADVERSE CHANGE. There shall have not occurred between the date hereof and the Closing Date any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the SPE or the SPE Subsidiaries and the Properties, taken as a whole.

(f) REPRESENTATION, WARRANTY AND INDEMNITY AGREEMENT. The Rady Trust shall have entered into the Representation, Warranty and Indemnity Agreement.

(g) ESCROW AGREEMENT. The parties thereto shall have entered into the Escrow Agreement.

(h) LOCK-UP AGREEMENT. Each of the Pre-Formation Participants owning interests in the SPE shall have entered into the Lock-Up Agreement substantially in the form attached as Exhibit E.

(i) TAX PROTECTION AGREEMENT. In the event that (1) the SPE owns, directly or indirectly, an interest in any property specified in the Tax Protection Agreement or (2) the SPE Equity Interests are held by any Pre-Formation Participant that has been provided an opportunity to guarantee debt as set forth in the Tax Protection Agreement, the holders of SPE Equity Interests shall have entered into the Tax Protection Agreement, substantially in the form attached as Exhibit A.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.01 NOTICES. All notices and other communications under this Agreement shall be in writing and shall be deemed given when (i) delivered personally, (ii) five (5) Business Days after being mailed by certified mail, return receipt requested and postage prepaid, (iii) one (1) Business Day after being sent by a nationally recognized overnight courier or (iv) transmitted by facsimile if confirmed within twenty-four (24) hours thereafter by a signed original sent in the manner provided in clause (i), (ii) or (iii) to the parties at the following addresses (or at such other address for a party as shall be specified by notice from such party):

if to the Operating Partnership or Merger Sub to:

American Assets Trust, L.P.
11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620

if to the SPE to:

11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620

Section 8.02 DEFINITIONS. For purposes of this Agreement, the following terms shall have the following meanings.

(a) "Accredited Investor" has the meaning set forth under Regulation D of the Securities Act.

(b) "Affiliate" means, with respect to any Person, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

(c) "Allocated Share" means the amount that would be allocated to a Pre-Formation Participant that is the holder of an interest in an American Assets Entity in accordance with the provisions of the existing Organizational Documents of such entity relating to distributions of distributable net proceeds from sales of directly or indirectly owned properties or assets, and assuming the sale of the relevant Target Asset or Target Assets that are directly or indirectly owned by such entity for a value equal to such Target Asset's or Target Assets' respective Equity Value(s).

Notwithstanding the foregoing, the Allocated Share of any Pre-Formation Participant shall reflect the following adjustments:

1. Intercompany Debt Adjustment. In calculating Allocated Share, all Intercompany Debt shall be taken into account so that the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligor of Intercompany Debt collectively are reduced, and the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligee of such Intercompany Debt collectively are increased, in each case by the amount of such Intercompany Debt (such adjustments being referred to as "Intercompany Debt Adjustments").

2. Entity Specific Debt Adjustment. To the extent that Entity Specific Debt is allocated to a Target Asset, in calculating Allocated Shares of holders of direct or indirect Pre-Formation Interests in the American Assets Entity or Entities owning such Target Asset, the amount of the decrease in Equity Value of such Target Asset attributable to the allocation of such Entity Specific Debt to such Target Asset (through the operation of the formula set forth on Schedule II) (in each case, such decrease being the "Decrease") shall be taken into account so that:

    a. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in any obligor(s) under such Entity Specific Debt collectively shall be (i) reduced by the amount equal to the excess of (w) the amount of the Entity Specific Debt owed by such obligor over (x) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset; or (ii) increased by the amount equal to the excess of (y) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset over (z) the amount of the Entity Specific Debt owed by such obligor; and

b. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in American Assets Entities owning such Target Asset that are not obligors under such Entity Specific Debt collectively shall be increased by the amount equal to the amount of the Decrease allocated pro rata to such holders as direct or indirect owner of the Target Asset;

with the net effect under the foregoing clauses (a)(i), (a)(ii) and (b) being that the adverse economic impact of the Decrease shall be borne equitably by the holders of direct or indirect Pre-Formation Interests in the actual obligor(s) under such Entity Specific Debt and not by any other holder of direct or indirect Pre-Formation Interests in the American Assets Entities owning such Target Asset.

Illustrative examples of the application of the foregoing Allocated Share adjustments using hypothetical numbers are included as Example 3 and Example 4 in ***Appendix A*** to Schedule II.

(d) "Alternate Transaction" means (i) a contribution of the assets held by the SPE to the Operating Partnership in exchange for the amount of cash and the number of OP Units and/or REIT Shares that were to be issued pursuant to this Agreement, (ii) a contribution by each holder of direct or indirect equity interests in the SPE to the Operating Partnership in exchange for the amount of cash and the number of OP Units and/or REIT Shares that would have otherwise been received by such holder of direct or indirect equity interests pursuant to this Agreement, (iii) the restructuring of the Merger as either (x) a merger of the SPE with and into either the REIT or the Operating Partnership or a wholly owned subsidiary of the REIT or (y) a merger of a wholly owned subsidiary of the REIT or the Operating Partnership with and into the SPE, in each case in exchange for the amount of cash and the number of OP Units and/or REIT Shares that were to be issued pursuant to this Agreement, or (iv) any other transaction pursuant to which the REIT, the Operating Partnership or any of their Subsidiaries acquire the assets held by the SPE or each holder of direct or indirect equity interests in such SPE in a transaction pursuant to which each holder of direct or indirect interests in such SPE receives the amount of cash, the number of OP Units and/or the number of REIT Shares that were to be received by such holder pursuant to this Agreement (or a portion thereof equal in value to the value of the portion of such assets acquired by the REIT, the Operating Partnership or any of their Subsidiaries pursuant to such Alternate Transaction).

(e) "American Assets Entity" means a Forward OP Merger Entity, Forward REIT Merger Entity, OP Sub Reverse Merger Entity, OP Sub Forward Merger Entity, REIT Sub Forward Merger Entity, or Contributed Entity, as applicable. As used herein, "American Assets Entities" refer to each American Assets Entity, collectively.

(f) "Business Day" means any day that is not a Saturday, Sunday or legal holiday in the State of California.

(g) "Code" means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated or issued thereunder.

(h) "Consent Form" means the forms provided to each holder of Pre-Formation Interests to consent to the Formation Transactions and to make such holder's irrevocable elections with respect to consideration to be received in the Formation Transactions.

(i) "Elected OP Unit Percentage" means, for the Merger Consideration to be received with respect to any SPE Equity Interest, the percentage of the Allocated Share represented by such SPE Equity Interest that the holder thereof has made a Valid Election to receive in the form of OP Units.

(j) "Elected REIT Shares Percentage" means, for the Merger Consideration to be received with respect to any SPE Equity Interest, the percentage of the Allocated Share represented by such SPE Equity Entity Interest that the holder thereof has made a Valid Election to receive in the form of REIT Shares.

(k) "Environmental Laws" means all federal, state and local Laws governing pollution or the protection of human health or the environment.

(l) "Equity Value" has the meaning set forth in Schedule II hereto.

(m) "Escrow Agreement" means the Indemnity Escrow Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the Rady Trust.

(n) "Formation Transaction Documentation" means all of the agreements and plans of merger (including this Agreement) relating to all target entities and all contribution agreements and related documents and agreements, substantially in the forms accompanying the Request for Consent dated July 31, 2010 and identified in Exhibit B hereto, pursuant to which all of the American Assets Entities and/or the equity interests in the American Assets Entities held by the Pre-Formation Participants are to be acquired by the REIT or the Operating Partnership, directly or indirectly, as part of the Formation Transactions.

(o) "Formation Transactions" means the transactions contemplated by this Agreement and the other Formation Transaction Documentation.

(p) "Governmental Authority" means any government or agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

(q) "Intercompany Debt" means loans or advances among American Assets Entities and/or their Subsidiaries or among holders of Pre-Formation Interests on the one hand and American Assets Entities and/or their Subsidiaries on the other hand, other than those promissory notes set forth on ***Appendix D*** to Schedule II for which Del Monte Center is listed as the associated Target Asset, each of which loans or advances are set forth on Schedule III hereto. Intercompany Debt shall not be discharged pursuant to the Formation Transactions except to the extent any such Intercompany Debt merges out of existence by operation of law as a result of such transactions (e.g., if the Operating Partnership acquires both the obligor and obligee interest in a loan which reflects an Intercompany Debt). After the closing of the Formation Transactions, and except as provided below, to the extent any such loans are acquired by the REIT, Operating Partnership or their Subsidiaries (e.g., an obligor or obligee with respect to such loans is merged

with or into, or acquired by, one of such entities), the REIT, Operating Partnership or their Subsidiaries (as applicable) shall be permitted to take any actions (including repayment) with respect to such Intercompany Debt as they deem appropriate. Intercompany Debt with respect to which either the obligor or the obligee (but not both such parties) under such Intercompany Debt is acquired, directly or indirectly, by the REIT, Operating Partnership or their Subsidiaries, shall be deemed to be discharged immediately after the Formation Transactions by (i) the REIT, Operating Partnership or their Subsidiaries (as applicable) as obligor, or (ii) the obligor to the REIT, Operating Partnership or their Subsidiaries (as applicable) as obligee, in each case in exchange for the consideration payable as set forth in the applicable Formation Transaction Documentation. The amounts payable and receivable with respect to each item of Intercompany Debt shall be determined by the REIT, for purposes of determining the Intercompany Debt Adjustments, within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

(r) "IPO Closing Date" means the closing date of the IPO.

(s) "IPO Price" means the initial public offering price of a REIT Share in the IPO.

(t) "Laws" means laws, statutes, rules, regulations, codes, orders, ordinances, judgments, injunctions, decrees and policies of any Governmental Authority, including, without limitation, zoning, land use or other similar rules or ordinances.

(u) "Liens" means all pledges, claims, liens, charges, restrictions, controls, easements, rights of way, exceptions, reservations, leases, licenses, grants, covenants and conditions, encumbrances and security interests of any kind or nature whatsoever.

(v) "Lock-Up Agreement" means that certain Lock-Up Agreement, by and between the underwriters and each investor of the REIT and/or the Operating Partnership.

(w) "OP Material Adverse Effect" means any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the Operating Partnership and each Operating Partnership Subsidiary, taken as a whole.

(x) "Operating Partnership Agreement" means the agreement of limited partnership of the Operating Partnership, as amended and restated and in effect immediately prior to the Effective Time.

(y) "Organizational Documents" means the certificate of formation, certificate of incorporation and bylaws, certificate of limited partnership and limited partnership agreement, limited liability company agreement or operating agreement of the SPE or any SPE Subsidiary, as applicable.

(z) "Permitted Liens" means (i) Liens, or deposits made to secure the release of such Liens, securing Taxes, the payment of which is not delinquent or the payment of which (including, without limitation, the amount or validity thereof) is being contested in good faith by appropriate proceedings for which adequate reserves have been made in accordance with GAAP;

(ii) zoning, entitlement, building and other land use Laws imposed by governmental agencies having jurisdiction over the Properties; (iii) covenants, conditions, restrictions, easements for public utilities, encroachments, rights of access or other non-monetary matters that do not materially impair the use of the Properties for the purposes for which they are currently being used or proposed to be used in connection with the relevant Person's business; (iv) Liens securing financing or credit arrangements existing as of the Closing Date; (v) Liens arising under leases in effect as of the Closing Date; (vi) any exceptions contained in any title policy (including any policy issued to a secured lender) relating to the Properties as of the Closing Date; (vii) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the ordinary course of business that are not yet due and payable and which are not, in the aggregate, material to the business, operations and financial condition of the Properties so encumbered; and (viii) any matters that would not have an SPE Material Adverse Effect.

(aa) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

(bb) "Pre-Formation Interests" means the interests held by the Pre-Formation Participants in the American Assets Entities.

(cc) "Pre-Formation Participants" means the holders of the direct and indirect equity interests in the relevant American Assets Entities immediately prior to the Formation Transactions.

(dd) "Prospectus" means the REIT's final prospectus as filed with the SEC.

(ee) "Representation, Warranty and Indemnity Agreement" means the Representation, Warranty and Indemnity Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the Rady Trust.

(ff) "Securities Act" means the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder.

(gg) "SPE Material Adverse Effect" means any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the SPE and each SPE Subsidiary, taken as a whole.

(hh) "Subsidiary" of any Person means any corporation, partnership, limited liability company, joint venture, trust or other legal entity of which such Person owns (either directly or through or together with another Subsidiary of such Person) either (i) a general partner, managing member or other similar interest, or (ii)(A) ten percent (10%) or more of the voting power of the voting capital stock or other equity interests, or (B) ten percent (10%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other legal entity.

(ii) "Target Asset" has the meaning set forth in Schedule II hereto.

(jj) "Tax" means all federal, state, local and foreign income, gross receipts, license, property, withholding, sales, franchise, employment, payroll, goods and services, stamp,

environmental, customs duties, capital stock, social security, transfer, alternative minimum, excise and other taxes, tariffs or governmental charges of any nature whatsoever, including estimated taxes, together with penalties, interest or additions to Tax with respect thereto, whether or not disputed.

(kk) "Tax Protection Agreement" means that certain Tax Protection Agreement by and among the REIT, the Operating Partnership and the parties identified as a signatory on Schedule A thereto.

(ll) "Underwriting Agreement" means that certain underwriting agreement, by and between the REIT, the Operating Partnership and certain underwriters set forth therein, pursuant to which the REIT will issue and sell shares in the IPO.

(mm) "Valid Election" means, with respect to any SPE Equity Interest, an irrevocable election to receive all or a portion of its Allocated Share in the form of OP Units and/or REIT Shares as indicated on the properly completed and timely received Consent Form of the holder of such SPE Equity Interest or a Consent Form as to which any deficiencies have been waived by the REIT.

Section 8.03 COUNTERPARTS. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party and delivered to each other party.

Section 8.04 ENTIRE AGREEMENT; THIRD-PARTY BENEFICIARIES. This Agreement, the other Formation Transaction Documentation and the Consent Forms to which the parties hereto are a party, including, without limitation, the exhibits and schedules hereto and thereto, constitute the entire agreement and, except as set forth in Section 1.09, supersede each prior agreement and understanding, whether written or oral, among the parties regarding the subject matter of this Agreement. This Agreement is not intended to confer any rights or remedies on any Person other than the parties hereto.

Section 8.05 GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of California, regardless of any Laws that might otherwise govern under applicable principles of conflicts of laws thereof.

Section 8.06 ASSIGNMENT. This Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns; *provided*, *however*, that this Agreement may not be assigned (except by operation of law) by any party without the prior written consent of the other parties, and any attempted assignment without such consent shall be null and void and of no force and effect, except that the Operating Partnership may assign its rights and obligations hereunder to an Affiliate.

Section 8.07 JURISDICTION. The parties hereto hereby (a) submit to the exclusive jurisdiction of any state or federal court sitting in the County of San Diego, with respect to any dispute arising out of this Agreement or any transaction contemplated hereby to the extent such courts would have subject matter jurisdiction with respect to such dispute and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action, any

claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, or that the venue of the action is improper.

Section 8.08 DISPUTE RESOLUTION. The parties intend that this Section 8.08 will be valid, binding, enforceable, exclusive and irrevocable and that it shall survive any termination of this Agreement.

(a) Upon any dispute, controversy or claim arising out of or relating to this Agreement or the enforcement, breach, termination or validity thereof ("Dispute"), the party raising the Dispute will give written notice to the other parties to the Dispute describing the nature of the Dispute following which the parties to such Dispute shall attempt for a period of ten (10) Business Days from receipt by the parties of notice of such Dispute to resolve such Dispute by negotiation between representatives of the parties hereto who have authority to settle such Dispute. All such negotiations shall be confidential and any statements or offers made therein shall be treated as compromise and settlement negotiations for purposes of any applicable rules of evidence and shall not be admissible as evidence in any subsequent proceeding for any purpose. The statute of limitations applicable to the commencement of a lawsuit shall apply to the commencement of an arbitration hereunder, except that no defense based on the running of the statute of limitations will be available based upon the passage of time during any such negotiation. Regardless of the foregoing, a party shall have the right to seek immediate injunctive relief pursuant to Section 8.08(c) below without regard to any such ten (10) Business Day negotiation period.

(b) Any Dispute (including the determination of the scope or applicability of this agreement to arbitrate) that is not resolved pursuant to Section 8.08(a) above shall be submitted to final and binding arbitration in California before one neutral and impartial arbitrator, in accordance with the Laws of the State of California for agreements made in and to be performed in that State. The arbitration shall be administered by JAMS, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. Each of the Operating Partnership and the SPE shall appoint one arbitrator within fifteen (15) days of a demand for arbitration. If the Operating Partnership and the SPE cannot mutually agree upon an arbitrator within such 15-day period, the arbitrator shall be appointed by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. The arbitrator shall designate the place and time of the hearing. The hearing shall be scheduled to begin as soon as practicable and no later than sixty (60) days after the appointment of the arbitrator (unless such period is extended by the arbitrator for good cause shown) and shall be conducted as expeditiously as possible. The award, which shall set forth the arbitrator's findings of fact and conclusions of law, shall be filed with JAMS and mailed to the parties no later than thirty (30) days after the close of the arbitration hearing. The arbitration award shall be final and binding on the parties and not subject to collateral attack. Judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(c) Notwithstanding the parties' agreement to submit all Disputes to final and binding arbitration before JAMS, the parties shall have the right to seek and obtain temporary or preliminary injunctive relief in any court having jurisdiction thereof. Such courts shall have authority to, among other things, grant temporary or provisional injunctive relief in

order to protect any party's rights under this Agreement. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitral tribunal shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitral tribunal's orders to that effect.

(d) The prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, and the non-prevailing party shall pay all expenses and fees of JAMS, all costs of the stenographic record, all expenses of witnesses or proofs that may have been produced at the direction of the arbitrator, and the fees, costs, and expenses of the arbitrator. The arbitrator shall allocate such costs and designate the prevailing party or parties for these purposes.

Section 8.09 SEVERABILITY. Each provision of this Agreement will be interpreted so as to be effective and valid under applicable law, but if any provision is held invalid, illegal or unenforceable under applicable law in any jurisdiction, then such invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been included herein.

Section 8.10 RULES OF CONSTRUCTION.

(a) The parties hereto agree that they have had the opportunity to be represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(b) The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." All terms defined in this Agreement shall have the defined meanings contained herein when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Unless explicitly stated otherwise herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time, amended, qualified or supplemented, including (in the case of agreements and instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 8.11 EQUITABLE REMEDIES. The parties agree that irreparable damage would occur to the Operating Partnership in the event that any of the provisions of this

Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Operating Partnership shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the SPE and to enforce specifically the terms and provisions hereof in any federal or state court located in California, this being in addition to any other remedy to which the Operating Partnership is entitled under this Agreement or otherwise at law or in equity.

Section 8.12 WAIVER OF SECTION 1542 PROTECTIONS. As of the Closing, the SPE expressly acknowledges that it has had, or has had and waived, the opportunity to be advised by independent legal counsel and hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the California Civil Code and does so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542 which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Section 8.13 TIME OF THE ESSENCE. Time is of the essence with respect to all obligations under this Agreement.

Section 8.14 DESCRIPTIVE HEADINGS. The descriptive headings herein are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Section 8.15 NO PERSONAL LIABILITY CONFERRED. This Agreement shall not create or permit any personal liability or obligation on the part of any officer, director, partner, employee or shareholder of the Operating Partnership, Merger Sub or the SPE.

Section 8.16 AMENDMENTS. This Agreement may be amended by appropriate instrument, without the consent of the SPE, at any time prior to the Effective Time; *provided*, that no such amendment, modification or supplement shall be made that alters the amount or changes the form of the consideration to be delivered to the SPE, without the prior written consent of the SPE in the event that the SPE would be adversely affected by such proposed amendment, modification or supplement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized officers, all as of the date first written above.

AMERICAN ASSETS TRUST, L.P.,
a Maryland limited partnership

By: AMERICAN ASSETS TRUST, INC.,
a Maryland corporation
Its: General Partner

By: _____
Name: John W. Chamberlain
Title: President

[OP SUB FORWARD MERGER ENTITY]

By: _____
Name:
Title:

[Signature Page to OP Sub Forward Merger Agreement]

AGREED AND ACCEPTED as of

[_____], 2010,

[OP SUB FORWARD MERGER ENTITY MERGER SUB],
a Delaware limited liability company

By: AMERICAN ASSETS TRUST, L.P.
a Maryland Limited Partnership
Its Sole Member

By: _____
Name: _____
Title: _____

[Signature Page to OP Sub Forward Merger Agreement]

Schedule I

List of Forward OP Merger Entities:

1. Solana Beach Towne Centres Investments, L.P.
2. Pacific San Jose Holdings, L.P.
3. Pacific Sorrento Mesa Holdings, L.P.
4. Hillside 104, a California limited partnership
5. Hillside 276, a California limited partnership
6. Desert Hillside Holdings, LLC
7. BWH Holdings, LLC
8. Waikele Center Holdings, LP

List of Forward REIT Merger Entities:

1. Pacific Stonecrest Assets, Inc.
2. Pacific National City Assets, Inc.
3. Western Assets, Inc.
4. Pacific Towne Centre Assets, Inc.
5. Pacific Oceanside Assets, Inc.
6. Pacific San Jose Assets, Inc.
7. KMBC Assets, Inc.
8. Hero Retail, Inc.
9. Pacific Sorrento Valley Assets I, Inc.
10. Pacific Sorrento Mesa Assets, Inc.
11. Beach Walk Assets, Inc.
12. ICW Plaza, Inc. [d/b/a Delaware ICW Plaza, Inc.]
13. ICW Valencia, Inc.
14. Pacific Torrey Reserve Assets, Inc.
15. Landmark Assets, Inc.
16. Landmark One Market, Inc.
17. Pacific Novato Assets, Inc.
18. Waikele Center Assets, Inc.

List of OP Sub Forward Merger Entities:

1. Pacific Stonecrest Holdings, L.P.
2. Rancho Carmel Plaza, a California limited partnership
3. Pacific Oceanside Holdings, L.P.
4. Kearny Mesa Business Center, a California limited partnership
5. Del Monte Center Holdings, LP
6. Beach Walk Holdings, LP
7. ICW Plaza, L.P., a California limited partnership
8. ICW Valencia, L.P.
9. Desert Oceanside Holdings, LLC
10. San Diego Loma Palisades, L.P.

List of OP Sub Reverse Merger Entities:

1. Pacific Waikiki Holdings, L.P.
2. ABW Lewers LLC

3. King Street Holdings, LP
4. Loma Palisades, a California general partnership

List of REIT Sub Forward Merger Entities:

1. Pacific Del Mar Assets, Inc.
2. Pacific Carmel Mountain Assets, Inc.
3. Pacific Solana Beach Assets, Inc.
4. Pacific Waikiki Assets, Inc.
5. King Street Assets, Inc.
6. Pacific Sorrento Valley Assets II, Inc.
7. Pacific Santa Fe Assets, Inc.

List of Contributed Entities:

1. American Assets Trust Management, LLC
2. Winrad Vista Hacienda, a California general partnership
3. Vista Hacienda, a California limited partnership
4. Pacific American Assets Holdings, L.P., a California limited partnership
5. Carmel Country Plaza, L.P.
6. Pacific Carmel Mountain Holdings, L.P.
7. Pacific National City Holdings, L.P.
8. Pacific Solana Beach Holdings, L.P.
9. Pacific San Jose Holdings, L.P.
10. Winrad Kearny Mesa Business Center, a California general partnership
11. Pacific Sorrento Valley Holdings I, L.P.
12. Pacific Sorrento Mesa Holdings, L.P.
13. Beach Walk Holdings, LP
14. ICW Plaza, L.P., a California limited partnership
15. ICW Valencia, L.P.
16. Pacific Sorrento Valley Holdings II, L.P.
17. EBW Hotel LLC
18. Imperial Strand, a California limited partnership
19. Winrad Imperial Strand, a California general partnership
20. San Diego Loma Palisades, L.P.
21. Mariner’s Point, LLC
22. Pacific Santa Fe Holdings, L.P.

Schedule II

Calculation of Equity Value

For purposes of all Formation Transaction Documentation, "Equity Value" of any Target Asset directly or indirectly owned by the American Assets Entity subject to such agreement shall be calculated pursuant to the formula set forth below. Capitalized terms used in this Schedule II shall have the meanings set forth below and capitalized terms used herein without definition shall have the meanings assigned to such terms in the Agreement.

$$EV = EP \times [TFTV-TPA]+AA;$$

where:

EV = Equity Value;
EP = Equity Percentage;
TFTV= Total Formation Transaction Value;
TPA = Total Portfolio Adjustment; and
AA = Asset Adjustment;

provided, however, that if the resulting Equity Value for a Target Asset is a negative amount (a "Net Deficit"), then the REIT shall exercise one of the following options, as determined by the REIT in its sole and absolute discretion: (i) select the Target Asset as an Eliminated Asset or (ii) if one or more entities that are subject to the Formation Transaction Documentation that are the direct or indirect owners of such Target Asset would otherwise possess Excluded Assets the value of which in the aggregate would equal or exceed the amount of such Net Deficit, increase the Target Net Working Capital with respect to such entity or entities by the absolute value of such Net Deficit; and *provided further* that if the REIT shall have exercised option (ii) with respect to any Target Asset, the Equity Value with respect to such Target Asset shall be deemed to be equal to zero;

provided further, that if the Equity Value for ICW Valencia/Valencia Corporate Center as calculated above would result in the holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. having an amount of Allocated Shares, prior to the application of the Intercompany Debt Adjustments, that is less than the value of the Intercompany Debt owed by ICW Valencia, L.P. to ICW Plaza, L.P. (such shortfall being referred to as the "Intercompany Debt Shortfall"), then (i) Western Insurance Holdings, Inc. shall issue a promissory note with a term of three years to ICW Valencia, L.P. which shall be treated as an Asset Adjustment with respect to ICW Valencia/Valencia Corporate Center and such promissory note (the "WIH Note") shall have such face amount as shall be necessary to increase the Equity Value of ICW Valencia/Valencia Corporate Center such that the Allocated Shares of holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. shall increase by an amount, prior to the application of the Intercompany Debt Adjustments, equal to the Intercompany Debt Shortfall and (ii) the Equity Value for ICW Valencia/Valencia Corporate Center shall be recalculated to give effect to the Asset Adjustment attributable to the issuance of the WIH Note.

Attached as ***Appendix A*** to this Schedule II are illustrative calculations of Equity Value for a hypothetical portfolio of Target Assets.

"Actual Balance" shall mean: (i) with respect to each Existing Loan to be assumed in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such assumption and all assumption fees and any related expenses with respect to such Existing Loan; and (ii) with respect to each Existing Loan to be prepaid, repaid or refinanced in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such prepayment, repayment or refinancing and any related prepayment penalties and any related expenses; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Actual Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed. With respect to each Existing Loan to be assumed, prepaid, repaid or refinanced in connection with the Formation Transactions, the Actual Balance as of the Closing Date shall be determined by the REIT within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

"Asset Adjustment" shall mean with respect to each Target Asset and any Existing Loan relating to such Target Asset, an amount equal to the Base Balance minus the Actual Balance (expressed as a positive or negative number, as applicable) with respect to all Existing Loans relating to such Target Asset, and in the case of ICW Valencia/Valencia Corporate Center, the face value of the WIH Note shall be deemed to reduce the Actual Balance of the Existing Loan relating to ICW Valencia/Valencia Corporate Center.

"Base Balance" shall mean with respect to each Existing Loan, the principal amount of such Existing Loan set forth on ***Appendix C*** to this Schedule II; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Base Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Eliminated Asset" shall mean any Target Asset subject to the Formation Transaction Documentation that is excluded pursuant to the terms of the Formation Transaction Documentation from the Formation Transactions.

"Equity Percentage" shall mean with respect to each Target Asset, the percentage (expressed as a decimal) set forth opposite the name of such Target Asset on ***Appendix B*** to this Schedule II (which percentage is based on the Fairness Opinion of Duff & Phelps, LLC and represents such

Target Asset's percentage of the net asset values of the Target Assets (other than the Management Company) and the net equity value of the Management Company, taken as a whole); *provided*, *however*, that in the event a Target Asset is selected as or otherwise becomes for any reason an Eliminated Asset, then: (i) the Equity Percentage for each remaining Target Asset shall be recalculated as a fraction, the numerator of which is the original Equity Percentage for such remaining Target Asset and the denominator of which is (A) 100 minus (B) the original Equity Percentage of the Eliminated Asset; and (ii) the Equity Percentage of the Eliminated Asset shall be zero; and *provided*, *further*, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then, after giving effect to any Eliminated Assets pursuant to the preceding proviso, the Equity Percentage for such Target Asset and for each other remaining Target Asset subject directly or indirectly to the Formation Transaction Documentation shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Excluded Assets" has the meaning set forth in Section 5.03 to the Agreement.

"Existing Loan" shall mean (i) each mortgage or mezzanine loan secured by a Target Asset listed on ***Appendix C*** to this Schedule II and (ii) all unsecured indebtedness of an American Assets Entity or of an entity in which an American Assets Entity has a direct or indirect interest that will be assumed, prepaid, repaid or refinanced in connection with the IPO and that is set forth on ***Appendix D*** to this Schedule II (all indebtedness falling within the scope of this clause (ii) shall be referred to as "Entity Specific Debt"); for the avoidance of doubt, no Intercompany Debt shall constitute an Existing Loan (in order to avoid double counting, as Intercompany Debt is adjusted for through the definition of "Allocated Share"). Existing Entity Specific Debt will be deemed to relate to the Target Asset(s) and, if to multiple Target Assets, in the proportions set forth opposite the name of such Entity Specific Debt on ***Appendix D*** to this Schedule II, and all such Entity Specific Debt will be deemed to have a Base Balance of zero (because "Equity Percentage" as determined by Duff & Phelps, LLC was determined at the property level and did not take into account Entity Specific Debt, Entity Specific Debt is deemed to be zero in order to cause a readjustment of "Equity Value" of all Target Assets after taking into account such Entity Specific Debt).

"Target Asset" shall mean each property set forth on Appendix B to this Schedule II and the property management business of American Assets, Inc. (the "Management Company").

"Target Net Working Capital" has the meaning set forth in Schedule 5.03 to the Agreement.

"Total Portfolio Adjustment" shall mean the sum (which may be a positive or negative number) of all Asset Adjustments for every Target Asset, excluding Eliminated Assets.

"Total Formation Transaction Value" shall mean the aggregate dollar value of (i) the cash, (ii) the REIT Shares and (iii) the OP Units that are issued or issuable to all Pre-Formation Participants in the Formation Transactions as set forth in the Prospectus. Total Formation Transaction Value will be determined valuing REIT Shares and OP Units at a value per REIT Share or OP Unit equal to the IPO Price.

EXHIBITS

Exhibit A:	**Form of Tax Protection Agreement**
Exhibit B:	**Formation Transaction Documentation**
Exhibit C:	**Operating Partnership Agreement**
Exhibit D:	**Form of Registration Rights Agreement**
Exhibit E:	**Lock-Up Agreement**
Exhibit F:	**Order of Mergers**

Exhibit A

Form of Tax Protection Agreement

See Attached.

Exhibit B

Formation Transaction Documentation

Form of Forward REIT Merger Agreement

Form of REIT Sub Forward Merger Agreement

Form of Forward OP Merger Agreement

Form of OP Sub Forward Merger Agreement

Form of OP Sub Reverse Merger Agreement

Form of OP Contribution Agreement

Form of OP Sub Contribution Agreement

Form of Alternate Contribution Agreement

Form of Tax Protection Agreement

Amended and Restated Agreement of Limited Partnership of American Assets Trust, L.P.

Registration Rights Agreement

Representation, Warranty and Indemnity Agreement

Indemnity Escrow Agreement

Lock-Up Agreement

Articles of Amendment and Restatement of American Assets Trust, Inc.

Bylaws of American Assets Trust, Inc.

Management Business Contribution Agreement

Exhibit C

Operating Partnership Agreement

See Attached.

Exhibit D

Form of Registration Rights Agreement

See Attached.

Exhibit E

Lock-Up Agreement

See Attached.

Exhibit F

Order of Mergers

Each step within each "Transaction Step" below must be completed before the transactions in the following "Transaction Step" may be completed. All transactions within each "Transaction Step" may be completed simultaneously or in any order.

Transaction Step 1

All Forward REIT Mergers
All REIT Sub Forward Mergers

Transaction Step 2

All Contributions to the OP (including the REIT's contribution to the OP of the assets acquired in Step 1)

Transaction Step 3

All Contributions to subsidiaries of the OP (including, where applicable, the OP's contribution to the applicable subsidiary of assets acquired in Step 2)

Transaction Step 4

All OP Forward Mergers ***except*** the OP Forward Merger set forth in Transaction Step 5 and Transaction Step 7 below

Transaction Step 5

Forward Merger of Desert Hillside Holdings LLC with and into the Operating Partnership

Transaction Step 6

All OP Sub Forward Mergers ***except*** the OP Sub Forward Merger set forth in Transaction Step 7 below

Transaction Step 7

Forward Merger of BWH Holdings LLC with and into the Operating Partnership

Forward Merger of Desert Oceanside Holdings LLC with and into Pacific Oceanside Holdings LLC.

Transaction Step 8

All OP Sub Reverse Mergers

AGREEMENT AND PLAN OF MERGER

DATED AS OF SEPTEMBER 13, 2010

BY AND AMONG

AMERICAN ASSETS TRUST, L.P.,
a Maryland limited partnership

[OP SUB REVERSE MERGER ENTITY MERGER SUB]
a [_____]

AND

[OP SUB REVERSE MERGER ENTITY]
a [_____]

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of September 13, 2010, by and among American Assets Trust, L.P., a Maryland limited partnership (the "Operating Partnership") and a subsidiary of American Assets Trust, Inc., a Maryland corporation (the "REIT"), **[OP Sub Reverse Merger Entity]**, a **[_____]** (the "SPE"), and **[OP Sub Reverse Merger Entity Merger Sub]**, a Delaware limited liability company to be formed prior to the Effective Time (defined below) and to be wholly-owned by the Operating Partnership ("Merger Sub").

RECITALS

WHEREAS, the REIT desires to consolidate the ownership of a portfolio of properties currently owned, directly or indirectly, by certain entities each as described on Schedule I hereto;

WHEREAS, concurrently with the execution of this Agreement, each of the entities identified on Schedule I hereto as "Forward REIT Merger Entities" (the "Forward REIT Merger Entities") will enter into an agreement and plan of merger with the REIT pursuant to which each such Forward REIT Merger Entity will merge with and into the REIT and the equity interest in each Forward REIT Merger Entity will be converted automatically into the right to receive cash, without interest, or shares of common stock of the REIT, par value $.01 per share (the "REIT Shares");

WHEREAS, concurrently with the execution of this Agreement, the REIT will enter into agreements and plans of merger with certain American Assets Entities identified as "REIT Sub Forward Merger Entities" on Schedule I hereto (the "REIT Sub Forward Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, each of the REIT Sub Forward Merger Entities will merge with and into wholly owned subsidiaries of the REIT;

WHEREAS, immediately following the completion of the mergers described in the preceding paragraphs, the REIT will contribute to the Operating Partnership, (i) all of the assets, rights and obligations of the Forward REIT Merger Entities acquired by the REIT as a result of the mergers between it and the Forward REIT Merger Entities and (ii) all of the REIT's interests in the surviving entities of the mergers of the REIT Sub Forward Merger Entities with and into wholly owned subsidiaries of the REIT;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, will enter into a contribution agreement with certain holders (the "Contributors") of interests in certain American Assets Entities identified as "Contributed Entities" on Schedule I hereto, pursuant to which, immediately following the completion of the mergers and contributions described in the preceding paragraphs, each Contributor shall contribute to the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, respectively, all of the Contributor's interests in the applicable American Assets Entity (the "Contributed Interest"), and the Operating Partnership, or such subsidiary, as applicable, shall acquire from each Contributor all of each Contributor's right, title and interest as a holder of the Contributed Interests;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into an agreement and plan of merger with certain American Assets Entities identified as "Forward OP Merger Entities" on Schedule I hereto (collectively, the "Forward OP Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraphs, each Forward OP Merger Entity will merge with and into the Operating Partnership in the order set forth in the merger agreement for such entities;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Assets Entities identified as "OP Sub Forward Merger Entities" on Schedule I hereto (collectively, the "OP Sub Forward Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraph, each OP Sub Forward Merger Entity will merge with and into a separate wholly owned subsidiary of the Operating Partnership;

WHEREAS, pursuant to this Agreement, immediately following the mergers identified in the preceding paragraph, the Merger Sub will merge with and into the SPE, with the SPE as the surviving entity (the "Merger"), pursuant to which each membership interest in the SPE (the "SPE Equity Interest") will be converted automatically as set forth herein into the right to receive cash, without interest, common units of partnership interest in the Operating Partnership (the "OP Units"), REIT Shares, or a combination of the foregoing;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain other American Assets Entities identified as "OP Sub Reverse Merger Entities" on Schedule I hereto (collectively with the SPE, the "OP Sub Reverse Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, a separate wholly-owned subsidiary of the Operating Partnership will merge with and into each OP Sub Reverse Merger Entity;

WHEREAS, in lieu of one or more of the mergers described in the preceding paragraphs and at the same time as such mergers would have otherwise occurred, certain holders (the "Consenting Holders") of interests in certain American Assets Entities shall contribute to the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, all of their interests in the applicable American Assets Entity, and the Operating Partnership or such subsidiary shall acquire from each Consenting Holder, all of each Consenting Holder's right, title and interest as a holder of interests in such American Assets Entities;

WHEREAS, the Formation Transactions relate to the proposed initial public offering (the "IPO") of the REIT Shares, following which the REIT will operate as a self-administered and self-managed real estate investment trust within the meaning of Section 856 of the Code;

WHEREAS, in accordance with applicable Law, the Merger Sub may be merged with another entity, subject to the requisite approval of the members as required by applicable Law;

WHEREAS, the REIT, as the general partner of the Operating Partnership, has approved and authorized the Merger and the other Formation Transactions in accordance with the Maryland Revised Uniform Limited Partnership Act (the "MLPA") and the Operating Partnership Agreement;

WHEREAS, the managing member, manager, board of directors or general partner, as applicable, of the SPE has determined that it is advisable and in the best interests of the SPE, and its equity holders to proceed with the Merger and the other Formation Transactions on the terms described in this Agreement; and

WHEREAS, the SPE has obtained the requisite approval of its equity holders (and lenders, as applicable) to the Merger and the other Formation Transactions, applicable to the SPE.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and other terms contained in this Agreement, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I
THE MERGER

Section 1.01 THE MERGER. At the Effective Time (as defined below) in the order specified in Exhibit F, and subject to and upon the terms and conditions of this Agreement and in accordance with applicable Laws, Merger Sub shall be merged with and into the SPE, whereby the separate existence of Merger Sub shall cease, and the SPE shall continue its existence under [ ] law as the surviving entity (hereinafter sometimes referred to as the "Surviving Entity").

Section 1.02 EFFECTIVE TIME. Subject to and upon the terms and conditions of this Agreement, concurrently with or as soon as practicable after (i) the execution by the REIT and the Operating Partnership of the Underwriting Agreement and (ii) the satisfaction or waiver of the conditions set forth in Article VII, the Merger Sub and the SPE shall file a certificate of merger or similar document with respect to the Merger (the "Certificate of Merger") as may be required by applicable Law with the Secretary of State of each applicable jurisdiction, providing that the Merger shall become effective upon filing or at such later date and time set forth in the Certificate of Merger that is not more than thirty (30) days after the acceptance of such Certificate of Merger by the Secretary of State of the applicable jurisdiction for record (the "Effective Time"), together with any certificates and other filings or recordings related thereto, in such forms as are required by, and executed in accordance with, the relevant provisions of applicable laws.

Section 1.03 EFFECT OF THE MERGER. At the Effective Time, which shall be in the order specified in Exhibit F, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and applicable Laws.

Section 1.04 ORGANIZATIONAL DOCUMENTS. At the Effective Time, the Organizational Documents of the Merger Sub, as in effect immediately prior to the Effective Time, shall be the Organizational Documents of the Surviving Entity until thereafter amended as provided therein or in accordance with applicable Law.

Section 1.05 CONVERSION OF SPE EQUITY INTERESTS.

(a) Under and subject to the terms and conditions of the respective Formation Transaction Documentation, as the result of an irrevocable election indicated on a Consent Form submitted by a Pre-Formation Participant or as a result of the failure of a Pre-Formation Participant to submit a Consent Form, each Pre-Formation Participant is irrevocably bound to accept and entitled to receive, as a result of and upon consummation of the Merger or other Formation Transactions, a specified share of the sponsors' value of the American Assets Entities as a whole in the form of the right to receive cash, REIT Shares and/or OP Units as calculated in Section 1.05(b).

(b) At the Effective Time, by virtue of the Merger and without any action on the part of the Operating Partnership, the SPE or the holders of any interest in the SPE, except as set forth in Section 1.05(c), each SPE Equity Interest shall be converted automatically into the right to receive cash, OP Units and/or REIT Shares with an aggregate value equal to the portion of Equity Value represented by such SPE Equity Interest (collectively referred to as the "Merger Consideration") and each holder that receives OP Units in the Merger shall upon receipt of such OP Units and the delivery of a Consent Form or a counterpart signature page to the Operating Partnership Agreement and such other documents and instruments as may be required in the sole discretion of the REIT to effect such holder's admission as a limited partner of the Operating Partnership, be admitted as a limited partner of the Operating Partnership in accordance with the MLPA and the Operating Partnership Agreement.

Subject to Section 1.07 and Section 2.02(c), the amount of cash, number of OP Units and/or REIT Shares comprising the Merger Consideration for each SPE Equity Interest so converted shall be as follows:

(i) Cash: One hundred percent (100%) of the Allocated Share for each SPE Equity Interest held by a Pre-Formation Participant who is not an Accredited Investor shall be paid in cash.

(ii) OP Units. The Elected OP Unit Percentage of the Allocated Share for each SPE Equity Interest or portion thereof held by a Pre-Formation Participant who is an Accredited Investor shall be distributed in the form of a number of OP Units equal to the applicable portion of such Allocated Share divided by the IPO Price.

(iii) REIT Shares. The Elected REIT Shares Percentage of the Allocated Share for each SPE Equity Interest or portion thereof held by a Pre-Formation Participant who is an Accredited Investor shall be distributed in the form of a number of REIT Shares equal to the applicable portion of such Allocated Share divided by the IPO Price; *provided* that, to the extent such distribution of REIT Shares to the holder of the SPE Equity Interests would result in a violation of the restrictions on ownership and transfer set forth in Section 6.3 of the REIT's charter (the "Ownership Limits"), such holder shall receive (x) the maximum number of whole REIT Shares that would not result in a violation of the Ownership Limits, and (y) that number of OP Units equal to the remaining number of REIT Shares not distributed as a result of the application of the foregoing clause (x).

(c) Each SPE Equity Interest issued and outstanding immediately prior to the Effective Time that is owned by the REIT, the Operating Partnership or any of their direct or indirect wholly-owned Subsidiaries (having been previously acquired by the REIT, the Operating Partnership or any such Subsidiary thereof pursuant to the other Formation Transactions) shall remain issued and outstanding, and no consideration shall be delivered hereunder in exchange therefor.

Section 1.06 CANCELLATION AND RETIREMENT OF SPE EQUITY INTERESTS. From and after the Effective Time, (i) each SPE Equity Interest converted into the right to receive the Merger Consideration pursuant to Section 1.05(b) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of such SPE Equity Interest so converted shall thereafter cease to have any rights as an equity holder of the SPE, except the right to receive the Merger Consideration applicable thereto, and (ii) each SPE Equity Interest issued and outstanding that is owned by the REIT, the Operating Partnership or any of their direct or indirect wholly-owned Subsidiaries shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist and no consideration shall be delivered hereunder in exchange therefor.

Section 1.07 FRACTIONAL INTERESTS. No fractional OP Units or REIT Shares shall be issued in the Merger. All fractional OP Units that a holder of SPE Equity Interests would otherwise be entitled to receive as a result of the Merger and the other Formation Transactions shall be aggregated, and each holder shall receive the number of whole OP Units resulting from such aggregation and, in lieu of any fractional OP Unit resulting from such aggregation, an amount in cash determined by multiplying that fraction of an OP Unit to which such holder would otherwise have been entitled, by the IPO Price. All fractional REIT Shares that a holder of SPE Equity Interests would otherwise be entitled to receive as a result of the Mergers and the other Formation Transactions shall be aggregated, and each holder shall receive the number of whole REIT Shares resulting from such aggregation and, in lieu of any fractional REIT Share resulting from such aggregation, an amount in cash determined by multiplying that fraction of a REIT Share to which such holder would otherwise have been entitled, by the IPO Price. No interest will be paid or will accrue on any cash paid or payable in lieu of any fractional OP Unit or REIT Share.

Section 1.08 CALCULATION OF MERGER CONSIDERATION.

(a) As soon as practicable following the determination of the IPO Price and prior to the Effective Time, all calculations relating to the Merger Consideration shall be performed in good faith by, or under the direction of, the REIT, and, absent manifest error, shall be final and binding upon the holders of SPE Equity Interests.

Section 1.09 TRANSACTION COSTS. If the Closing occurs, the REIT and the Operating Partnership shall be solely responsible for all transaction costs and expenses of the REIT, the Operating Partnership and the American Assets Entities in connection with the Formation Transactions and the IPO, which include, but are not limited to, the underwriting discounts and commissions. In the event the Closing does not occur, such costs and expenses shall be paid in accordance with the terms of that certain letter agreement entered into by the Property Entities (as defined therein) and American Assets, Inc., a California corporation, dated as of May 17, 2010.

ARTICLE II
CLOSING; TERM OF AGREEMENT

Section 2.01 CLOSING. Unless this Agreement shall have been terminated pursuant to Section 2.05, and subject to the satisfaction or waiver of the conditions in Article VII, the filing of the Certificate of Merger, the Effective Time and the closing of the other transactions contemplated by this Agreement shall occur substantially concurrently with the receipt by the REIT of the proceeds from the IPO from the underwriters (the "Closing" or the "Closing Date") in the order set forth on Exhibit F. The Closing shall take place at the offices of Latham & Watkins LLP, 12636 High Bluff Drive, Suite 400 San Diego, California 92130 or such other place as determined by the REIT in its sole discretion. The Closing hereunder and the closing of the IPO shall be deemed concurrent for all purposes.

Section 2.02 PAYMENT OF MERGER CONSIDERATION.

(a) As soon as reasonably practicable after the Effective Time, the Surviving Entity (or its successor in interest) shall deliver to each holder of SPE Equity Interests, whose SPE Equity Interests have been converted into the right to receive the Merger Consideration pursuant to Section 1.05(a) hereof, the Merger Consideration payable to such holder in the amounts and form provided in Section 1.05(a) hereof. The issuance of the OP Units and admission of the recipients thereof as limited partners of the Operating Partnership pursuant to Section 1.05(a) shall be evidenced by an amendment to Exhibit A to the Operating Partnership Agreement, and the Operating Partnership shall deliver, or cause to be delivered, an executed copy of such amendment to each Pre-Formation Participant receiving OP Units hereunder. Any certificate representing REIT Shares issuable as Merger Consideration shall bear the following legend:

> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS THE TRANSFEROR DELIVERS TO THE CORPORATION AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION, TO THE EFFECT THAT THE PROPOSED SALE, TRANSFER OR OTHER DISPOSITION MAY BE EFFECTED WITHOUT REGISTRATION UNDER THE ACT AND UNDER APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.
>
> THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON BENEFICIAL AND CONSTRUCTIVE OWNERSHIP AND TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). SUBJECT TO CERTAIN FURTHER RESTRICTIONS AND

EXCEPT AS EXPRESSLY PROVIDED IN THE CORPORATION'S CHARTER, (I) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF THE CORPORATION'S COMMON STOCK IN EXCESS OF [__]% (IN VALUE OR NUMBER OF SHARES) OF THE OUTSTANDING SHARES OF COMMON STOCK OF THE CORPORATION UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (II) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK OF THE CORPORATION IN EXCESS OF [__]% OF THE VALUE OF THE TOTAL OUTSTANDING SHARES OF CAPITAL STOCK OF THE CORPORATION, UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (III) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN CAPITAL STOCK THAT WOULD RESULT IN THE CORPORATION BEING "CLOSELY HELD" UNDER SECTION 856(h) OF THE CODE OR OTHERWISE CAUSE THE CORPORATION TO FAIL TO QUALIFY AS A REIT; AND (IV) NO PERSON MAY TRANSFER SHARES OF CAPITAL STOCK IF SUCH TRANSFER WOULD RESULT IN THE CAPITAL STOCK OF THE CORPORATION BEING OWNED BY FEWER THAN 100 PERSONS. ANY PERSON WHO BENEFICIALLY OR CONSTRUCTIVELY OWNS OR ATTEMPTS TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK WHICH CAUSES OR WILL CAUSE A PERSON TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK IN EXCESS OR IN VIOLATION OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE CORPORATION. IF ANY OF THE RESTRICTIONS ON TRANSFER OR OWNERSHIP SET FORTH IN (I) THROUGH (III) ABOVE ARE VIOLATED, THE SHARES OF CAPITAL STOCK REPRESENTED HEREBY WILL BE AUTOMATICALLY TRANSFERRED TO A TRUSTEE OF A TRUST FOR THE BENEFIT OF ONE OR MORE CHARITABLE BENEFICIARIES. IN ADDITION, THE CORPORATION MAY TAKE OTHER ACTIONS, INCLUDING REDEEMING SHARES UPON THE TERMS AND CONDITIONS SPECIFIED BY THE BOARD OF DIRECTORS IN ITS SOLE AND ABSOLUTE DISCRETION IF THE BOARD OF DIRECTORS DETERMINES THAT OWNERSHIP OR A TRANSFER OR OTHER EVENT MAY VIOLATE THE RESTRICTIONS DESCRIBED ABOVE. FURTHERMORE, UPON THE OCCURRENCE OF CERTAIN EVENTS, ATTEMPTED TRANSFERS IN VIOLATION OF THE RESTRICTIONS DESCRIBED ABOVE MAY BE VOID *AB INITIO*. ALL UNDERLINED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN THE CHARTER OF THE CORPORATION, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER AND OWNERSHIP, WILL BE FURNISHED TO EACH HOLDER OF CAPITAL STOCK OF THE CORPORATION ON REQUEST AND WITHOUT CHARGE. REQUESTS FOR SUCH A COPY MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL OFFICE.

(b) The Surviving Entity (or its successor in interest) shall not be liable to any holder of an SPE Equity Interests for any portion of the Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(c) So long as some portion of the Merger Consideration with respect to an American Assets Entity is in the form of OP Units, the parties hereto intend and agree that, for United States federal income tax purposes, the Merger of such entity shall constitute an "assets-over" partnership merger within the meaning of Treasury Regulations Section 1.708-1(c)(3)(i), and, as a result, that (i) any payment of cash or REIT Shares for SPE Equity Interests of such holder in such entity shall be treated as a sale of such SPE Equity Interests by the holder and a purchase of such SPE Equity Interests by the Operating Partnership for the cash and/or REIT Shares so paid under the terms of this Agreement in accordance with Treasury Regulations Section 1.708-1(c)(4), and (ii) each such holder of SPE Equity Interests who accepts cash and/or REIT Shares shall explicitly agree and consent (the "Sale Consent") to such treatment in their Consent Form as a condition to electing such consideration. To the extent the Operating Partnership acquires any SPE Equity Interests as described above, or previously acquired such interest, for United States federal income tax purposes the receipt by the Operating Partnership of the portion of property attributable to such SPE Equity Interests shall be treated as a distribution by the SPE Equity in redemption of such SPE Equity Interests. Notwithstanding Section 1.05(a) and any holder's election as to the form of their Merger Consideration, if any holder (other than a non-accredited investor) fails to execute a Sale Consent prior to the Closing, such holder's Merger Consideration shall consist solely of OP Units. Any cash paid as the Merger Consideration to a non-accredited investor for an SPE Equity Interests shall be paid only after the receipt of a Sale Consent from such holder.

Section 2.03 TAX WITHHOLDING. The Operating Partnership, Merger Sub and the SPE, as applicable, shall be entitled to deduct and withhold from the consideration payable pursuant to this Agreement to any holder of SPE Equity Interests such amounts required to be deducted and withheld with respect to the making of such payment under the Code or any provision of state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the SPE Equity Interests in respect of which such deduction and withholding was made.

Section 2.04 FURTHER ACTION. If, at any time after the Effective Time, the Surviving Entity shall determine or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Entity the right, title or interest in, to or under any of the rights, properties or assets of the SPE acquired or to be acquired by the Surviving Entity as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the Surviving Entity shall be authorized to execute and deliver, in the name and on behalf of the SPE or otherwise, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of the SPE or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Entity or otherwise to carry out this Agreement.

Section 2.05 TERM OF THE AGREEMENT. This Agreement shall terminate automatically if (i) the initial registration statement of the REIT for the IPO (the "Registration Statement") has not been filed with the Securities and Exchange Commission ("SEC") by March 31, 2011, or (ii) the Merger shall not have been consummated on or prior to December 31, 2011 (such date is hereinafter referred to as the "Outside Date").

Section 2.06 EFFECT OF TERMINATION. In the event of termination of this Agreement for any reason, all obligations on the part of the Operating Partnership, the Merger Sub and the SPE under this Agreement shall terminate, except that the obligations set forth in Article VIII shall survive; it being understood and agreed, however, for the avoidance of doubt, that if this Agreement is terminated because one or more of the conditions to a non-breaching party's obligations under this Agreement are not satisfied by the Outside Date as a result of the other party's material breach of a covenant, representation, warranty or other obligation under this Agreement or any other Formation Transaction Documentation, the non-breaching party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE OPERATING PARTNERSHIP AND MERGER SUB

Each of the Operating Partnership and Merger Sub hereby represents and warrants to the SPE as follows:

Section 3.01 ORGANIZATION; AUTHORITY.

(a) Each of the Operating Partnership and Merger Sub has been duly incorporated or formed and is validly existing and in good standing under the Laws of its jurisdiction of incorporation or formation, as applicable, and upon the effectiveness of the Operating Partnership Agreement, will have all requisite power and authority to enter into this Agreement and the other Formation Transaction Documentation and to carry out the transactions contemplated hereby and thereby, and to own, lease and/or operate its property and to carry on its business as presently conducted and each of the Operating Partnership and Merger Sub, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

(b) Schedule 3.01(b) sets forth as of the date hereof, (i) each Subsidiary of the Operating Partnership (each an "Operating Partnership Subsidiary"), (ii) the ownership interest therein of the Operating Partnership, and (iii) if not wholly owned by the Operating Partnership, the identity and ownership interest of each of the other owners of such Operating Partnership Subsidiary. Each Operating Partnership Subsidiary has been duly organized or formed and is validly existing and is in good standing under the Laws of its jurisdiction of organization or formation, as applicable, has all requisite power and authority to own, lease and/or operate its property and to carry on its business as presently conducted and, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which

the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.02 DUE AUTHORIZATION. The execution, delivery and performance of this Agreement and the other Formation Transaction Documentation (including each agreement, document and instrument executed and delivered by or on behalf of the Operating Partnership and Merger Sub pursuant to this Agreement or the other Formation Transaction Documentation) by the Operating Partnership and Merger Sub, have been duly and validly authorized by all necessary actions required of each of the Operating Partnership and Merger Sub, respectively. This Agreement, the other Formation Transaction Documentation and each agreement, document and instrument executed and delivered by or on behalf of each of the Operating Partnership and Merger Sub pursuant to this Agreement or the other Formation Transaction Documentation constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of each of the Operating Partnership and Merger Sub, each enforceable against each of the Operating Partnership and Merger Sub, in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.03 CONSENTS AND APPROVALS. Except for the filing of the Certificate of Merger in accordance with Section 1.02 hereof or in connection with the IPO and the consummation of the other Formation Transactions, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration or filing with, any Person or Governmental Authority or under any applicable Laws is required to be obtained by the Operating Partnership or Merger Sub in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby and thereby, except for (i) those consents, waivers, approvals, authorizations, orders, licenses, permits, registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect, or (ii) those consents of the Pre-Formation Participants under the organizational documents of the applicable American Assets Entity, the failure of which to obtain would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.04 NO VIOLATION. None of the execution, delivery or performance of this Agreement, the other Formation Transaction Documentation, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the organizational documents of any of the Operating Partnership or Merger Sub, (B) any agreement, document or instrument to which the Operating Partnership or Merger Sub or any of their respective assets are bound or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on any of the Operating Partnership or Merger Sub, except for, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.05 VALIDITY OF OP UNITS. Any OP Units to be issued pursuant to this Agreement will have been duly authorized and, when issued against the consideration therefor, will be validly issued by the Operating Partnership, free and clear of all Liens created by the Operating Partnership (other than any Liens created by the Operating Partnership Agreement).

Section 3.06 OPERATING PARTNERSHIP AGREEMENT. Attached as Exhibit C hereto is a true and correct copy of the Operating Partnership Agreement in substantially final form.

Section 3.07 LIMITED ACTIVITIES. Except for activities in connection with the IPO, the Formation Transactions or in the ordinary course of business, neither the Operating Partnership, the Operating Partnership Subsidiaries nor the Merger Sub has engaged in any material business or incurred any material obligations.

Section 3.08 LITIGATION. Except for actions, suits or proceedings covered by policies of insurance, there is no action, suit or proceeding pending or, to the knowledge of the Operating Partnership or Merger Sub, threatened against the Operating Partnership or any Operating Partnership Subsidiary, other than actions, suits, proceedings arising in the ordinary course of business from the ownership and operation of the Operating Partnership, that individually or in the aggregate, would not reasonably be expected, (a) if adversely determined, to have an OP Material Adverse Effect, or (b) to challenge or impair the ability of the Operating Partnership or Merger Sub to execute or deliver, or materially perform its obligations under, this Agreement and the documents executed by it pursuant to this Agreement or to consummate the transactions contemplated hereby or thereby to such extents as would result in an OP Material Adverse Effect.

Section 3.09 NO BROKER. Neither the Operating Partnership nor the Merger Sub has entered into, each of the Operating Partnership and the Merger Sub covenants that it will not enter into, any agreement, arrangement or understanding with any Person or firm which will result in the obligation of the SPE or any Affiliates thereof to pay any finder's fee, brokerage commission or similar payment in connection with the transaction contemplated by this Agreement (other than underwriting discounts, commissions and other fees and expenses to be paid by the REIT in connection with the IPO and any related financing transactions).

Section 3.10 NO IMPLIED REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article III, the Operating Partnership and Merger Sub shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby. All representations, warranties and covenants of the Operating Partnership and Merger Sub contained in this Agreement shall expire at the Closing.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE SPE

Except as disclosed in the Prospectus or the schedules attached hereto, the SPE represents and warrants to the Operating Partnership that the following statements are true and correct as of the Closing Date:

Section 4.01 ORGANIZATION; AUTHORITY.

(a) The SPE has been duly organized and is validly existing and in good standing under the Laws of its jurisdiction of incorporation or formation, and has all requisite power and authority to enter into this Agreement, each agreement contemplated hereby and the other Formation Transaction Documentation to which it is a party (including any agreement, document and instrument executed and delivered by or on behalf of the SPE pursuant to this Agreement or the other Formation Transaction Documentation) and to carry out the transactions contemplated hereby and thereby, and to own, lease and/or operate any Property owned, leased and/or operated by it and to carry on its business as presently conducted. The SPE, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of a Property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

(b) Schedule 4.01(b) sets forth as of the date hereof with respect to the SPE (i) each Subsidiary of the SPE (each an "SPE Subsidiary"), (ii) the ownership interest therein of the SPE, (iii) if not wholly owned by the SPE, the identity and ownership interest of each of the other owners of such Subsidiary, and (iv) each property owned by the SPE or such Subsidiary or leased pursuant to a ground lease by the SPE of such Subsidiary (each a "Property"). Each SPE Subsidiary has been duly organized and is validly existing and is in good standing under the Laws of its jurisdiction of organization, and has all requisite power and authority to own, lease and/or operate its Property and to carry on its business as presently conducted. Each SPE Subsidiary, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its Property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.02 DUE AUTHORIZATION. The execution, delivery and performance by the SPE of this Agreement and the other Formation Transaction Documentation (including any agreement, document and instrument executed and delivered by or on behalf of the SPE pursuant to this Agreement or the other Formation Transaction Documentation) to which it is a party have been duly and validly authorized by all necessary actions required of the SPE. This Agreement, the other Formation Transaction Documentation and each agreement, document and instrument executed and delivered by or on behalf of the SPE pursuant to this Agreement or the other Formation Transaction Documentation constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of the SPE, each enforceable against the SPE in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.03 CAPITALIZATION. Schedule 4.03 sets forth as of the date hereof the ownership of the SPE. All of the issued and outstanding equity interests of the SPE and each SPE Subsidiary are duly authorized, validly issued and fully paid; and, to the knowledge of the SPE, are not subject to preemptive rights, transfer restrictions, or appraisal, dissenters' or other similar rights under the organizational documents of or any contract to which the SPE is a party or otherwise bound, except for such preemptive rights, transfer restrictions, or appraisal,

dissenters' or other similar rights as would not prevent the Merger. There are no outstanding rights to purchase, subscriptions, warrants, options or any other security convertible into or exchangeable for equity interests in the SPE or its SPE Subsidiaries.

Section 4.04 CONSENTS AND APPROVALS. Except as shall have been obtained or satisfied on or prior to the Closing Date, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration or filing with, any Person or any Governmental Authority or under any applicable Laws is required to be obtained by the SPE or any of the SPE Subsidiaries in connection with the execution, delivery and performance of this Agreement, the other Formation Transaction Documentation to which the SPE or any of the SPE Subsidiaries is a party and the transactions contemplated hereby and thereby, except for those consents, waivers, approvals, authorizations, orders, licenses, permits, registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.05 NO VIOLATION. None of the execution, delivery or performance of this Agreement, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the organizational documents of the SPE or any SPE Subsidiary (B) any agreement, document or instrument to which the SPE or any SPE Subsidiary or any of their respective assets or properties are bound by or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on the SPE or any SPE Subsidiary, except for, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.06 LICENSES AND PERMITS. To the knowledge of the SPE, all notices, licenses, permits, certificates and authorizations required for the continued use, occupancy, management, leasing and operation of the Properties have been obtained or can be obtained without material cost, are in full force and effect, are in good standing and (to the extent required in connection with the transactions contemplated by the Formation Transaction Documentation) are assignable to the Merger Sub, except in each case for items that, if not so obtained, obtainable and/or transferred, would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect. To the knowledge of the SPE, neither the SPE, nor any SPE Subsidiary, nor any third party has taken any action that (or failed to take any action the omission of which) would result in the revocation of any such notice, license, permit, certificate or authorization where such revocation or revocations would, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect, nor has any one of them received any written notice of violation from any Governmental Authority or written notice of the intention of any entity to revoke any such notice, license, permit, certificate or authorization, that in each case has not been cured or otherwise resolved to the satisfaction of such Governmental Authority or other entity and except as would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.07 COMPLIANCE WITH LAWS. To the knowledge of the SPE, the SPE and each SPE Subsidiary have conducted their respective businesses in compliance with all applicable Laws, except for such failures that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect. To the knowledge of the SPE, neither the SPE, nor any SPE Subsidiary nor any third party has been informed in writing of any continuing violation of any such Laws or that any investigation has been commenced and is continuing or is contemplated respecting any such possible violation, except in each case for violations that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.08 PROPERTIES.

(a) Except as set forth in Schedule 4.08(a), the SPE or an SPE Subsidiary is the insured under a policy of title insurance as the owner of, and, to the knowledge of the SPE, the SPE or an SPE Subsidiary is the owner of, the fee simple estate (or, in the case of certain Properties, the leasehold estate or the tenancy-in-common estate) to the Property owned by the SPE or an SPE Subsidiary, in each case free and clear of all Liens except for Permitted Liens. Prior to the effective time of the merger contemplated hereby, neither the SPE nor any SPE Subsidiary shall take or omit to take any action to cause any Lien to attach to any Property, except for Permitted Liens and Liens, if any, given to secure mortgage indebtedness encumbering such Property.

(b) Except for matters that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect, to the knowledge of the SPE, (1) neither the SPE, nor any SPE Subsidiary, nor any other party to any material agreement affecting any Property (other than a Lease (as such term is hereinafter defined) for space within such Property), is in breach or default of any such agreement, (2) no event has occurred or has been threatened in writing, which with or without the passage of time or the giving of notice, or both, would, individually or together with all such other events, constitute a default under any such agreement, or would, individually or together with all such other events, reasonably be expected to cause the acceleration of any material obligation of any party thereto or the creation of a Lien upon any asset of the SPE or any SPE Subsidiary, except for Permitted Liens, and (3) all agreements affecting any Property required for the continued use, occupancy, management, leasing and operation of such Property (exclusive of space Leases) are valid and binding and in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

(c) To the knowledge of the SPE, as presently conducted, none of the operation of the buildings, fixtures and other improvements comprising a part of the Properties is in violation of any applicable building code, zoning ordinance or other "land use" Law, except for such violations that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

(d) Except for matters that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect, (1) to the knowledge of the SPE, neither the SPE, nor its SPE Subsidiary, nor any other party to any Lease, is in breach or default of any such Lease, (2) to the knowledge of the SPE, no event has occurred or has been

threatened in writing, which with or without the passage of time or the giving of notice, or both, would, individually or together with all such other events, constitute a default under any Lease, or would permit termination, modification or acceleration under such Lease, and (3) to the knowledge of the SPE each of the leases (and all amendments thereto or modifications thereof) to which the SPE or any SPE Subsidiary is a party or by which the SPE or any SPE Subsidiary or any Property is bound or subject (collectively, the "Leases") is valid and binding and in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.09 INSURANCE. The SPE or an SPE Subsidiary has in place the public liability, casualty and other insurance coverage with respect to each Property owned, leased and/or managed by it as the SPE reasonably deems necessary and in all cases including such coverage as is required under the terms of any continuing loan or Lease. Each of the insurance policies with respect to each Property is in full force and effect in all material respects and all premiums due and payable thereunder have been fully paid when due. To the knowledge of the SPE, neither the SPE nor any SPE Subsidiary has received from any insurance company any notices of cancellation or intent to cancel any insurance.

Section 4.10 ENVIRONMENTAL MATTERS. Except for matters that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect, to the knowledge of the SPE, (A) the SPE and the SPE Subsidiaries are in compliance with all Environmental Laws, (B) neither the SPE nor any SPE Subsidiary have received any written notice from any Governmental Authority or third party alleging that the SPE, any SPE Subsidiary or any Property is not in compliance with applicable Environmental Laws, and (C) there has not been a release of a hazardous substance on any of the Properties that would require investigation or remediation under applicable Environmental Laws. The representations and warranties contained in this Section 4.10 constitute the sole and exclusive representations and warranties made by the SPE concerning environmental matters.

Section 4.11 EMINENT DOMAIN. There is no existing or, to the knowledge of the SPE, proposed or threatened condemnation, eminent domain or similar proceeding, or private purchase in lieu of such a proceeding which would affect any of the Properties, except for such proceedings that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.12 EXISTING LOANS. Schedule 4.12 lists, as of the date hereof, all secured loans presently encumbering the Properties or any direct or indirect interest in the SPE, and any unsecured loans relating thereto to be assumed by the Operating Partnership or any Subsidiary of the Operating Partnership at Closing, as of the date hereof (the "Disclosed Loans").

Section 4.13 FRANCHISE AGREEMENTS. To the knowledge of the SPE, the hotel franchise agreement set forth on Schedule 4.13 ("Franchise Agreement") is the only hotel franchise agreement in effect for any Property. Except as set forth on Schedule 4.13, neither the SPE nor any of SPE Subsidiary, nor, to the knowledge of the SPE, any other party to the Franchise Agreement, is in breach or default of the Franchise Agreement, except for such breach or default that would not, individually or in the aggregate, reasonably be expected to have an SPE Merger Entity Material Adverse Effect.

Section 4.14 FINANCIAL STATEMENTS. The financial statements of the SPE included in the Prospectus have been prepared in all material respects in accordance with generally accepted accounting principles applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto), subject, in the case of unaudited statements, to normal year-end audit adjustments, and fairly present in all material respects the financial condition and results of operations of the SPE as of the dates indicated therein and for the periods ended as indicated therein.

Section 4.15 TAXES. Except as set forth in Section 4.15, (i) the SPE and each of the SPE Subsidiaries have timely and properly filed all Tax returns and reports required to be filed by it (after giving effect to any filing extension properly granted by a Governmental Authority having authority to do so) and all such returns and reports are accurate and complete in all material respects, and has paid (or had paid on its behalf) all Taxes as required to be paid by it, (ii) no income or material non-income Tax returns filed by the SPE or any SPE Subsidiaries are the subject of a pending or ongoing audit, and (iii) except as would not have an SPE Material Adverse Effect, no deficiencies for any Taxes have been proposed, asserted or assessed against the SPE or any of the SPE Subsidiaries, and no requests for waivers of the time to assess any such Taxes are pending. Except as set forth in Schedule 4.15, since its formation, for U.S. federal income tax purposes, the SPE has been treated as a partnership, or an entity disregarded from a partnership, and not as a corporation or an association taxable as a corporation, and each of the SPE Subsidiaries has been treated as a partnership or disregarded entity and not as a corporation or an association taxable as a corporation.

Section 4.16 LITIGATION. Except for actions, suits or proceedings covered by policies of insurance, to the knowledge of the SPE, there is no action, suit or proceeding pending or, to the knowledge of the SPE, threatened against or affecting the SPE or any SPE Subsidiary, or any officer, director, principal, managing member, general partner or Affiliate of any of the foregoing other than actions, suits, proceedings arising in the ordinary course of business from the ownership and operation, which, if adversely determined, would not have an SPE Material Adverse Effect. There is no action, suit, or proceeding pending or, to the knowledge of the SPE, threatened against or affecting the SPE, any SPE Subsidiary or any officer, director, principal, managing member, general partner or Affiliate of any of the foregoing which challenges or impairs the ability of the SPE to execute or deliver, or materially perform its obligations under, this Agreement and the documents executed by it pursuant to this Agreement or to consummate the transactions contemplated hereby or thereby. Except for matters covered by insurance, there is no judgment, decree, injunction, rule or order of a Governmental Authority outstanding against the SPE, any SPE Subsidiary or any officer, director, principal, managing member or general partner of any of the foregoing in their capacity as such which, would reasonably be expected to have an SPE Material Adverse Effect.

Section 4.17 NO INSOLVENCY PROCEEDINGS. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to the SPE's knowledge, threatened against the SPE, nor are any such proceedings contemplated by the SPE.

Section 4.18 SECURITIES LAW MATTERS. The SPE acknowledges that: (i) the REIT and Operating Partnership intend the offer and issuance of any REIT Shares or OP Units to

any Pre-Formation Participants to be exempt from registration under the Securities Act and applicable state securities laws by virtue of the status of such equity holder as an "accredited investor" (within the meaning of Rule 501(a) of Regulation D under the Securities Act) acquiring any REIT Shares or OP Units in a transaction exempt from registration pursuant to Rule 506 of Regulation D under the Securities Act, and (ii) in issuing any REIT Shares or OP Units pursuant to the terms of this Agreement, the REIT and Operating Partnership are relying on the representations made by each equity holder electing to receive REIT Shares or OP Units as consideration in the Merger, which representations were set forth in Appendix D to the Request for Consent - Accredited Investor Representations Letter.

Section 4.19 NO BROKER. The SPE has not entered into, and it covenants that it will not enter into, any agreement, arrangement or understanding with any Person or firm which will result in the obligation of the Operating Partnership or any Affiliate to pay any finder's fee, brokerage commission or similar payment in connection with the transaction contemplated by this Agreement (other than underwriting discounts, commissions and other fees and expenses to be paid by the REIT in connection with the IPO and any related financing transactions).

Section 4.20 NO IMPLIED REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article IV and any other agreement entered into in connection with the Formation Transactions to which it is a party, the SPE shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby.

Section 4.21 OWNERSHIP OF CERTAIN ASSETS. Except as set forth in Section 4.21, neither the SPE nor any SPE Subsidiary owns any loan assets or other securities of any issuer except for equity interests in other American Assets Entities.

Section 4.22 SURVIVAL OF REPRESENTATIONS AND WARRANTIES OF THE SPE. The parties hereto agree and acknowledge that the representations and warranties set forth in this Article IV (other than Section 4.01, Section 4.02, Section 4.03, Section 4.18 and Section 4.23) shall not survive the Closing.

Section 4.23 NON-FOREIGN STATUS. Neither the SPE nor any SPE Subsidiary is a foreign person (as defined in the Code).

ARTICLE V
COVENANTS AND OTHER AGREEMENTS

Section 5.01 PRE-CLOSING COVENANTS. During the period from the date hereof to the Closing Date (except as otherwise provided for or contemplated by this Agreement or in connection with the Formation Transactions), the SPE shall use commercially reasonable efforts to (and shall cause each of the SPE Subsidiaries to) conduct its businesses and operate and maintain the Properties in the ordinary course of business consistent with past practice, pay its debt obligations as they become due and payable, and use commercially reasonable efforts to preserve intact its current business organizations and preserve its relationships with customers, tenants, suppliers, advertisers and others having business dealings with it, in each case consistent with past practice. In addition, and without limiting the generality of the foregoing, during the

period from the date hereof to the Closing Date and except in connection with the Formation Transactions, the SPE shall not (and shall not permit any of the SPE Subsidiaries to) without the prior written consent of the Operating Partnership, which consent may be withheld by the Operating Partnership in its sole discretion:

(a)(i) other than distributions to the equity holders of the SPE in connection with such holders' payment of any Taxes related to their ownership of the equity of the SPE or as otherwise contemplated by this Agreement, declare, set aside or pay any dividends or distributions in respect of any of the SPE Equity Interests, except in the ordinary course of business consistent with past practice and in accordance with the SPE's applicable Organizational Documents, (ii) issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for any SPE Equity Interests or make any other changes to the equity capital structure of the SPE or any SPE Subsidiary, or (iii) purchase, redeem or otherwise acquire any SPE Equity Interests or equity interests of any of the SPE Subsidiaries or any other securities thereof;

(b) issue, deliver, sell, transfer, dispose, mortgage, pledge, assign or otherwise encumber, or cause the issuance, delivery, sale, transfer, disposition, mortgage, pledge, assignment or otherwise encumbrance of, any limited liability company, partnership interests or other equity interests in the SPE or any of the SPE Subsidiaries or any other assets of the SPE or the SPE Subsidiaries;

(c) amend, modify or terminate any lease, contract or other instruments relating to the Property, except in the ordinary course of business consistent with past practice;

(d) amend its Organizational Documents;

(e) adopt a plan of liquidation, dissolution, merger, consolidation, restructuring, recapitalization or reorganization;

(f) materially alter the manner of keeping such SPE or SPE Subsidiary's books, accounts or records or the accounting practices therein reflected;

(g) file an entity classification election pursuant to Treasury Regulation Section 301.7701-3(c) on Internal Revenue Service Form 8832 (Entity Classification Election) to treat the SPE or any of its SPE Subsidiaries as an association taxable as a corporation for United States federal income tax purposes; make or change any other Tax elections; settle or compromise any claim, notice, audit report or assessment in respect of Taxes; change any annual Tax accounting period; adopt or change any method of Tax accounting; file any amended Tax return; enter into any tax allocation agreement, tax sharing agreement, tax indemnity agreement or closing agreement relating to any Tax; surrender of any right to claim a Tax refund; or consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment;

(h) terminate or amend any existing insurance policies affecting any Property that results in a material reduction in insurance coverage for the Property;

(i) knowingly cause or permit the SPE to violate, or fail to use commercially reasonable efforts to cure any violation of, any applicable Laws; or

(j) authorize, commit or agree to take any of the foregoing actions.

Section 5.02 CONSENT AND WAIVER OF RIGHTS UNDER ORGANIZATIONAL DOCUMENTS. As of the Closing, the SPE waives and relinquishes all rights and benefits otherwise afforded to the SPE (a) under its Organizational Documents including, without limitation, any rights of appraisal, rights of first offer or first refusal, buy/sell agreements, put, option or similar parallel exit or dissenter rights in connection with the Formation Transactions and the IPO and any right to consent to or approve of the sale or contribution or other transaction undertaken by any equity holder of the SPE of their SPE Equity Interests to the Operating Partnership or any Affiliate thereof and any and all notice provisions related thereto and (b) for claims against the REIT or the Operating Partnership for breach by any of their respective present or former officers, directors, managing members, general partners or Affiliates of their fiduciary duties or similar obligations (including duties of disclosure) to any of their respective present or former shareholders, members, partners, equity interest holders or Affiliates. The SPE acknowledges that the agreements contained herein and the transactions contemplated hereby and any actions taken in contemplation of the transactions contemplated hereby may conflict with, and may not have been contemplated by, the Organizational Documents of the SPE or other agreements among one or more holders of such SPE Equity Interests or one or more of the equity holders of the SPE. With respect to the SPE and each Property in which an SPE Equity Interest of the SPE represents a direct or indirect interest, the SPE expressly gives all consents (and any consents necessary to authorize the proper parties in interest to give all consents) and waivers it is entitled to give that are necessary or desirable to facilitate the contribution or other Formation Transactions relating to the SPE or such Property. In addition, if the transactions contemplated hereby occur, this Agreement shall be deemed to be an amendment to the Organizational Documents of the SPE to the extent the terms herein conflict with the terms thereof, including without limitation, terms with respect to allocations, distributions and the like. In the event the transactions contemplated by this Agreement do not occur, nothing in this Agreement shall be deemed to be or construed as an amendment or modification of, or commitment of any kind to amend or modify, the Organizational Documents of the SPE, which shall remain in full force and effect without modification.

Section 5.03 EXCLUDED ASSETS. Prior to or, as specified on Schedule 5.03, as soon as possible following the Closing and after such amounts are reasonably determinable, the SPE shall distribute or cause to be distributed or paid out the assets identified on Schedule 5.03 (the "Excluded Assets").

ARTICLE VI
ADDITIONAL AGREEMENTS

Section 6.01 COMMERCIALLY REASONABLE EFFORTS BY THE OPERATING PARTNERSHIP AND THE SPE. Each of the Operating Partnership and the SPE shall use commercially reasonable efforts and cooperate with each other in (i) promptly determining whether any filings are required to be made or consents, approvals, waivers, permits or authorizations are required to be obtained (under any applicable Law or regulation or from any

Governmental Authority or third party) in connection with the transactions contemplated by this Agreement, and (ii) promptly making (or causing to be made) any such filings, in furnishing information required in connection therewith and in timely seeking to obtain any such consents, approvals, waivers, permits and authorizations.

Section 6.02 OBLIGATIONS OF MERGER SUB. Subject to the terms of this Agreement, the Operating Partnership shall take all reasonable action necessary to cause Merger Sub (i) to be formed prior to the Effective Time and become a party to this Agreement by executing a counterpart of this Agreement where indicated on the signature page hereof (the date of such execution, the "Joinder Date") and (ii) to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement. All representations, warranties, covenants, agreements, rights and obligations of Merger Sub herein shall become effective as to Merger Sub as of the Joinder Date.

Section 6.03 TAX MATTERS.

(a) The SPE and the SPE Subsidiaries shall timely file or cause to be timely filed when due all Tax returns required to be filed by or with respect to such Person on or prior to the Closing Date and shall pay or cause to be paid all Taxes shown due thereon. All such Tax returns (including, for the avoidance of doubt, any amended Tax returns) shall be prepared in a manner consistent with past practice, except as otherwise required by applicable Law.

(b) The Operating Partnership shall prepare or cause to be prepared and file or cause to be filed all income Tax returns of the SPE and any of the SPE Subsidiaries which are due after the Closing Date. All such income Tax returns (including, for the avoidance of doubt, any amended Tax returns) shall be prepared in a manner consistent with past practice, except as otherwise required by applicable Law. No later than ten (10) days prior to the due date (including extensions) for filing such income Tax returns, the Operating Partnership shall deliver such income Tax returns to American Assets, Inc. for its review and approval, which shall not be unreasonably withheld.

(c) The Operating Partnership shall prepare or cause to be prepared all other Tax returns of the SPE and any of its Subsidiaries.

(d) In accordance with Section 704(c) of the Code, the Operating Partnership shall adopt and use only the so-called "traditional method" described in Treasury Regulation Section 1.704-3(b) with respect to any properties transferred directly or indirectly by the SPE to the Operating Partnership as a result of the Formation Transactions, and therefore shall not make any curative or remedial allocations with respect to such properties.

Section 6.04 WITHHOLDING CERTIFICATE. Prior to Closing, the SPE shall deliver to the Operating Partnership such forms and certificates, duly executed and acknowledged, in form and substance reasonably satisfactory to the Operating Partnership (including any relevant forms or certificates provided to the SPE by the holder of SPE Equity Interests), certifying that the payment of consideration in the Merger is exempt from withholding under Section 1445 of the Code and any similar withholding rules under applicable state, local or foreign Tax Laws.

Section 6.05 TAX ADVICE. The Operating Partnership makes no representations or warranties to the SPE or any holder of SPE Equity Interests regarding the Tax treatment of the Merger or the other Formation Transactions, or with respect to any other Tax consequences to the SPE or any holder of SPE Equity Interests of this Agreement, the Merger or the other Formation Transactions. The SPE acknowledges that the SPE and the holders of SPE Equity Interests are relying solely on their own Tax advisors in connection with this Agreement, the Merger and the other Formation Transactions and agreements contemplated hereby.

Section 6.06 ALTERNATE TRANSACTION. In the event that the Operating Partnership determines that a structure change is necessary, advisable or desirable, the Operating Partnership may elect, in its sole and absolute discretion, to effect the Alternate Transaction, and in such case the SPE hereby agrees and consents to such election, without the need for the Operating Partnership to seek any further consent or action from the SPE, and agrees that the parties shall undertake the Alternate Transaction and shall, and it shall cause its equity holders and Subsidiaries to, enter into such agreements as shall be necessary to consummate the Alternate Transaction.

Section 6.07 EXCLUSION OF ENTITIES. The parties hereby agree that the Operating Partnership shall have the right, in its sole discretion, to exclude the SPE from the Merger after the date hereof until the Effective Time, provided that the Operating Partnership shall provide prior written notice to the SPE regarding such exclusion.

ARTICLE VII
CONDITIONS PRECEDENT

Section 7.01 CONDITION TO EACH PARTY'S OBLIGATIONS. The respective obligation of each party to effect the Merger and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date is subject to the satisfaction or waiver on or prior to the Effective Time, of the following conditions:

(a) REGISTRATION STATEMENT. The Registration Statement shall have become effective under the Securities Act and shall not be the subject of any stop order or proceedings by the SEC seeking a stop order. This condition may not be waived by any party.

(b) NO INJUNCTION. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, judgment, injunction, stay or other order (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of any of the transactions contemplated in this Agreement nor shall any of the same brought by a Governmental Authority of competent jurisdiction be pending or threatened that seeks the foregoing.

(c) OPERATING PARTNERSHIP AGREEMENT. The Operating Partnership Agreement, in substantially the form attached hereto as Exhibit D, shall have been executed and delivered by the partners of the Operating Partnership and shall be in full force and effect and, except as contemplated by Section 2.02 or the other Formation Transaction Documents, shall not have been amended or modified.

(d) TAX PROTECTION AGREEMENT. In the event that the SPE Equity Interests are held by any Pre-Formation Participant that (1) owns, directly or indirectly, an interest in any property specified in the Tax Protection Agreement or (2) has been provided an opportunity to guarantee debt as set forth in the Tax Protection Agreement, the REIT and the Operating Partnership shall have entered into the Tax Protection Agreement substantially in the form attached as Exhibit A, where applicable.

Section 7.02 CONDITIONS TO OBLIGATIONS OF THE SPE. The obligation of the SPE to effect the Merger and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date are further subject to satisfaction of the following conditions (any of which may be waived by the SPE, in whole or in part):

(a) REPRESENTATIONS AND WARRANTIES. Except as would not have an OP Material Adverse Effect, each of the representations and warranties of the Operating Partnership and Merger Sub contained in this Agreement shall be true and correct in all material respects at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(b) PERFORMANCE BY THE OPERATING PARTNERSHIP AND MERGER SUB. Except as would not have an OP Material Adverse Effect, each of the Operating Partnership and Merger Sub shall have performed all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) REGISTRATION RIGHTS AGREEMENT. The REIT shall have entered into the registration rights agreement substantially in the form attached as Exhibit C. This condition may not be waived by any party.

Section 7.03 CONDITIONS TO OBLIGATION OF THE OPERATING PARTNERSHIP AND MERGER SUB. The obligations of the Operating Partnership and Merger Sub to effect the Merger and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date are further subject to satisfaction of the following conditions (any of which may be waived by the Operating Partnership and Merger Sub, in whole or in part):

(a) REPRESENTATIONS AND WARRANTIES. Except as would not have an SPE Material Adverse Effect, each of the representations and warranties of the SPE contained in this Agreement, as well as those of the Ernest Rady Trust U/D/T March 10, 1983, as amended (the "Rady Trust"), under the Representation, Warranty and Indemnity Agreement, shall be true and correct in all respects at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(b) PERFORMANCE BY THE SPE. The SPE shall have performed in all material respects all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) IPO CLOSING. The closing of the IPO shall occur substantially concurrently with the Closing.

(d) CONSENTS, ETC. All necessary consents or approvals of Governmental Authorities or third parties (including lenders) for the SPE to consummate the transactions contemplated hereby shall have been obtained.

(e) NO MATERIAL ADVERSE CHANGE. There shall have not occurred between the date hereof and the Closing Date any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the SPE or the SPE Subsidiaries and the Properties, taken as a whole.

(f) REPRESENTATION, WARRANTY AND INDEMNITY AGREEMENT. The Rady Trust shall have entered into the Representation, Warranty and Indemnity Agreement.

(g) ESCROW AGREEMENT. The parties thereto shall have entered into the Escrow Agreement.

(h) LOCK-UP AGREEMENT. Each of the Pre-Formation Participants owning interests in the SPE shall have entered into the Lock-Up Agreement substantially in the form attached as Exhibit E.

(i) TAX PROTECTION AGREEMENT. In the event that (1) the SPE owns, directly or indirectly, an interest in any property specified in the Tax Protection Agreement or (2) the SPE Equity Interests are held by any Pre-Formation Participant that has been provided an opportunity to guarantee debt as set forth in the Tax Protection Agreement, the holders of SPE Equity Interests shall have entered into the Tax Protection Agreement, substantially in the form attached as Exhibit A.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.01 NOTICES. All notices and other communications under this Agreement shall be in writing and shall be deemed given when (i) delivered personally, (ii) five (5) Business Days after being mailed by certified mail, return receipt requested and postage prepaid, (iii) one (1) Business Day after being sent by a nationally recognized overnight courier or (iv) transmitted by facsimile if confirmed within twenty-four (24) hours thereafter by a signed original sent in the manner provided in clause (i), (ii) or (iii) to the parties at the following addresses (or at such other address for a party as shall be specified by notice from such party):

if to the Operating Partnership or Merger Sub to:

American Assets Trust, L.P.
11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620

if to the SPE to:

11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620

Section 8.02 DEFINITIONS. For purposes of this Agreement, the following terms shall have the following meanings.

(a) "Accredited Investor" has the meaning set forth under Regulation D of the Securities Act.

(b) "Affiliate" means, with respect to any Person, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

(c) "Allocated Share" means the amount that would be allocated to a Pre-Formation Participant that is the holder of an interest in an American Assets Entity in accordance with the provisions of the existing Organizational Documents of such entity relating to distributions of distributable net proceeds from sales of directly or indirectly owned properties or assets, and assuming the sale of the relevant Target Asset or Target Assets that are directly or indirectly owned by such entity for a value equal to such Target Asset's or Target Assets' respective Equity Value(s).

Notwithstanding the foregoing, the Allocated Share of any Pre-Formation Participant shall reflect the following adjustments:

1. Intercompany Debt Adjustment. In calculating Allocated Share, all Intercompany Debt shall be taken into account so that the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligor of Intercompany Debt collectively are reduced, and the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligee of such Intercompany Debt collectively are increased, in each case by the amount of such Intercompany Debt (such adjustments being referred to as "Intercompany Debt Adjustments").
2. Entity Specific Debt Adjustment. To the extent that Entity Specific Debt is allocated to a Target Asset, in calculating Allocated Shares of holders of direct or indirect Pre-Formation Interests in the American Assets Entity or Entities owning such Target Asset, the amount of the decrease in Equity Value of such Target Asset attributable to the allocation of such Entity Specific Debt to such Target Asset (through the operation of the formula set forth on Schedule II) (in each case, such decrease being the "Decrease") shall be taken into account so that:
    a. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in any obligor(s) under such Entity Specific Debt collectively shall be (i) reduced by the amount equal to the excess of (w) the amount of the Entity

Specific Debt owed by such obligor over (x) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset; or (ii) increased by the amount equal to the excess of (y) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset over (z) the amount of the Entity Specific Debt owed by such obligor; and

b. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in American Assets Entities owning such Target Asset that are not obligors under such Entity Specific Debt collectively shall be increased by the amount equal to the amount of the Decrease allocated pro rata to such holders as direct or indirect owner of the Target Asset;

with the net effect under the foregoing clauses (a)(i), (a)(ii) and (b) being that the adverse economic impact of the Decrease shall be borne equitably by the holders of direct or indirect Pre-Formation Interests in the actual obligor(s) under such Entity Specific Debt and not by any other holder of direct or indirect Pre-Formation Interests in the American Assets Entities owning such Target Asset.

Illustrative examples of the application of the foregoing Allocated Share adjustments using hypothetical numbers are included as Example 3 and Example 4 in ***Appendix A*** to Schedule II.

(d) "Alternate Transaction" means (i) a contribution of the assets held by the SPE to the Operating Partnership in exchange for the amount of cash and the number of OP Units and/or REIT Shares that were to be issued pursuant to this Agreement, (ii) a contribution by each holder of direct or indirect equity interests in the SPE to the Operating Partnership in exchange for the amount of cash and the number of OP Units and/or REIT Shares that would have otherwise been received by such holder of direct or indirect equity interests pursuant to this Agreement, (iii) the restructuring of the Merger as either (x) a merger of the SPE with and into either the REIT or the Operating Partnership or a wholly owned subsidiary of the REIT or (y) a merger of a wholly owned subsidiary of the REIT or the Operating Partnership with and into the SPE, in each case in exchange for the amount of cash and the number of OP Units and/or REIT Shares that were to be issued pursuant to this Agreement, or (iv) any other transaction pursuant to which the REIT, the Operating Partnership or any of their Subsidiaries acquire the assets held by the SPE or each holder of direct or indirect equity interests in such SPE in a transaction pursuant to which each holder of direct or indirect interests in such SPE receives the amount of cash, the number of OP Units and/or the number of REIT Shares that were to be received by such holder pursuant to this Agreement (or a portion thereof equal in value to the value of the portion of such assets acquired by the REIT, the Operating Partnership or any of their Subsidiaries pursuant to such Alternate Transaction).

(e) "American Assets Entity" means a Forward OP Merger Entity, Forward REIT Merger Entity, OP Sub Reverse Merger Entity, OP Sub Forward Merger Entity, REIT Sub Forward Merger Entity, or Contributed Entity, as applicable. As used herein, "American Assets Entities" refer to each American Assets Entity, collectively.

(f) "Business Day" means any day that is not a Saturday, Sunday or legal holiday in the State of California.

(g) "Code" means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated or issued thereunder.

(h) "Consent Form" means the forms provided to each holder of Pre-Formation Interests to consent to the Formation Transactions and to make such holder's irrevocable elections with respect to consideration to be received in the Formation Transactions.

(i) "Elected OP Unit Percentage" means, for the Merger Consideration to be received with respect to any SPE Equity Interest, the percentage of the Allocated Share represented by such SPE Equity Interest that the holder thereof has made a Valid Election to receive in the form of OP Units.

(j) "Elected REIT Shares Percentage" means, for the Merger Consideration to be received with respect to any SPE Equity Interest, the percentage of the Allocated Share represented by such SPE Equity Entity Interest that the holder thereof has made a Valid Election to receive in the form of REIT Shares.

(k) "Environmental Laws" means all federal, state and local Laws governing pollution or the protection of human health or the environment.

(l) "Escrow Agreement" means the Indemnity Escrow Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the Rady Trust.

(m) "Equity Value" has the meaning set forth in Schedule II hereto.

(n) "Formation Transaction Documentation" means all of the agreements and plans of merger (including this Agreement) relating to all target entities and all contribution agreements and related documents and agreements, substantially in the forms accompanying the Request for Consent dated July 31, 2010 and identified in Exhibit B hereto, pursuant to which all of the American Assets Entities and/or the equity interests in the American Assets Entities held by the Pre-Formation Participants are to be acquired by the REIT or the Operating Partnership, directly or indirectly, as part of the Formation Transactions.

(o) "Formation Transactions" means the transactions contemplated by this Agreement and the other Formation Transaction Documentation.

(p) "Governmental Authority" means any government or agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

(q) "Intercompany Debt" means loans or advances among American Assets Entities and/or their Subsidiaries or among holders of Pre-Formation Interests on the one hand and American Assets Entities and/or their Subsidiaries on the other hand, other than those promissory notes set forth on ***Appendix D*** to Schedule II for which Del Monte Center is listed as the associated Target Asset, each of which loans or advances are set forth on Schedule III hereto. Intercompany Debt shall not be discharged pursuant to the Formation Transactions except to the extent any such Intercompany Debt merges out of existence by operation of law as a result of such transactions (e.g., if the Operating Partnership acquires both the obligor and obligee interest in a loan which reflects an Intercompany Debt). After the closing of the Formation Transactions, and except as provided below, to the extent any such loans are acquired by the REIT, Operating Partnership or their Subsidiaries (e.g., an obligor or obligee with respect to such loans is merged

with or into, or acquired by, one of such entities), the REIT, Operating Partnership or their Subsidiaries (as applicable) shall be permitted to take any actions (including repayment) with respect to such Intercompany Debt as they deem appropriate. Intercompany Debt with respect to which either the obligor or the obligee (but not both such parties) under such Intercompany Debt is acquired, directly or indirectly, by the REIT, Operating Partnership or their Subsidiaries, shall be deemed to be discharged immediately after the Formation Transactions by (i) the REIT, Operating Partnership or their Subsidiaries (as applicable) as obligor, or (ii) the obligor to the REIT, Operating Partnership or their Subsidiaries (as applicable) as obligee, in each case in exchange for the consideration payable as set forth in the applicable Formation Transaction Documentation. The amounts payable and receivable with respect to each item of Intercompany Debt shall be determined by the REIT, for purposes of determining the Intercompany Debt Adjustments, within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

(r) "IPO Closing Date" means the closing date of the IPO.

(s) "IPO Price" means the initial public offering price of a REIT Share in the IPO.

(t) "Laws" means laws, statutes, rules, regulations, codes, orders, ordinances, judgments, injunctions, decrees and policies of any Governmental Authority, including, without limitation, zoning, land use or other similar rules or ordinances.

(u) "Liens" means all pledges, claims, liens, charges, restrictions, controls, easements, rights of way, exceptions, reservations, leases, licenses, grants, covenants and conditions, encumbrances and security interests of any kind or nature whatsoever.

(v) "Lock-Up Agreement" means that certain Lock-Up Agreement, by and between the underwriters and each investor of the REIT and/or the Operating Partnership.

(w) "OP Material Adverse Effect" means any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the Operating Partnership and each Operating Partnership Subsidiary, taken as a whole.

(x) "Operating Partnership Agreement" means the agreement of limited partnership of the Operating Partnership, as amended and restated and in effect immediately prior to the Effective Time.

(y) "Organizational Documents" means the certificate of formation, certificate of incorporation and bylaws, certificate of limited partnership and limited partnership agreement, limited liability company agreement or operating agreement of the SPE or any SPE Subsidiary, as applicable.

(z) "Permitted Liens" means (i) Liens, or deposits made to secure the release of such Liens, securing Taxes, the payment of which is not delinquent or the payment of which (including, without limitation, the amount or validity thereof) is being contested in good faith by appropriate proceedings for which adequate reserves have been made in accordance with GAAP;

(ii) zoning, entitlement, building and other land use Laws imposed by governmental agencies having jurisdiction over the Properties; (iii) covenants, conditions, restrictions, easements for public utilities, encroachments, rights of access or other non-monetary matters that do not materially impair the use of the Properties for the purposes for which they are currently being used or proposed to be used in connection with the relevant Person's business; (iv) Liens securing financing or credit arrangements existing as of the Closing Date; (v) Liens arising under leases in effect as of the Closing Date; (vi) any exceptions contained in any title policy (including any policy issued to a secured lender) relating to the Properties as of the Closing Date; (vii) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the ordinary course of business that are not yet due and payable and which are not, in the aggregate, material to the business, operations and financial condition of the Properties so encumbered; and (viii) any matters that would not have an SPE Material Adverse Effect.

(aa) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

(bb) "Pre-Formation Interests" means the interests held by the Pre-Formation Participants in the American Assets Entities.

(cc) "Pre-Formation Participants" means the holders of the direct and indirect equity interests in the relevant American Assets Entities immediately prior to the Formation Transactions.

(dd) "Prospectus" means the REIT's final prospectus as filed with the SEC.

(ee) "Representation, Warranty and Indemnity Agreement" means the Representation, Warranty and Indemnity Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the Rady Trust.

(ff) "Securities Act" means the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder.

(gg) "SPE Material Adverse Effect" means any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the SPE and each SPE Subsidiary, taken as a whole.

(hh) "Subsidiary" of any Person means any corporation, partnership, limited liability company, joint venture, trust or other legal entity of which such Person owns (either directly or through or together with another Subsidiary of such Person) either (i) a general partner, managing member or other similar interest, or (ii)(A) ten percent (10%) or more of the voting power of the voting capital stock or other equity interests, or (B) ten percent (10%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other legal entity.

(ii) "Target Asset" has the meaning set forth in Schedule II hereto.

(jj) "Tax" means all federal, state, local and foreign income, gross receipts, license, property, withholding, sales, franchise, employment, payroll, goods and services, stamp,

environmental, customs duties, capital stock, social security, transfer, alternative minimum, excise and other taxes, tariffs or governmental charges of any nature whatsoever, including estimated taxes, together with penalties, interest or additions to Tax with respect thereto, whether or not disputed.

(kk) "Tax Protection Agreement" means that certain Tax Protection Agreement by and among the REIT, the Operating Partnership and the parties identified as a signatory on Schedule A thereto.

(ll) "Underwriting Agreement" means that certain underwriting agreement, by and between the REIT, the Operating Partnership and certain underwriters set forth therein, pursuant to which the REIT will issue and sell shares in the IPO.

(mm) "Valid Election" means, with respect to any SPE Equity Interest, an irrevocable election to receive all or a portion of its Allocated Share in the form of OP Units and/or REIT Shares as indicated on the properly completed and timely received Consent Form of the holder of such SPE Equity Interest or a Consent Form as to which any deficiencies have been waived by the REIT.

Section 8.03 COUNTERPARTS. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party and delivered to each other party.

Section 8.04 ENTIRE AGREEMENT; THIRD-PARTY BENEFICIARIES. This Agreement, the other Formation Transaction Documentation and the Consent Forms to which the parties hereto are a party, including, without limitation, the exhibits and schedules hereto and thereto, constitute the entire agreement and, except as set forth in Section 1.09, supersede each prior agreement and understanding, whether written or oral, among the parties regarding the subject matter of this Agreement. This Agreement is not intended to confer any rights or remedies on any Person other than the parties hereto.

Section 8.05 GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of California, regardless of any Laws that might otherwise govern under applicable principles of conflicts of laws thereof.

Section 8.06 ASSIGNMENT. This Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns; *provided*, *however*, that this Agreement may not be assigned (except by operation of law) by any party without the prior written consent of the other parties, and any attempted assignment without such consent shall be null and void and of no force and effect, except that the Operating Partnership may assign its rights and obligations hereunder to an Affiliate.

Section 8.07 JURISDICTION. The parties hereto hereby (a) submit to the exclusive jurisdiction of any state or federal court sitting in the County of San Diego, with respect to any dispute arising out of this Agreement or any transaction contemplated hereby to the extent such courts would have subject matter jurisdiction with respect to such dispute and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action, any

claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, or that the venue of the action is improper.

Section 8.08 DISPUTE RESOLUTION. The parties intend that this Section 8.08 will be valid, binding, enforceable, exclusive and irrevocable and that it shall survive any termination of this Agreement.

(a) Upon any dispute, controversy or claim arising out of or relating to this Agreement or the enforcement, breach, termination or validity thereof ("Dispute"), the party raising the Dispute will give written notice to the other parties to the Dispute describing the nature of the Dispute following which the parties to such Dispute shall attempt for a period of ten (10) Business Days from receipt by the parties of notice of such Dispute to resolve such Dispute by negotiation between representatives of the parties hereto who have authority to settle such Dispute. All such negotiations shall be confidential and any statements or offers made therein shall be treated as compromise and settlement negotiations for purposes of any applicable rules of evidence and shall not be admissible as evidence in any subsequent proceeding for any purpose. The statute of limitations applicable to the commencement of a lawsuit shall apply to the commencement of an arbitration hereunder, except that no defense based on the running of the statute of limitations will be available based upon the passage of time during any such negotiation. Regardless of the foregoing, a party shall have the right to seek immediate injunctive relief pursuant to Section 8.08(c) below without regard to any such ten (10) Business Day negotiation period.

(b) Any Dispute (including the determination of the scope or applicability of this agreement to arbitrate) that is not resolved pursuant to Section 8.08(a) above shall be submitted to final and binding arbitration in California before one neutral and impartial arbitrator, in accordance with the Laws of the State of California for agreements made in and to be performed in that State. The arbitration shall be administered by JAMS, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. Each of the Operating Partnership and the SPE shall appoint one arbitrator within fifteen (15) days of a demand for arbitration. If the Operating Partnership and the SPE cannot mutually agree upon an arbitrator within such 15-day period, the arbitrator shall be appointed by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. The arbitrator shall designate the place and time of the hearing. The hearing shall be scheduled to begin as soon as practicable and no later than sixty (60) days after the appointment of the arbitrator (unless such period is extended by the arbitrator for good cause shown) and shall be conducted as expeditiously as possible. The award, which shall set forth the arbitrator's findings of fact and conclusions of law, shall be filed with JAMS and mailed to the parties no later than thirty (30) days after the close of the arbitration hearing. The arbitration award shall be final and binding on the parties and not subject to collateral attack. Judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(c) Notwithstanding the parties' agreement to submit all Disputes to final and binding arbitration before JAMS, the parties shall have the right to seek and obtain temporary or preliminary injunctive relief in any court having jurisdiction thereof. Such courts shall have authority to, among other things, grant temporary or provisional injunctive relief in

order to protect any party's rights under this Agreement. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitral tribunal shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitral tribunal's orders to that effect.

(d) The prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, and the non-prevailing party shall pay all expenses and fees of JAMS, all costs of the stenographic record, all expenses of witnesses or proofs that may have been produced at the direction of the arbitrator, and the fees, costs, and expenses of the arbitrator. The arbitrator shall allocate such costs and designate the prevailing party or parties for these purposes.

Section 8.09 SEVERABILITY. Each provision of this Agreement will be interpreted so as to be effective and valid under applicable law, but if any provision is held invalid, illegal or unenforceable under applicable law in any jurisdiction, then such invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been included herein.

Section 8.10 RULES OF CONSTRUCTION.

(a) The parties hereto agree that they have had the opportunity to be represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(b) The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." All terms defined in this Agreement shall have the defined meanings contained herein when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Unless explicitly stated otherwise herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time, amended, qualified or supplemented, including (in the case of agreements and instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 8.11 EQUITABLE REMEDIES. The parties agree that irreparable damage would occur to the Operating Partnership in the event that any of the provisions of this

Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Operating Partnership shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the SPE and to enforce specifically the terms and provisions hereof in any federal or state court located in California, this being in addition to any other remedy to which the Operating Partnership is entitled under this Agreement or otherwise at law or in equity.

Section 8.12 WAIVER OF SECTION 1542 PROTECTIONS. As of the Closing, the SPE expressly acknowledges that it has had, or has had and waived, the opportunity to be advised by independent legal counsel and hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the California Civil Code and does so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542 which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Section 8.13 TIME OF THE ESSENCE. Time is of the essence with respect to all obligations under this Agreement.

Section 8.14 DESCRIPTIVE HEADINGS. The descriptive headings herein are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Section 8.15 NO PERSONAL LIABILITY CONFERRED. This Agreement shall not create or permit any personal liability or obligation on the part of any officer, director, partner, employee or shareholder of the Operating Partnership, Merger Sub or the SPE.

Section 8.16 AMENDMENTS. This Agreement may be amended by appropriate instrument, without the consent of the SPE, at any time prior to the Effective Time; *provided*, that no such amendment, modification or supplement shall be made that alters the amount or changes the form of the consideration to be delivered to the SPE, without the prior written consent of the SPE in the event that the SPE would be adversely affected by such proposed amendment, modification or supplement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized officers, all as of the date first written above.

AMERICAN ASSETS TRUST, L.P.,
a Maryland limited partnership

By: AMERICAN ASSETS TRUST, INC.,
a Maryland corporation
Its: General Partner

By: _____
Name: John W. Chamberlain
Title: President

[OP SUB REVERSE MERGER ENTITY]
a [_____]

By: _____
Name:
Title:

[Signature Page to OP Sub Reverse Merger Agreement]

AGREED AND ACCEPTED as of

[_____], 2010,

[OP SUB REVERSE MERGER ENTITY
MERGER SUB LLC],
a [_____]

By: AMERICAN ASSETS TRUST, L.P.
a Maryland Limited Partnership
Its Sole Member

By: _____
Name: _____
Title: _____

[Signature Page to OP Sub Reverse Merger Agreement]

Schedule I

List of Forward OP Merger Entities:

1. Solana Beach Towne Centres Investments, L.P.
2. Pacific San Jose Holdings, L.P.
3. Pacific Sorrento Mesa Holdings, L.P.
4. Hillside 104, a California limited partnership
5. Hillside 276, a California limited partnership
6. Desert Hillside Holdings, LLC
7. BWH Holdings, LLC
8. Waikele Center Holdings, LP

List of Forward REIT Merger Entities:

1. Pacific Stonecrest Assets, Inc.
2. Pacific National City Assets, Inc.
3. Western Assets, Inc.
4. Pacific Towne Centre Assets, Inc.
5. Pacific Oceanside Assets, Inc.
6. Pacific San Jose Assets, Inc.
7. KMBC Assets, Inc.
8. Hero Retail, Inc.
9. Pacific Sorrento Valley Assets I, Inc.
10. Pacific Sorrento Mesa Assets, Inc.
11. Beach Walk Assets, Inc.
12. ICW Plaza, Inc. [d/b/a Delaware ICW Plaza, Inc.]
13. ICW Valencia, Inc.
14. Pacific Torrey Reserve Assets, Inc.
15. Landmark Assets, Inc.
16. Landmark One Market, Inc.
17. Pacific Novato Assets, Inc.
18. Waikele Center Assets, Inc.

List of OP Sub Forward Merger Entities:

1. Pacific Stonecrest Holdings, L.P.
2. Rancho Carmel Plaza, a California limited partnership
3. Pacific Oceanside Holdings, L.P.
4. Kearny Mesa Business Center, a California limited partnership
5. Del Monte Center Holdings, LP
6. Beach Walk Holdings, LP
7. ICW Plaza, L.P., a California limited partnership
8. ICW Valencia, L.P.
9. Desert Oceanside Holdings, LLC
10. San Diego Loma Palisades, L.P.

List of OP Sub Reverse Merger Entities:

1. Pacific Waikiki Holdings, L.P.
2. ABW Lewers LLC
3. King Street Holdings, LP
4. Loma Palisades, a California general partnership

List of REIT Sub Forward Merger Entities:

1. Pacific Del Mar Assets, Inc.
2. Pacific Carmel Mountain Assets, Inc.
3. Pacific Solana Beach Assets, Inc.
4. Pacific Waikiki Assets, Inc.
5. King Street Assets, Inc.
6. Pacific Sorrento Valley Assets II, Inc.
7. Pacific Santa Fe Assets, Inc.

List of Contributed Entities:

1. American Assets Trust Management, LLC
2. Winrad Vista Hacienda, a California general partnership
3. Vista Hacienda, a California limited partnership
4. Pacific American Assets Holdings, L.P., a California limited partnership
5. Carmel Country Plaza, L.P.
6. Pacific Carmel Mountain Holdings, L.P.
7. Pacific National City Holdings, L.P.
8. Pacific Solana Beach Holdings, L.P.
9. Pacific San Jose Holdings, L.P.
10. Winrad Kearny Mesa Business Center, a California general partnership
11. Pacific Sorrento Valley Holdings I, L.P.
12. Pacific Sorrento Mesa Holdings, L.P.
13. Beach Walk Holdings, LP
14. ICW Plaza, L.P., a California limited partnership
15. ICW Valencia, L.P.
16. Pacific Sorrento Valley Holdings II, L.P.
17. EBW Hotel LLC
18. Imperial Strand, a California limited partnership
19. Winrad Imperial Strand, a California general partnership
20. San Diego Loma Palisades, L.P.
21. Mariner’s Point, LLC
22. Pacific Santa Fe Holdings, L.P.

Schedule II

Calculation of Equity Value

For purposes of all Formation Transaction Documentation, "Equity Value" of any Target Asset directly or indirectly owned by the American Assets Entity subject to such agreement shall be calculated pursuant to the formula set forth below. Capitalized terms used in this Schedule II shall have the meanings set forth below and capitalized terms used herein without definition shall have the meanings assigned to such terms in the Agreement.

$$EV = EP \times [TFTV\text{-}TPA]+AA;$$

where:

EV = Equity Value;
EP = Equity Percentage;
TFTV= Total Formation Transaction Value;
TPA = Total Portfolio Adjustment; and
AA = Asset Adjustment;

provided, *however*, that if the resulting Equity Value for a Target Asset is a negative amount (a "Net Deficit"), then the REIT shall exercise one of the following options, as determined by the REIT in its sole and absolute discretion: (i) select the Target Asset as an Eliminated Asset or (ii) if one or more entities that are subject to the Formation Transaction Documentation that are the direct or indirect owners of such Target Asset would otherwise possess Excluded Assets the value of which in the aggregate would equal or exceed the amount of such Net Deficit, increase the Target Net Working Capital with respect to such entity or entities by the absolute value of such Net Deficit; and *provided further* that if the REIT shall have exercised option (ii) with respect to any Target Asset, the Equity Value with respect to such Target Asset shall be deemed to be equal to zero;

provided further, that if the Equity Value for ICW Valencia/Valencia Corporate Center as calculated above would result in the holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. having an amount of Allocated Shares, prior to the application of the Intercompany Debt Adjustments, that is less than the value of the Intercompany Debt owed by ICW Valencia, L.P. to ICW Plaza, L.P. (such shortfall being referred to as the "Intercompany Debt Shortfall"), then (i) Western Insurance Holdings, Inc. shall issue a promissory note with a term of three years to ICW Valencia, L.P. which shall be treated as an Asset Adjustment with respect to ICW Valencia/Valencia Corporate Center and such promissory note (the "WIH Note") shall have such face amount as shall be necessary to increase the Equity Value of ICW Valencia/Valencia Corporate Center such that the Allocated Shares of holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. shall increase by an amount, prior to the application of the Intercompany Debt Adjustments, equal to the Intercompany Debt Shortfall and (ii) the Equity Value for ICW Valencia/Valencia Corporate Center shall be recalculated to give effect to the Asset Adjustment attributable to the issuance of the WIH Note.

Attached as ***Appendix A*** to this Schedule II are illustrative calculations of Equity Value for a hypothetical portfolio of Target Assets.

"Actual Balance" shall mean: (i) with respect to each Existing Loan to be assumed in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such assumption and all assumption fees and any related expenses with respect to such Existing Loan; and (ii) with respect to each Existing Loan to be prepaid, repaid or refinanced in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such prepayment, repayment or refinancing and any related prepayment penalties and any related expenses; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Actual Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed. With respect to each Existing Loan to be assumed, prepaid, repaid or refinanced in connection with the Formation Transactions, the Actual Balance as of the Closing Date shall be determined by the REIT within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

"Asset Adjustment" shall mean with respect to each Target Asset and any Existing Loan relating to such Target Asset, an amount equal to the Base Balance minus the Actual Balance (expressed as a positive or negative number, as applicable) with respect to all Existing Loans relating to such Target Asset, and in the case of ICW Valencia/Valencia Corporate Center, the face value of the WIH Note shall be deemed to reduce the Actual Balance of the Existing Loan relating to ICW Valencia/Valencia Corporate Center.

"Base Balance" shall mean with respect to each Existing Loan, the principal amount of such Existing Loan set forth on ***Appendix C*** to this Schedule II; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Base Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Eliminated Asset" shall mean any Target Asset subject to the Formation Transaction Documentation that is excluded pursuant to the terms of the Formation Transaction Documentation from the Formation Transactions.

"Equity Percentage" shall mean with respect to each Target Asset, the percentage (expressed as a decimal) set forth opposite the name of such Target Asset on ***Appendix B*** to this Schedule II (which percentage is based on the Fairness Opinion of Duff & Phelps, LLC and represents such

Target Asset's percentage of the net asset values of the Target Assets (other than the Management Company) and the net equity value of the Management Company, taken as a whole); *provided, however*, that in the event a Target Asset is selected as or otherwise becomes for any reason an Eliminated Asset, then: (i) the Equity Percentage for each remaining Target Asset shall be recalculated as a fraction, the numerator of which is the original Equity Percentage for such remaining Target Asset and the denominator of which is (A) 100 minus (B) the original Equity Percentage of the Eliminated Asset; and (ii) the Equity Percentage of the Eliminated Asset shall be zero; and *provided, further*, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then, after giving effect to any Eliminated Assets pursuant to the preceding proviso, the Equity Percentage for such Target Asset and for each other remaining Target Asset subject directly or indirectly to the Formation Transaction Documentation shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Excluded Assets" has the meaning set forth in Section 5.03 to the Agreement.

"Existing Loan" shall mean (i) each mortgage or mezzanine loan secured by a Target Asset listed on ***Appendix C*** to this Schedule II and (ii) all unsecured indebtedness of an American Assets Entity or of an entity in which an American Assets Entity has a direct or indirect interest that will be assumed, prepaid, repaid or refinanced in connection with the IPO and that is set forth on ***Appendix D*** to this Schedule II (all indebtedness falling within the scope of this clause (ii) shall be referred to as "Entity Specific Debt"); for the avoidance of doubt, no Intercompany Debt shall constitute an Existing Loan (in order to avoid double counting, as Intercompany Debt is adjusted for through the definition of "Allocated Share"). Existing Entity Specific Debt will be deemed to relate to the Target Asset(s) and, if to multiple Target Assets, in the proportions set forth opposite the name of such Entity Specific Debt on ***Appendix D*** to this Schedule II, and all such Entity Specific Debt will be deemed to have a Base Balance of zero (because "Equity Percentage" as determined by Duff & Phelps, LLC was determined at the property level and did not take into account Entity Specific Debt, Entity Specific Debt is deemed to be zero in order to cause a readjustment of "Equity Value" of all Target Assets after taking into account such Entity Specific Debt).

"Target Asset" shall mean each property set forth on Appendix B to this Schedule II and the property management business of American Assets, Inc. (the "Management Company").

"Target Net Working Capital" has the meaning set forth in Schedule 5.03 to the Agreement.

"Total Portfolio Adjustment" shall mean the sum (which may be a positive or negative number) of all Asset Adjustments for every Target Asset, excluding Eliminated Assets.

"Total Formation Transaction Value" shall mean the aggregate dollar value of (i) the cash, (ii) the REIT Shares and (iii) the OP Units that are issued or issuable to all Pre-Formation Participants in the Formation Transactions as set forth in the Prospectus. Total Formation Transaction Value will be determined valuing REIT Shares and OP Units at a value per REIT Share or OP Unit equal to the IPO Price.

EXHIBITS

Exhibit A: **Form of Tax Protection Agreement**

Exhibit B: **Formation Transaction Documentation**

Exhibit C: **Operating Partnership Agreement**

Exhibit D: **Form of Registration Rights Agreement**

Exhibit E: **Lock-Up Agreement**

Exhibit F: **Order of Mergers**

Exhibit A

Form of Tax Protection Agreement

See Attached.

Exhibit B

Formation Transaction Documentation

Form of Forward REIT Merger Agreement

Form of REIT Sub Forward Merger Agreement

Form of Forward OP Merger Agreement

Form of OP Sub Forward Merger Agreement

Form of OP Sub Reverse Merger Agreement

Form of OP Contribution Agreement

Form of OP Sub Contribution Agreement

Form of Alternate Contribution Agreement

Form of Tax Protection Agreement

Amended and Restated Agreement of Limited Partnership of American Assets Trust, L.P.

Registration Rights Agreement

Representation, Warranty and Indemnity Agreement

Indemnity Escrow Agreement

Lock-Up Agreement

Articles of Amendment and Restatement of American Assets Trust, Inc.

Bylaws of American Assets Trust, Inc.

Management Business Contribution Agreement

Exhibit C

Operating Partnership Agreement

See Attached.

Exhibit D

Form of Registration Rights Agreement

See Attached.

Exhibit E

Lock-Up Agreement

See Attached.

Exhibit F

Order of Mergers

Each step within each "Transaction Step" below must be completed before the transactions in the following "Transaction Step" may be completed. All transactions within each "Transaction Step" may be completed simultaneously or in any order.

Transaction Step 1

All Forward REIT Mergers
All REIT Sub Forward Mergers

Transaction Step 2

All Contributions to the OP (including the REIT's contribution to the OP of the assets acquired in Step 1)

Transaction Step 3

All Contributions to subsidiaries of the OP (including, where applicable, the OP's contribution to the applicable subsidiary of assets acquired in Step 2)

Transaction Step 4

All OP Forward Mergers ***except*** the OP Forward Merger set forth in Transaction Step 5 and Transaction Step 7 below

Transaction Step 5

Forward Merger of Desert Hillside Holdings LLC with and into the Operating Partnership

Transaction Step 6

All OP Sub Forward Mergers ***except*** the OP Sub Forward Merger set forth in Transaction Step 7 below

Transaction Step 7

Forward Merger of BWH Holdings LLC with and into the Operating Partnership

Forward Merger of Desert Oceanside Holdings LLC with and into Pacific Oceanside Holdings LLC.

Transaction Step 8

All OP Sub Reverse Mergers

Exhibit 10.13

AGREEMENT AND PLAN OF MERGER

DATED AS OF SEPTEMBER 13, 2010

BY AND AMONG

AMERICAN ASSETS TRUST, INC.,
a Maryland corporation

[REIT SUB FORWARD MERGER ENTITY MERGER SUB]
a Delaware limited liability company

AND

[REIT SUB FORWARD MERGER ENTITY]
a [_____]

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of September 13, 2010, by and among American Assets Trust, Inc., a Maryland corporation (the "REIT"), **[REIT Sub Forward Merger Entity]**, a **[_____]** (the "SPE"), and **[REIT Sub Forward Merger Entity Merger Sub]**, a Delaware limited liability company to be formed prior to the Effective Time (defined below) and to be wholly-owned by the REIT ("Merger Sub").

RECITALS

WHEREAS, the REIT desires to consolidate the ownership of a portfolio of properties currently owned, directly or indirectly, by certain entities each as described on Schedule I hereto;

WHEREAS, concurrently with the execution of this Agreement, each of the entities identified on Schedule I hereto as "Forward REIT Merger Entities" (the "Forward REIT Merger Entities") will enter into an agreement and plan of merger with the REIT pursuant to which each such Forward REIT Merger Entity will merge with and into the REIT and the equity interest in each Forward REIT Merger Entity will be converted automatically into the right to receive cash, without interest, or shares of common stock of the REIT, par value $.01 per share (the "REIT Shares");

WHEREAS, pursuant to this Agreement, the SPE, immediately following the mergers identified in the preceding paragraph, will merge with and into the Merger Sub, with the Merger Sub as the surviving entity (the "Merger"), pursuant to which each membership interest in the SPE (the "SPE Equity Interest") will be converted automatically as set forth herein into the right to receive cash, without interest or REIT Shares;

WHEREAS, concurrently with the execution of this Agreement, the REIT will enter into agreements and plans of merger with certain other American Assets Entities identified as "REIT Sub Forward Merger Entities" on Schedule I hereto (collectively with the SPE, the "REIT Sub Forward Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, each of the other REIT Sub Forward Merger Entities will merge with and into wholly owned subsidiaries of the REIT;

WHEREAS, immediately following the completion of the mergers described in the preceding paragraphs, the REIT will contribute to American Assets Trust, L.P., a Maryland limited partnership (the "Operating Partnership"), (i) all of the assets, rights and obligations of the Forward REIT Merger Entities acquired by the REIT as a result of the mergers between it and the Forward REIT Merger Entities and (ii) all of the REIT's interests in the surviving entities of the mergers of the REIT Sub Forward Merger Entities with and into wholly owned subsidiaries of the REIT;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, will enter into a contribution agreement with certain holders (the "Contributors") of interests in certain American Assets Entities identified as "Contributed Entities" on Schedule I hereto, pursuant to which,

immediately following the completion of the mergers and contributions described in the preceding paragraphs, each Contributor shall contribute to the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, respectively, all of the Contributor's interests in the applicable American Assets Entity (the "Contributed Interest"), and the Operating Partnership, or such subsidiary, as applicable, shall acquire from each Contributor all of each Contributor's right, title and interest as a holder of the Contributed Interests;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into an agreement and plan of merger with certain American Assets Entities identified as "Forward OP Merger Entities" on Schedule I hereto (collectively, the "Forward OP Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraphs, each Forward OP Merger Entity will merge with and into the Operating Partnership in the order set forth in the merger agreement for such entities;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Assets Entities identified as "OP Sub Forward Merger Entities" on Schedule I hereto (collectively, the "OP Sub Forward Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraphs, each OP Sub Forward Merger Entity will merge with and into a separate wholly-owned subsidiary of the Operating Partnership;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Assets Entities identified as "OP Sub Reverse Merger Entities" on Schedule I hereto (collectively, the "OP Sub Reverse Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraphs, a separate wholly-owned subsidiary of the Operating Partnership will merge with and into each OP Sub Reverse Merger Entity;

WHEREAS, in lieu of one or more of the mergers described in the preceding paragraphs and at the same time as such mergers would have otherwise occurred, certain holders (the "Consenting Holders") of interests in certain American Assets Entities shall contribute to the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, all of their interests in the applicable American Assets Entity, and the Operating Partnership, or such subsidiary, shall acquire from each Consenting Holder, all of each Consenting Holder's right, title and interest as a holder of interests in such American Assets Entities;

WHEREAS, the Formation Transactions relate to the proposed initial public offering (the "IPO") of the REIT Shares, following which the REIT will operate as a self-administered and self-managed real estate investment trust within the meaning of Section 856 of the Code;

WHEREAS, in accordance with applicable Law, the SPE may be merged with another entity, subject to the requisite approval of the equity holders as required by applicable Law;

WHEREAS, the board of directors of the REIT has approved and authorized the Merger and the other Formation Transactions in accordance with the Maryland General Corporation Law (the "MGCL") and its charter and bylaws;

WHEREAS, the board of directors of the SPE has determined that it is advisable and in the best interests of the SPE and its equity holders to proceed with the Merger and the other Formation Transactions on the terms described in this Agreement; and

WHEREAS, the SPE has obtained the requisite approval of its equity holders (and lenders, as applicable) to the Merger and the other Formation Transactions, applicable to the SPE.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and other terms contained in this Agreement, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I
THE MERGER

Section 1.01 THE MERGER. At the Effective Time (as defined below), and subject to and upon the terms and conditions of this Agreement and in accordance with applicable Laws, the SPE shall be merged with and into the Merger Sub in the order specified in Exhibit D, whereby the separate existence of the SPE shall cease, and the Merger Sub shall continue its existence under Delaware law as the surviving entity (hereinafter sometimes referred to as the "Surviving Entity").

Section 1.02 EFFECTIVE TIME. Subject to and upon the terms and conditions of this Agreement, concurrently with or as soon as practicable after (i) the execution by the REIT and the Operating Partnership of the Underwriting Agreement and (ii) the satisfaction or waiver of the conditions set forth in Article VII, the Merger Sub and the SPE shall file a certificate of merger or similar document with respect to the Merger (the "Certificate of Merger") as may be required by applicable Law with the Secretary of State of each applicable jurisdiction, providing that the Merger shall become effective upon filing or at such later date and time set forth in the Certificate of Merger that is not more than thirty (30) days after the acceptance of such Certificate of Merger by the Secretary of State of the applicable jurisdiction for record (the "Effective Time"), together with any certificates and other filings or recordings related thereto, in such forms as are required by, and executed in accordance with, the relevant provisions of applicable laws.

Section 1.03 EFFECT OF THE MERGER. At the Effective Time, which shall be in the order specified in Exhibit D, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and applicable Laws.

Section 1.04 ORGANIZATIONAL DOCUMENTS. At the Effective Time, the Organizational Documents of the Merger Sub, as in effect immediately prior to the Effective Time, shall be the Organizational Documents of the Surviving Entity until thereafter amended as provided therein or in accordance with applicable Law.

Section 1.05 CONVERSION OF SPE EQUITY INTERESTS.

(a) Under and subject to the terms and conditions of the respective Formation Transaction Documentation each Pre-Formation Participant is irrevocably bound to accept and

entitled to receive, as a result of and upon consummation of the Merger or other Formation Transactions, a specified share of the sponsors' value of the American Assets Entities as a whole in the form of the right to receive cash or REIT Shares as calculated in Section 1.05.

At the Effective Time, by virtue of the Merger and without any action on the part of the parties hereto or the holders of any interest in the SPE, except as set forth in Section 1.05(b), each SPE Equity Interest shall be converted automatically into the right to receive cash or REIT Shares (or OP Units, as provided in clause (ii) of the following sentence) with an aggregate value equal to the Allocated Share of Equity Value represented by such SPE Equity Interest (collectively referred to as the "Merger Consideration") and each holder that receives OP Units in the Merger shall, upon receipt of such OP Units and the delivery of a Consent Form or a counterpart signature page to the Operating Partnership Agreement and such other documents and instruments as may be required in the sole discretion of the REIT to effect such holder's admission as a limited partner of the Operating Partnership, be admitted as a limited partner of the Operating Partnership in accordance with the Maryland Revised Uniform Limited Partnership Act and the Operating Partnership Agreement.

Subject to Section 1.07 and Section 2.02(c), the amount of cash or REIT Shares comprising the Merger Consideration for each SPE Equity Interest so converted shall be as follows:

(i) Cash: One hundred percent (100%) of the Allocated Share for each SPE Equity Interest held by a Pre-Formation Participant who is not an Accredited Investor shall be paid in cash.

(ii) REIT Shares. The Allocated Share for each SPE Equity Interest or portion thereof held by a Pre-Formation Participant who is an Accredited Investor shall be distributed in the form of a number of REIT Shares equal to the applicable portion of such Allocated Share divided by the IPO Price; *provided* that, subject to Section 7.02(d), to the extent such distribution of REIT Shares to the holder of the SPE Equity Interests would result in such a violation of the restrictions on ownership and transfer set forth in Section 6.3 of the REIT's charter (the "Ownership Limits"), such holder shall receive (x) the maximum number of whole REIT Shares that would not result in a violation of the Ownership Limits, and (y) that number of common units of partnership interests in the Operating Partnership (the "OP Units") equal to the remaining number of REIT Shares not distributed as a result of the application of the foregoing clause (x).

(b) Each SPE Equity Interest issued and outstanding immediately prior to the Effective Time that is owned by the REIT, the Operating Partnership or any of their direct or indirect wholly-owned Subsidiaries (having been previously acquired by the REIT, the Operating Partnership or any such Subsidiary thereof pursuant to the other Formation Transactions) shall remain issued and outstanding, and no consideration shall be delivered hereunder in exchange therefor.

Section 1.06 CANCELLATION AND RETIREMENT OF SPE EQUITY INTERESTS. From and after the Effective Time, (i) each SPE Equity Interest converted into the right to receive the Merger Consideration pursuant to Section 1.05(b) shall no longer be outstanding and

shall automatically be cancelled and retired and shall cease to exist, and each holder of such SPE Equity Interest so converted shall thereafter cease to have any rights as an equity holder of the SPE, except the right to receive the Merger Consideration applicable thereto, and (ii) each SPE Equity Interest issued and outstanding that is owned by the REIT, the Operating Partnership or any of their direct or indirect wholly-owned Subsidiaries shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist and no consideration shall be delivered hereunder in exchange therefor.

Section 1.07 FRACTIONAL INTERESTS. No fractional REIT Shares or OP Units shall be issued in the Merger. All fractional REIT Shares that a holder of SPE Equity Interests would otherwise be entitled to receive as a result of the Mergers and the other Formation Transactions shall be aggregated, and each holder shall receive the number of whole REIT Shares resulting from such aggregation and, in lieu of any fractional REIT Share resulting from such aggregation, an amount in cash determined by multiplying that fraction of a REIT Share to which such holder would otherwise have been entitled, by the IPO Price. All fractional OP Units that a holder SPE Equity Interests would otherwise be entitled to receive as a result of the Mergers and the other Formation Transactions shall be aggregated, and each holder shall receive the number of whole OP Units resulting from such aggregation and, in lieu of any fractional OP Unit resulting from such aggregation, an amount in cash determined by multiplying that fraction of an OP Unit to which such holder would otherwise have been entitled, by the IPO Price. No interest will be paid or will accrue on any cash paid or payable in lieu of any fractional REIT Share.

Section 1.08 CALCULATION OF MERGER CONSIDERATION.

(a) As soon as practicable following the determination of the IPO Price and prior to the Effective Time, all calculations relating to the Merger Consideration shall be performed in good faith by, or under the direction of, the REIT, and, absent manifest error, shall be final and binding upon the holders of SPE Equity Interests.

Section 1.09 TRANSACTION COSTS. If the Closing occurs, the REIT and the Operating Partnership shall be solely responsible for all transaction costs and expenses of the REIT, the Operating Partnership and the American Assets Entities in connection with the Formation Transactions and the IPO, which include, but are not limited to, the underwriting discounts and commissions. In the event the Closing does not occur, such costs and expenses shall be paid in accordance with the terms of that certain letter agreement entered into by the Property Entities (as defined therein) and American Assets, Inc., a California corporation, dated as of May 17, 2010.

ARTICLE II
CLOSING; TERM OF AGREEMENT

Section 2.01 CLOSING. Unless this Agreement shall have been terminated pursuant to Section 2.05, and subject to the satisfaction or waiver of the conditions in Article VII, the filing of the Certificate of Merger, the Effective Time and the closing of the other transactions contemplated by this Agreement shall occur substantially concurrently with the receipt by the REIT of the proceeds from the IPO from the underwriters (the "Closing" or the "Closing Date")

in the order set forth on Exhibit D. The Closing shall take place at the offices of Latham & Watkins LLP, 12636 High Bluff Drive, Suite 400 San Diego, California 92130 or such other place as determined by the REIT in its sole discretion. The Closing hereunder and the closing of the IPO shall be deemed concurrent for all purposes.

Section 2.02 PAYMENT OF MERGER CONSIDERATION.

(a) As soon as reasonably practicable after the Effective Time, the Surviving Entity (or its successor in interest) shall deliver to each holder of SPE Equity Interests, whose SPE Equity Interests have been converted into the right to receive the Merger Consideration pursuant to Section 1.05(a) hereof, the Merger Consideration payable to such holder in the amounts and form provided in Section 1.05(a) hereof. The issuance of any OP Units and admission of the recipients thereof as limited partners of the Operating Partnership pursuant to Section 1.05(a) shall be evidenced by an amendment to Exhibit A to the Operating Partnership Agreement, and the Operating Partnership shall deliver, or cause to be delivered, an executed copy of such amendment to each Pre-Formation Participant receiving OP Units hereunder. Any certificate representing REIT Shares issuable as Merger Consideration shall bear the following legend:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS THE TRANSFEROR DELIVERS TO THE CORPORATION AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION, TO THE EFFECT THAT THE PROPOSED SALE, TRANSFER OR OTHER DISPOSITION MAY BE EFFECTED WITHOUT REGISTRATION UNDER THE ACT AND UNDER APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON BENEFICIAL AND CONSTRUCTIVE OWNERSHIP AND TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). SUBJECT TO CERTAIN FURTHER RESTRICTIONS AND EXCEPT AS EXPRESSLY PROVIDED IN THE CORPORATION'S CHARTER, (I) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF THE CORPORATION'S COMMON STOCK IN EXCESS OF [__]% (IN VALUE OR NUMBER OF SHARES) OF THE OUTSTANDING SHARES OF COMMON STOCK OF THE CORPORATION UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (II) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK OF THE CORPORATION IN EXCESS OF [__]% OF THE VALUE OF THE TOTAL OUTSTANDING SHARES OF CAPITAL STOCK OF THE CORPORATION, UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN

WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (III) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN CAPITAL STOCK THAT WOULD RESULT IN THE CORPORATION BEING "CLOSELY HELD" UNDER SECTION 856(h) OF THE CODE OR OTHERWISE CAUSE THE CORPORATION TO FAIL TO QUALIFY AS A REIT; AND (IV) NO PERSON MAY TRANSFER SHARES OF CAPITAL STOCK IF SUCH TRANSFER WOULD RESULT IN THE CAPITAL STOCK OF THE CORPORATION BEING OWNED BY FEWER THAN 100 PERSONS. ANY PERSON WHO BENEFICIALLY OR CONSTRUCTIVELY OWNS OR ATTEMPTS TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK WHICH CAUSES OR WILL CAUSE A PERSON TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK IN EXCESS OR IN VIOLATION OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE CORPORATION. IF ANY OF THE RESTRICTIONS ON TRANSFER OR OWNERSHIP SET FORTH IN (I) THROUGH (III) ABOVE ARE VIOLATED, THE SHARES OF CAPITAL STOCK REPRESENTED HEREBY WILL BE AUTOMATICALLY TRANSFERRED TO A TRUSTEE OF A TRUST FOR THE BENEFIT OF ONE OR MORE CHARITABLE BENEFICIARIES. IN ADDITION, THE CORPORATION MAY TAKE OTHER ACTIONS, INCLUDING REDEEMING SHARES UPON THE TERMS AND CONDITIONS SPECIFIED BY THE BOARD OF DIRECTORS IN ITS SOLE AND ABSOLUTE DISCRETION IF THE BOARD OF DIRECTORS DETERMINES THAT OWNERSHIP OR A TRANSFER OR OTHER EVENT MAY VIOLATE THE RESTRICTIONS DESCRIBED ABOVE. FURTHERMORE, UPON THE OCCURRENCE OF CERTAIN EVENTS, ATTEMPTED TRANSFERS IN VIOLATION OF THE RESTRICTIONS DESCRIBED ABOVE MAY BE VOID *AB INITIO*. ALL UNDERLINED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN THE CHARTER OF THE CORPORATION, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER AND OWNERSHIP, WILL BE FURNISHED TO EACH HOLDER OF CAPITAL STOCK OF THE CORPORATION ON REQUEST AND WITHOUT CHARGE. REQUESTS FOR SUCH A COPY MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL OFFICE.

(b) The Surviving Entity (or its successor in interest) shall not be liable to any holder of an SPE Equity Interests for any portion of the Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(c) It is intended that the Merger contemplated by this Agreement shall be treated as a "reorganization" within the meaning of Section 368(a) of the Code, and the regulations promulgated thereunder, and that this Agreement will be, and is, adopted as a plan of reorganization.

Section 2.03 TAX WITHHOLDING. The REIT, Merger Sub and the SPE, as applicable, shall be entitled to deduct and withhold from the consideration payable pursuant to

this Agreement to any holder of SPE Equity Interests such amounts required to be deducted and withheld with respect to the making of such payment under the Code or any provision of state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the SPE Equity Interests in respect of which such deduction and withholding was made.

Section 2.04 FURTHER ACTION. If, at any time after the Effective Time, the Surviving Entity shall determine or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Entity the right, title or interest in, to or under any of the rights, properties or assets of the SPE acquired or to be acquired by the Surviving Entity as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the Surviving Entity shall be authorized to execute and deliver, in the name and on behalf of the SPE or otherwise, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of the SPE or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Entity or otherwise to carry out this Agreement.

Section 2.05 TERM OF THE AGREEMENT. This Agreement shall terminate automatically if (i) the initial registration statement of the REIT for the IPO (the "Registration Statement") has not been filed with the Securities and Exchange Commission ("SEC") by March 31, 2011, or (ii) the Merger shall not have been consummated on or prior to December 31, 2011 (such date is hereinafter referred to as the "Outside Date").

Section 2.06 EFFECT OF TERMINATION. In the event of termination of this Agreement for any reason, all obligations on the part of the REIT, the Merger Sub and the SPE under this Agreement shall terminate, except that the obligations set forth in Article VIII shall survive; it being understood and agreed, however, for the avoidance of doubt, that if this Agreement is terminated because one or more of the conditions to a non-breaching party's obligations under this Agreement are not satisfied by the Outside Date as a result of the other party's material breach of a covenant, representation, warranty or other obligation under this Agreement or any other Formation Transaction Documentation, the non-breaching party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE REIT AND MERGER SUB

Each of the REIT and Merger Sub hereby represents and warrants to the SPE as follows:

Section 3.01 ORGANIZATION; AUTHORITY.

(a) Each of the REIT and Merger Sub has been duly incorporated or formed and is validly existing and in good standing under the Laws of its jurisdiction of incorporation or formation, as applicable, and, upon the effectiveness of the REIT Charter, will have all requisite

power and authority to enter into this Agreement and the other Formation Transaction Documentation and to carry out the transactions contemplated hereby and thereby, and to own, lease and/or operate its property and to carry on its business as presently conducted and each of the Operating Partnership and Merger Sub, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have a REIT Material Adverse Effect.

(b) Schedule 3.01(b) sets forth as of the date hereof, (i) each Subsidiary of the REIT (each a "REIT Subsidiary"), (ii) the ownership interest therein of the REIT, and (iii) if not wholly owned by the REIT, the identity and ownership interest of each of the other owners of such REIT Subsidiary. Each REIT Subsidiary has been duly organized or formed and is validly existing and is in good standing under the Laws of its jurisdiction of organization or formation, as applicable, has all requisite power and authority to own, lease and/or operate its property and to carry on its business as presently conducted and, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have a REIT Material Adverse Effect.

Section 3.02 DUE AUTHORIZATION. The execution, delivery and performance of this Agreement and the other Formation Transaction Documentation (including each agreement, document and instrument executed and delivered by or on behalf of the REIT and Merger Sub pursuant to this Agreement or the other Formation Transaction Documentation) by the REIT and Merger Sub, prior to Closing, will have been duly and validly authorized by all necessary actions required of each of the REIT and Merger Sub, respectively. This Agreement, the other Formation Transaction Documentation and each agreement, document and instrument executed and delivered by or on behalf of each of the REIT and Merger Sub pursuant to this Agreement or the other Formation Transaction Documentation constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of each of the REIT and Merger Sub, each enforceable against each of the REIT and Merger Sub, in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.03 CONSENTS AND APPROVALS. Except for the filing of the Certificate of Merger in accordance with Section 1.02 hereof or in connection with the IPO and the consummation of the other Formation Transactions, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration or filing with, any Person or Governmental Authority or under any applicable Laws is required to be obtained by the REIT or Merger Sub in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby and thereby, except for (i) those consents, waivers, approvals, authorizations, orders, licenses, permits, registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have a REIT Material Adverse Effect, or (ii) those consents of the Pre-Formation Participants under the Organizational Documents of the applicable American Assets Entity, the failure of which to obtain would not, individually or in the aggregate, reasonably be expected to have a REIT Material Adverse Effect.

Section 3.04 NO VIOLATION. None of the execution, delivery or performance of this Agreement, the other Formation Transaction Documentation, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the organizational documents of any of the REIT or Merger Sub, (B) any agreement, document or instrument to which the REIT or Merger Sub or any of their respective assets are bound or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on any of the REIT or Merger Sub, except for, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a REIT Material Adverse Effect.

Section 3.05 VALIDITY OF REIT SHARES. Any REIT Shares to be issued pursuant to this Agreement will have been duly authorized by the REIT and, when issued against the consideration therefor, will be validly issued, fully paid and non-assessable, free and clear of all Liens created by the REIT (other than any Liens created by the REIT Charter).

Section 3.06 REIT CHARTER. Attached as Exhibit B hereto is a true and correct copy of the charter of the REIT (the "REIT Charter") in substantially final form.

Section 3.07 LIMITED ACTIVITIES. Except for activities in connection with the IPO, the Formation Transactions or in the ordinary course of business, neither the REIT, the REIT Subsidiaries nor the Merger Sub has engaged in any material business or incurred any material obligations.

Section 3.08 LITIGATION. Except for actions, suits or proceedings covered by policies of insurance, there is no action, suit or proceeding pending or, to the knowledge of the REIT or Merger Sub, threatened against the REIT or any REIT Subsidiary, other than actions, suits, proceedings arising in the ordinary course of business from the ownership and operation of the REIT, that individually or in the aggregate, would not reasonably be expected, (a) if adversely determined, to have a REIT Material Adverse Effect, or (b) to challenge or impair the ability of the REIT or Merger Sub to execute or deliver, or materially perform its obligations under, this Agreement and the documents executed by it pursuant to this Agreement or to consummate the transactions contemplated hereby or thereby to such extent as would result in a REIT Material Adverse Effect.

Section 3.09 NO BROKER. Neither the REIT nor the Merger Sub has entered into, each of the REIT and the Merger Sub covenants that it will not enter into, any agreement, arrangement or understanding with any Person or firm which will result in the obligation of the SPE or any Affiliates thereof to pay any finder's fee, brokerage commission or similar payment in connection with the transaction contemplated by this Agreement (other than underwriting discounts, commissions and other fees and expenses to be paid by the REIT in connection with the IPO and any related financing transactions).

Section 3.10 NO IMPLIED REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article III, the REIT and Merger Sub shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby. All representations, warranties and covenants of the REIT and Merger Sub contained in this Agreement shall expire at the Closing.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE SPE

Except as disclosed in the Prospectus or the schedules attached hereto, the SPE represents and warrants to the REIT that the following statements are true and correct as of the Closing Date:

Section 4.01 ORGANIZATION; AUTHORITY.

(a) The SPE has been duly organized and is validly existing and in good standing under the Laws of its jurisdiction of incorporation or formation, and has all requisite power and authority to enter into this Agreement, each agreement contemplated hereby and the other Formation Transaction Documentation to which it is a party (including any agreement, document and instrument executed and delivered by or on behalf of the SPE pursuant to this Agreement or the other Formation Transaction Documentation) and to carry out the transactions contemplated hereby and thereby, and to own, lease and/or operate any Property owned, leased and/or operated by it and to carry on its business as presently conducted. The SPE, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of a Property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

(b) Schedule 4.01(b) sets forth as of the date hereof with respect to the SPE (i) each Subsidiary of the SPE (each an "SPE Subsidiary"), (ii) the ownership interest therein of the SPE, (iii) if not wholly owned by the SPE, the identity and ownership interest of each of the other owners of such Subsidiary, and (iv) each property owned by the SPE or such Subsidiary or leased pursuant to a ground lease by the SPE or such Subsidiary (each a "Property"). Each SPE Subsidiary has been duly organized and is validly existing and is in good standing under the Laws of its jurisdiction of organization, and has all requisite power and authority to own, lease and/or operate its Property and to carry on its business as presently conducted. Each SPE Subsidiary, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its Property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.02 DUE AUTHORIZATION. The execution, delivery and performance by the SPE of this Agreement and the other Formation Transaction Documentation (including any agreement, document and instrument executed and delivered by or on behalf of the SPE pursuant to this Agreement or the other Formation Transaction Documentation) to which it is a party have been duly and validly authorized by all necessary actions required of the SPE. This Agreement,

the other Formation Transaction Documentation and each agreement, document and instrument executed and delivered by or on behalf of the SPE pursuant to this Agreement or the other Formation Transaction Documentation constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of the SPE, each enforceable against the SPE in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.03 CAPITALIZATION. Schedule 4.03 sets forth as of the date hereof the ownership of the SPE. All of the issued and outstanding equity interests of the SPE and each SPE Subsidiary are duly authorized, validly issued and fully paid; and, to the knowledge of the SPE, are not subject to preemptive rights, transfer restrictions, or appraisal, dissenters' or other similar rights under the Organizational Documents of or any contract to which the SPE is a party or otherwise bound, except for such preemptive rights, transfer restrictions, or appraisal, dissenters' or other similar rights as would not prevent the Merger. There are no outstanding rights to purchase, subscriptions, warrants, options or any other security convertible into or exchangeable for equity interests in the SPE or its SPE Subsidiaries.

Section 4.04 CONSENTS AND APPROVALS. Except as shall have been obtained or satisfied on or prior to the Closing Date, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration or filing with, any Person or any Governmental Authority or under any applicable Laws is required to be obtained by the SPE or any of the SPE Subsidiaries in connection with the execution, delivery and performance of this Agreement, the other Formation Transaction Documentation to which the SPE or any of the SPE Subsidiaries is a party and the transactions contemplated hereby and thereby, except for those consents, waivers, approvals, authorizations, orders, licenses, permits, registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.05 NO VIOLATION. None of the execution, delivery or performance of this Agreement, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the Organizational Documents of the SPE or any SPE Subsidiary (B) any agreement, document or instrument to which the SPE or any SPE Subsidiary or any of their respective assets or properties are bound by or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on the SPE or any SPE Subsidiary, except for, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.06 LICENSES AND PERMITS. To the knowledge of the SPE, all notices, licenses, permits, certificates and authorizations required for the continued use, occupancy, management, leasing and operation of the Properties have been obtained or can be obtained without material cost, are in full force and effect, are in good standing and (to the extent required in connection with the transactions contemplated by the Formation Transaction Documentation) are assignable to the Merger Sub, except in each case for items that, if not so obtained,

obtainable and/or transferred, would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect. To the knowledge of the SPE, neither the SPE, nor any SPE Subsidiary, nor any third party has taken any action that (or failed to take any action the omission of which) would result in the revocation of any such notice, license, permit, certificate or authorization where such revocation or revocations would, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect, nor has any one of them received any written notice of violation from any Governmental Authority or written notice of the intention of any entity to revoke any such notice, license, permit, certificate or authorization, that in each case has not been cured or otherwise resolved to the satisfaction of such Governmental Authority or other entity and except as would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.07 COMPLIANCE WITH LAWS. To the knowledge of the SPE, the SPE and each SPE Subsidiary have conducted their respective businesses in compliance with all applicable Laws, except for such failures that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect. To the knowledge of the SPE, neither the SPE, nor any SPE Subsidiary nor any third party has been informed in writing of any continuing violation of any such Laws or that any investigation has been commenced and is continuing or is contemplated respecting any such possible violation, except in each case for violations that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.08 PROPERTIES.

(a) Except as set forth in Schedule 4.08(a), the SPE or an SPE Subsidiary is the insured under a policy of title insurance as the owner of, and, to the knowledge of the SPE, the SPE or an SPE Subsidiary is the owner of, the fee simple estate (or, in the case of certain Properties, the leasehold estate or the tenancy-in-common estate) to the Property owned by the SPE or an SPE Subsidiary, in each case free and clear of all Liens except for Permitted Liens. Prior to the effective time of the merger contemplated hereby, neither the SPE nor any SPE Subsidiary shall take or omit to take any action to cause any Lien to attach to any Property, except for Permitted Liens and Liens, if any, given to secure mortgage indebtedness encumbering such Property.

(b) Except for matters that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect, to the knowledge of the SPE, (1) neither the SPE, nor any SPE Subsidiary, nor any other party to any material agreement affecting any Property (other than a Lease (as such term is hereinafter defined) for space within such Property), is in breach or default of any such agreement, (2) no event has occurred or has been threatened in writing, which with or without the passage of time or the giving of notice, or both, would, individually or together with all such other events, constitute a default under any such agreement, or would, individually or together with all such other events, reasonably be expected to cause the acceleration of any material obligation of any party thereto or the creation of a Lien upon any asset of the SPE or any SPE Subsidiary, except for Permitted Liens, and (3) all agreements affecting any Property required for the continued use, occupancy, management, leasing and operation of such Property (exclusive of space Leases) are valid and binding and in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

(c) To the knowledge of the SPE, as presently conducted, none of the operation of the buildings, fixtures and other improvements comprising a part of the Properties is in violation of any applicable building code, zoning ordinance or other "land use" Law, except for such violations that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

(d) Except for matters that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect, (1) to the knowledge of the SPE, neither the SPE, nor its SPE Subsidiary, nor any other party to any Lease, is in breach or default of any such Lease, (2) to the knowledge of the SPE, no event has occurred or has been threatened in writing, which with or without the passage of time or the giving of notice, or both, would, individually or together with all such other events, constitute a default under any Lease, or would permit termination, modification or acceleration under such Lease, and (3) to the knowledge of the SPE each of the leases (and all amendments thereto or modifications thereof) to which the SPE or any SPE Subsidiary is a party or by which the SPE or any SPE Subsidiary or any Property is bound or subject (collectively, the "Leases") is valid and binding and in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.09 INSURANCE. The SPE or an SPE Subsidiary has in place the public liability, casualty and other insurance coverage with respect to each Property owned, leased and/or managed by it as the SPE reasonably deems necessary and in all cases including such coverage as is required under the terms of any continuing loan or Lease. Each of the insurance policies with respect to each Property is in full force and effect in all material respects and all premiums due and payable thereunder have been fully paid when due. To the knowledge of the SPE, neither the SPE nor any SPE Subsidiary has received from any insurance company any notices of cancellation or intent to cancel any insurance.

Section 4.10 ENVIRONMENTAL MATTERS. Except for matters that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect, to the knowledge of the SPE, (A) the SPE and the SPE Subsidiaries are in compliance with all Environmental Laws, (B) neither the SPE nor any SPE Subsidiary have received any written notice from any Governmental Authority or third party alleging that the SPE, any SPE Subsidiary or any Property is not in compliance with applicable Environmental Laws, and (C) there has not been a release of a hazardous substance on any of the Properties that would require investigation or remediation under applicable Environmental Laws. The representations and warranties contained in this Section 4.10 constitute the sole and exclusive representations and warranties made by the SPE concerning environmental matters.

Section 4.11 EMINENT DOMAIN. There is no existing or, to the knowledge of the SPE, proposed or threatened condemnation, eminent domain or similar proceeding, or private purchase in lieu of such a proceeding which would affect any of the Properties, except for such proceedings that would not, individually or in the aggregate, reasonably be expected to have an SPE Material Adverse Effect.

Section 4.12 EXISTING LOANS. Schedule 4.12 lists, as of the date hereof, all secured loans presently encumbering the Properties or any direct or indirect interest in the SPE, and any unsecured loans relating thereto to be assumed by the REIT or any Subsidiary of the REIT at Closing (the "Disclosed Loans").

Section 4.13 FRANCHISE AGREEMENTS. To the knowledge of the SPE, the franchise agreement set forth on Schedule 4.13 ("Franchise Agreement") is the only hotel franchise agreement in effect for any Property. Except as set forth on Schedule 4.13, neither the SPE nor any of SPE Subsidiary, nor, to the knowledge of the SPE, any other party to the Franchise Agreement, is in breach or default of the Franchise Agreement, except for such breach or default that would not, individually or in the aggregate, reasonably be expected to have an SPE Merger Entity Material Adverse Effect.

Section 4.14 FINANCIAL STATEMENTS. The financial statements of the SPE included in the Prospectus have been prepared in all material respects in accordance with generally accepted accounting principles applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto), subject, in the case of unaudited statements, to normal year-end audit adjustments, and fairly present in all material respects the financial condition and results of operations of the SPE as of the dates indicated therein and for the periods ended as indicated therein.

Section 4.15 TAXES. Except as set forth in Schedule 4.15, (i) the SPE and each of its SPE Subsidiaries have timely and properly filed all Tax returns and reports required to be filed by it (after giving effect to any filing extension properly granted by a Governmental Authority having authority to do so), and all such returns and reports are accurate and complete in all material respects, and has paid (or had paid on its behalf) all Taxes as required to be paid by it, (ii) no income or material non-income Tax returns filed by the SPE or its SPE Subsidiaries are the subject of a pending or ongoing audit, and (iii) except as would not have an SPE Material Adverse Effect, no deficiencies for any Taxes have been proposed, asserted or assessed against the SPE or its SPE Subsidiaries, and no requests for waivers of the time to assess any such Taxes are pending. Except as set forth in Schedule 4.15, at all times since its formation, the SPE (including any "predecessor corporation" (within the meaning of Treasury Regulations Section 1.1374-1(e)) to the SPE) has continuously qualified as an "S corporation" within the meaning of Section 1361(a)(1) of the Code and all applicable corresponding provisions of state and local law, and no Tax authority has claimed in writing that the SPE does not qualify as an S corporation.

Section 4.16 LITIGATION. Except for actions, suits or proceedings covered by policies of insurance, to the knowledge of the SPE, there is no action, suit or proceeding pending or, to the knowledge of the SPE, threatened against or affecting the SPE or any SPE Subsidiary, or any officer, director, principal, managing member, general partner or Affiliate of any of the foregoing other than actions, suits, proceedings arising in the ordinary course of business from the ownership and operation, which, if adversely determined, would not have an SPE Material Adverse Effect. There is no action, suit, or proceeding pending or, to the knowledge of the SPE, threatened against or affecting the SPE, any SPE Subsidiary or any officer, director, principal, managing member, general partner or Affiliate of any of the foregoing which challenges or impairs the ability of the SPE to execute or deliver, or materially perform its obligations under,

this Agreement and the documents executed by it pursuant to this Agreement or to consummate the transactions contemplated hereby or thereby. Except for matters covered by insurance, there is no judgment, decree, injunction, rule or order of a Governmental Authority outstanding against the SPE, any SPE Subsidiary or any officer, director, principal, managing member, general partner or Affiliate of any of the foregoing in their capacity as such, or which would reasonably be expected to have an SPE Material Adverse Effect.

Section 4.17 NO INSOLVENCY PROCEEDINGS. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to the SPE's knowledge, threatened against the SPE, nor are any such proceedings contemplated by the SPE.

Section 4.18 SECURITIES LAW MATTERS. The SPE acknowledges that: (i) the REIT intends the offer and issuance of REIT Shares to any Pre-Formation Participants to be exempt from registration under the Securities Act and applicable state securities laws by virtue of the status of such equity holders as an "accredited investor" (within the meaning of Rule 501(a) of Regulation D under the Securities Act) acquiring any REIT Shares in a transaction exempt from registration pursuant to Rule 506 of Regulation D under the Securities Act, and (ii) in issuing any REIT Shares pursuant to the terms of this Agreement, the REIT is relying on the representations made by each equity holder receiving REIT Shares as consideration in the Merger, which representations were set forth in Appendix D to the Request for Consent - Accredited Investor Representations Letter.

Section 4.19 NO BROKER. The SPE has not entered into, and it covenants that it will not enter into, any agreement, arrangement or understanding with any Person or firm which will result in the obligation of the REIT or any Affiliate to pay any finder's fee, brokerage commission or similar payment in connection with the transaction contemplated by this Agreement (other than underwriting discounts, commissions and other fees and expenses to be paid by the REIT in connection with the IPO and any related financing transactions).

Section 4.20 NO IMPLIED REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article IV and any other agreement entered into in connection with the Formation Transactions to which it is a party, the SPE shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby.

Section 4.21 OWNERSHIP OF CERTAIN ASSETS. Except as set forth in Section 4.21, neither the SPE nor any SPE Subsidiary owns any loan assets or other securities of any issuer except for equity interests in other American Assets Entities.

Section 4.22 SURVIVAL OF REPRESENTATIONS AND WARRANTIES OF THE SPE. The parties hereto agree and acknowledge that the representations and warranties set forth in this Article IV (other than Section 4.01, Section 4.02, Section 4.03, Section 4.18 and Section 4.23) shall not survive the Closing.

Section 4.23 NON-FOREIGN STATUS. Neither the SPE nor any of its SPE Subsidiaries is a foreign person (as defined in the Code).

ARTICLE V
COVENANTS AND OTHER AGREEMENTS

Section 5.01 PRE-CLOSING COVENANTS. During the period from the date hereof to the Closing Date (except as otherwise provided for or contemplated by this Agreement or in connection with the Formation Transactions), the SPE shall use commercially reasonable efforts to (and shall cause each of the SPE Subsidiaries to) conduct its businesses and operate and maintain the Properties in the ordinary course of business consistent with past practice, pay its debt obligations as they become due and payable, and use commercially reasonable efforts to preserve intact its current business organizations and preserve its relationships with customers, tenants, suppliers, advertisers and others having business dealings with it, in each case consistent with past practice. In addition, and without limiting the generality of the foregoing, during the period from the date hereof to the Closing Date and except in connection with the Formation Transactions, the SPE shall not (and shall not permit any of the SPE Subsidiaries to) without the prior written consent of the REIT, which consent may be withheld by the REIT in its sole discretion:

(a) (i) other than distributions to the holders of SPE Equity Interests in connection with such holders' payment of any Taxes related to their ownership of the equity of the SPE or as otherwise contemplated by this Agreement, declare, set aside or pay any dividends or distributions in respect of any of the SPE Equity Interests, except in the ordinary course of business consistent with past practice and in accordance with the SPE's applicable Organizational Documents, (ii) issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for any SPE Equity Interests or make any other changes to the equity capital structure of the SPE or any SPE Subsidiary, or (iii) purchase, redeem or otherwise acquire any SPE Equity Interests or equity interests of any of the SPE Subsidiaries or any other securities thereof;

(b) issue, deliver, sell, transfer, dispose, mortgage, pledge, assign or otherwise encumber, or cause the issuance, delivery, sale, transfer, disposition, mortgage, pledge, assignment or otherwise encumbrance of, any limited liability company, partnership interests or other equity interests in the SPE or any of the SPE Subsidiaries or any other assets of the SPE or the SPE Subsidiaries;

(c) amend, modify or terminate any lease, contract or other instruments relating to the Property, except in the ordinary course of business consistent with past practice;

(d) amend its Organizational Documents;

(e) adopt a plan of liquidation, dissolution, merger, consolidation, restructuring, recapitalization or reorganization;

(f) materially alter the manner of keeping such SPE or SPE Subsidiary's books, accounts or records or the accounting practices therein reflected;

(g) make or change any Tax elections (except that, if applicable, the SPE may, without the consent of the REIT, (i) terminate its election, if applicable, to be taxed as an S corporation up to three days prior to the expected pricing of the IPO and (ii) cause any SPE

Subsidiary that is a qualified subchapter S subsidiary to convert or merge into a wholly-owned limited liability company subsidiary of the SPE that is a disregarded entity for federal Tax purposes); settle or compromise any claim, notice, audit report or assessment in respect of Taxes; change any annual Tax accounting period; adopt or change any method of Tax accounting; file any amended Tax return; enter into any tax allocation agreement, tax sharing agreement, tax indemnity agreement or closing agreement relating to any Tax; surrender of any right to claim a Tax refund; or consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment;

(h) terminate or amend any existing insurance policies affecting any Property that results in a material reduction in insurance coverage for the Property;

(i) knowingly cause or permit the SPE to violate, or fail to use commercially reasonable efforts to cure any violation of, any applicable Laws; or

(j) authorize, commit or agree to take any of the foregoing actions.

Section 5.02 CONSENT AND WAIVER OF RIGHTS UNDER ORGANIZATIONAL DOCUMENTS. As of the Closing, the SPE waives and relinquishes all rights and benefits otherwise afforded to the SPE (a) under its Organizational Documents including, without limitation, any rights of appraisal, rights of first offer or first refusal, buy/sell agreements, put, option or similar parallel exit or dissenter rights in connection with the Formation Transactions and the IPO and any right to consent to or approve of the sale or contribution or other transaction undertaken by any equity holder of the SPE of their SPE Equity Interests to the REIT or any Affiliate thereof and any and all notice provisions related thereto and (b) for claims against the REIT or the Operating Partnership for breach by any of their respective present or former officers, directors, managing members, general partners or Affiliates of their fiduciary duties or similar obligations (including duties of disclosure) to any of their respective present or former shareholders, members, partners, equity interest holders or Affiliates. The SPE acknowledges that the agreements contained herein and the transactions contemplated hereby and any actions taken in contemplation of the transactions contemplated hereby may conflict with, and may not have been contemplated by, the Organizational Documents of the SPE or other agreements among one or more holders of such SPE Equity Interests or one or more of the equity holders of the SPE. With respect to the SPE and each Property in which an SPE Equity Interest of the SPE represents a direct or indirect interest, the SPE expressly gives all consents (and any consents necessary to authorize the proper parties in interest to give all consents) and waivers it is entitled to give that are necessary or desirable to facilitate the contribution or other Formation Transactions relating to the SPE or such Property. In addition, if the transactions contemplated hereby occur, this Agreement shall be deemed to be an amendment to the Organizational Documents of the SPE to the extent the terms herein conflict with the terms thereof, including without limitation, terms with respect to allocations, distributions and the like. In the event the transactions contemplated by this Agreement do not occur, nothing in this Agreement shall be deemed to be or construed as an amendment or modification of, or commitment of any kind to amend or modify, the Organizational Documents of the SPE, which shall remain in full force and effect without modification.

Section 5.03 EXCLUDED ASSETS. Prior to or, as specified on Schedule 5.03, as soon as possible following the Closing and after such amounts are reasonably determinable, the SPE shall distribute or cause to be distributed or paid out the assets identified on Schedule 5.03 (the "Excluded Assets").

ARTICLE VI
ADDITIONAL AGREEMENTS

Section 6.01 COMMERCIALLY REASONABLE EFFORTS BY THE REIT AND THE SPE. Each of the REIT and the SPE shall use commercially reasonable efforts and cooperate with each other in (i) promptly determining whether any filings are required to be made or consents, approvals, waivers, permits or authorizations are required to be obtained (under any applicable Law or regulation or from any Governmental Authority or third party) in connection with the transactions contemplated by this Agreement, and (ii) promptly making (or causing to be made) any such filings, in furnishing information required in connection therewith and in timely seeking to obtain any such consents, approvals, waivers, permits and authorizations.

Section 6.02 OBLIGATIONS OF MERGER SUB. Subject to the terms of this Agreement, the REIT shall take all reasonable action necessary to cause Merger Sub (i) to be formed prior to the Effective Time and become a party to this Agreement by executing a counterpart of this Agreement where indicated on the signature page hereof (the date of such execution, the "Joinder Date") and (ii) to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement. All representations, warranties, covenants, agreements, rights and obligations of Merger Sub herein shall become effective as to Merger Sub as of the Joinder Date.

Section 6.03 TAX MATTERS.

(a) The SPE and the SPE Subsidiaries shall timely file or cause to be timely filed when due all Tax returns required to be filed by or with respect to such Person on or prior to the Closing Date and shall pay or cause to be paid all Taxes shown due thereon. All such Tax returns (including, for the avoidance of doubt, any amended Tax returns) shall be prepared in a manner consistent with past practice, except as otherwise required by applicable Law.

(b) The REIT shall prepare or cause to be prepared and file or cause to be filed all income Tax returns of the SPE and any of the SPE Subsidiaries which are due after the Closing Date. All such income Tax returns (including, for the avoidance of doubt, any amended Tax returns) shall be prepared in a manner consistent with past practice, except as otherwise required by applicable Law. No later than ten (10) days prior to the due date (including extensions) for filing such income Tax returns, the REIT shall deliver such income Tax returns to American Assets, Inc. for its review and approval, which shall not be unreasonably withheld.

(c) The REIT shall prepare or cause to be prepared all other Tax returns of the SPE and any of its Subsidiaries.

(d) The REIT and the SPE will each use its reasonable best efforts to cause the Merger to qualify, and will use its reasonable best efforts not to, and not to permit or cause any of its Subsidiaries to, take any action that could reasonably be expected to prevent or impede the Merger from qualifying, as a reorganization within the meaning of Section 368 of the Code.

(e) Unless otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code, each of the REIT and the SPE shall report the Merger as a "reorganization" within the meaning of Section 368(a) of the Code for federal income tax purposes.

(f) Following the Merger, the REIT will comply with the record-keeping and information filing requirements of Treasury Regulation Section 1.368-3.

Section 6.04 WITHHOLDING CERTIFICATE. Prior to Closing, the SPE shall deliver to the REIT such forms and certificates, duly executed and acknowledged, in form and substance reasonably satisfactory to the REIT (including any relevant forms or certificates provided to the SPE by the holder of SPE Equity Interests), certifying that the payment of consideration in the Merger is exempt from withholding under Section 1445 of the Code and any similar withholding rules under applicable state, local or foreign Tax Laws.

Section 6.05 TAX ADVICE. The REIT makes no representations or warranties to the SPE or any holder of SPE Equity Interests regarding the Tax treatment of the Merger or the other Formation Transactions, or with respect to any other Tax consequences to the SPE or any holder of SPE Equity Interests of this Agreement, the Merger or the other Formation Transactions. The SPE acknowledges that the SPE and the holders of SPE Equity Interests are relying solely on their own Tax advisors in connection with this Agreement, the Merger and the other Formation Transactions and agreements contemplated hereby.

Section 6.06 ALTERNATE TRANSACTION. In the event that the REIT determines that a structure change is necessary, advisable or desirable, the REIT may elect, in its sole and absolute discretion, to effect the Alternate Transaction, and in such case the SPE hereby agrees and consents to such election, without the need for the REIT to seek any further consent or action from the SPE, and agrees that the parties shall undertake the Alternate Transaction and shall, and it shall cause its equity holders and Subsidiaries to, enter into such agreements as shall be necessary to consummate the Alternate Transaction.

Section 6.07 EXCLUSION OF ENTITIES. The parties hereby agree that the REIT shall have the right, in its sole discretion, to exclude the SPE from the Merger after the date hereof until the Effective Time, provided that the REIT shall provide prior written notice to the SPE regarding such exclusion.

ARTICLE VII
CONDITIONS PRECEDENT

Section 7.01 CONDITION TO EACH PARTY'S OBLIGATIONS. The respective obligation of each party to effect the Merger and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date is subject to the satisfaction or waiver on or prior to the Effective Time, of the following conditions:

(a) REGISTRATION STATEMENT. The Registration Statement shall have become effective under the Securities Act and shall not be the subject of any stop order or proceedings by the SEC seeking a stop order. This condition may not be waived by any party.

(b) NO INJUNCTION. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, judgment, injunction, stay or other order (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of any of the transactions contemplated in this Agreement nor shall any of the same brought by a Governmental Authority of competent jurisdiction be pending or threatened that seeks the foregoing.

(c) OPERATING PARTNERSHIP AGREEMENT. The Operating Partnership Agreement, in substantially the form attached hereto as Exhibit F, shall have been executed and delivered by the partners of the Operating Partnership and shall be in full force and effect and, except as contemplated by Section 2.02 or the other Formation Transaction Documents, shall not have been amended or modified.

Section 7.02 CONDITIONS TO OBLIGATIONS OF THE SPE. The obligation of the SPE to effect the Merger and to consummate the other transactions contemplated by this Agreement to occur on the Closing Date are further subject to satisfaction of the following conditions (any of which may be waived by the SPE, in whole or in part):

(a) REPRESENTATIONS AND WARRANTIES. Except as would not have a REIT Material Adverse Effect, each of the representations and warranties of the REIT and Merger Sub contained in this Agreement shall be true and correct in all material respects at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(b) PERFORMANCE BY THE REIT AND MERGER SUB. Except as would not have a REIT Material Adverse Effect, each of the REIT and Merger Sub shall have performed all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) REGISTRATION RIGHTS AGREEMENT. The REIT shall have entered into the registration rights agreement substantially in the form attached as Exhibit C. This condition may not be waived by any party.

(d) OWNERSHIP WAIVER. Solely with respect to Ernest S. Rady, or his Affiliates, immediate family members, trusts of immediate family members, estates or heirs or successors or assigns or the Ernest Rady Trust U/D/T March 10, 1983, as amended, or its Affiliates, successors or assigns (collectively, the "Rady Group"), based on the shareholder representation letter described in Section 7.03(j), the Board of Directors of the REIT shall have granted an exception to the Common Stock Ownership Limit and the Aggregate Stock Ownership Limit set forth in the REIT Charter, providing the Rady Group with an Excepted Holder Limit (as defined in the REIT Charter) of [__]%.

Section 7.03 CONDITIONS TO OBLIGATION OF THE REIT AND MERGER SUB. The obligations of the REIT and Merger Sub to effect the Merger and to consummate the other

transactions contemplated by this Agreement to occur on the Closing Date are further subject to satisfaction of the following conditions (any of which may be waived by the REIT and Merger Sub, in whole or in part):

(a) REPRESENTATIONS AND WARRANTIES. Except as would not have an SPE Material Adverse Effect, each of the representations and warranties of the SPE contained in this Agreement, as well as those of the Ernest Rady Trust U/D/T March 10, 1983, as amended (the "Rady Trust"),under the Representation, Warranty and Indemnity Agreement, shall be true and correct in all respects at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(b) PERFORMANCE BY THE SPE. The SPE shall have performed in all material respects all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) IPO CLOSING. The closing of the IPO shall occur substantially concurrently with the Closing.

(d) CONSENTS, ETC. All necessary consents or approvals of Governmental Authorities or third parties (including lenders) for the SPE to consummate the transactions contemplated hereby shall have been obtained.

(e) NO MATERIAL ADVERSE CHANGE. There shall have not occurred between the date hereof and the Closing Date any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the SPE or the SPE Subsidiaries and the Properties, taken as a whole.

(f) REPRESENTATION, WARRANTY AND INDEMNITY AGREEMENT. The Rady Trust shall have entered into the Representation, Warranty and Indemnity Agreement.

(g) ESCROW AGREEMENT. The parties thereto shall have entered into the Escrow Agreement.

(h) LOCK-UP AGREEMENT. Each of the Pre-Formation Participants owning interests in the SPE shall have entered into the Lock-Up Agreement substantially in the form attached as Exhibit E.

(i) SHAREHOLDER REPRESENTATION LETTER. The Rady Group shall have executed and delivered a letter to the REIT setting forth certain representations and undertakings related to the Rady Group's ownership of REIT Shares in a form reasonably acceptable to the Board of Directors of the REIT and which allows the Board of Directors of the REIT to reasonably conclude that the ownership waiver and Excepted Holder Limit granted in Section 7.02(d) will not jeopardize the REIT's status as a real estate investment trust under the Code and make the other determinations required by the REIT Charter in connection with granting such waiver and Excepted Holder Limit.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.01 NOTICES. All notices and other communications under this Agreement shall be in writing and shall be deemed given when (i) delivered personally, (ii) five (5) Business Days after being mailed by certified mail, return receipt requested and postage prepaid, (iii) one (1) Business Day after being sent by a nationally recognized overnight courier or (iv) transmitted by facsimile if confirmed within twenty-four (24) hours thereafter by a signed original sent in the manner provided in clause (i), (ii) or (iii) to the parties at the following addresses (or at such other address for a party as shall be specified by notice from such party):

if to the REIT or Merger Sub to:

American Assets Trust, L.P.
11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620

if to the SPE to:

11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620

Section 8.02 DEFINITIONS. For purposes of this Agreement, the following terms shall have the following meanings.

(a) "Accredited Investor" has the meaning set forth under Regulation D of the Securities Act.

(b) "Affiliate" means, with respect to any Person, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

(c) "Allocated Share" means the amount that would be allocated to a Pre-Formation Participant that is the holder of an interest in an American Assets Entity in accordance with the provisions of the existing Organizational Documents of such entity relating to distributions of distributable net proceeds from sales of directly or indirectly owned properties or assets, and assuming the sale of the relevant Target Asset or Target Assets that are directly or indirectly owned by such entity for a value equal to such Target Asset's or Target Assets' respective Equity Value(s).

Notwithstanding the foregoing, the Allocated Share of any Pre-Formation Participant shall reflect the following adjustments:

1. Intercompany Debt Adjustment. In calculating Allocated Share, all Intercompany Debt shall be taken into account so that the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligor of Intercompany Debt collectively are reduced, and the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligee of such Intercompany Debt collectively are increased, in each case by the amount of such Intercompany Debt (such adjustments being referred to as "Intercompany Debt Adjustments").

2. Entity Specific Debt Adjustment. To the extent that Entity Specific Debt is allocated to a Target Asset, in calculating Allocated Shares of holders of direct or indirect Pre-Formation Interests in the American Assets Entity or Entities owning such Target Asset, the amount of the decrease in Equity Value of such Target Asset attributable to the allocation of such Entity Specific Debt to such Target Asset (through the operation of the formula set forth on Schedule II) (in each case, such decrease being the "Decrease") shall be taken into account so that:

    a. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in any obligor(s) under such Entity Specific Debt collectively shall be (i) reduced by the amount equal to the excess of (w) the amount of the Entity Specific Debt owed by such obligor over (x) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset; or (ii) increased by the amount equal to the excess of (y) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset over (z) the amount of the Entity Specific Debt owed by such obligor; and

    b. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in American Assets Entities owning such Target Asset that are not obligors under such Entity Specific Debt collectively shall be increased by the amount equal to the amount of the Decrease allocated pro rata to such holders as direct or indirect owner of the Target Asset;

with the net effect under the foregoing clauses (a)(i), (a)(ii) and (b) being that the adverse economic impact of the Decrease shall be borne equitably by the holders of direct or indirect Pre-Formation Interests in the actual obligor(s) under such Entity Specific Debt and not by any other holder of direct or indirect Pre-Formation Interests in the American Assets Entities owning such Target Asset.

Illustrative examples of the application of the foregoing Allocated Share adjustments using hypothetical numbers are included as Example 3 and Example 4 in ***Appendix A*** to Schedule II.

(d) "Alternate Transaction" means (i) a contribution of the assets held by the SPE to the REIT in exchange for the amount of cash and the number of REIT Shares that were to be issued pursuant to this Agreement, (ii) a contribution of the assets held by the SPE to the Operating Partnership in exchange for the amount of cash and a number of OP Units equal to the number of REIT Shares that were to be issued pursuant to this Agreement, (iii) a contribution by each holder of direct or indirect equity interests in the SPE to the Operating Partnership or the REIT in exchange for the amount of cash and a number of OP Units and/or REIT Shares equal to the number of REIT Shares that would have otherwise been received by such holder of direct or indirect equity interests pursuant to this Agreement, (iv) the restructuring of the Merger as either (x) a merger of the SPE with and into the REIT, the Operating Partnership or a wholly owned subsidiary of the Operating Partnership or (y) a merger of a wholly owned subsidiary of the REIT or the Operating Partnership with and into the SPE, in each case in exchange for the amount of cash and the number of REIT Shares that were to be issued pursuant to this Agreement (or the amount of cash and a number OP Units equal to the number of REIT Shares that were to be issued pursuant to this Agreement), or (v) any other transaction pursuant to which the REIT, the Operating Partnership or any of their Subsidiaries acquire the assets held by the SPE or each holder of direct or indirect equity interests in such SPE in a transaction pursuant to which each holder of direct or indirect interests in such SPE receives the amount of cash, the number of OP Units and/or the number of REIT Shares that were to be received by such holder pursuant to this Agreement (or a portion thereof equal in value to the value of the portion of such assets acquired by the REIT, the Operating Partnership or any of their Subsidiaries pursuant to such Alternate Transaction).

(e) "American Assets Entity" means a Forward OP Merger Entity, Forward REIT Merger Entity, OP Sub Reverse Merger Entity, OP Sub Forward Merger Entity, REIT Sub Forward Merger Entity, or Contributed Entity, as applicable. As used herein, "American Assets Entities" refer to each American Assets Entity, collectively.

(f) "Business Day" means any day that is not a Saturday, Sunday or legal holiday in the State of California.

(g) "Code" means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated or issued thereunder.

(h) "Consent Form" means the forms provided to each holder of Pre-Formation Interests to consent to the Formation Transactions and to make such holder's irrevocable elections with respect to consideration to be received in the Formation Transactions.

(i) "Environmental Laws" means all federal, state and local Laws governing pollution or the protection of human health or the environment.

(j) "Escrow Agreement" means the Indemnity Escrow Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the Rady Trust.

(k) "Equity Value" has the meaning set forth in Schedule II hereto.

(l) "Formation Transaction Documentation" means all of the agreements and plans of merger (including this Agreement) relating to all target entities and all contribution agreements and related documents and agreements, substantially in the forms accompanying the Request for Consent dated July 31, 2010 and identified in Exhibit A hereto, pursuant to which all of the American Assets Entities and/or the equity interests in the American Assets Entities held by the Pre-Formation Participants are to be acquired by the REIT or the Operating Partnership, directly or indirectly, as part of the Formation Transactions.

(m) "Formation Transactions" means the transactions contemplated by this Agreement and the other Formation Transaction Documentation.

(n) "Governmental Authority" means any government or agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

(o) "Intercompany Debt" means loans or advances among American Assets Entities and/or their Subsidiaries or among holders of Pre-Formation Interests on the one hand and American Assets Entities and/or their Subsidiaries on the other hand, other than those promissory notes set forth on ***Appendix D*** to Schedule II for which Del Monte Center is listed as the associated Target Asset, each of which loans or advances are set forth on Schedule III hereto. Intercompany Debt shall not be discharged pursuant to the Formation Transactions except to the extent any such Intercompany Debt merges out of existence by operation of law as a result of such transactions (e.g., if the Operating Partnership acquires both the obligor and obligee interest in a loan which reflects an Intercompany Debt). After the closing of the Formation Transactions, and except as provided below, to the extent any such loans are acquired by the REIT, Operating Partnership or their Subsidiaries (e.g., an obligor or obligee with respect to such loans is merged with or into, or acquired by, one of such entities), the REIT, Operating Partnership or their Subsidiaries (as applicable) shall be permitted to take any actions (including repayment) with respect to such Intercompany Debt as they deem appropriate. Intercompany Debt with respect to which either the obligor or the obligee (but not both such parties) under such Intercompany Debt is acquired, directly or indirectly, by the REIT, Operating Partnership or their Subsidiaries, shall be deemed to be discharged immediately after the Formation Transactions by (i) the REIT, Operating Partnership or their Subsidiaries (as applicable) as obligor, or (ii) the obligor to the REIT, Operating Partnership or their Subsidiaries (as applicable) as obligee, in each case in exchange for the consideration payable as set forth in the applicable Formation Transaction Documentation. The amounts payable and receivable with respect to each item of Intercompany Debt shall be determined by the REIT, for purposes of determining the Intercompany Debt Adjustments, within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

(p) "IPO Closing Date" means the closing date of the IPO.

(q) "IPO Price" means the initial public offering price of a REIT Share in the IPO.

(r) "Laws" means laws, statutes, rules, regulations, codes, orders, ordinances, judgments, injunctions, decrees and policies of any Governmental Authority, including, without limitation, zoning, land use or other similar rules or ordinances.

(s) "Liens" means all pledges, claims, liens, charges, restrictions, controls, easements, rights of way, exceptions, reservations, leases, licenses, grants, covenants and conditions, encumbrances and security interests of any kind or nature whatsoever.

(t) "Lock-Up Agreement" means that certain Lock-Up Agreement, by and between the underwriters and each investor of the REIT and/or the Operating Partnership.

(u) "Operating Partnership Agreement" means the agreement of limited partnership of the Operating Partnership, as amended and restated and in effect immediately prior to the Effective Time.

(v) "Organizational Documents" means the certificate of formation, certificate of incorporation and bylaws, certificate of limited partnership and limited partnership agreement, limited liability company agreement or operating agreement of the SPE or any SPE Subsidiary, as applicable.

(w) "Permitted Liens" means (i) Liens, or deposits made to secure the release of such Liens, securing Taxes, the payment of which is not delinquent or the payment of which (including, without limitation, the amount or validity thereof) is being contested in good faith by appropriate proceedings for which adequate reserves have been made in accordance with GAAP; (ii) zoning, entitlement, building and other land use Laws imposed by governmental agencies having jurisdiction over the Properties; (iii) covenants, conditions, restrictions, easements for public utilities, encroachments, rights of access or other non-monetary matters that do not materially impair the use of the Properties for the purposes for which they are currently being used or proposed to be used in connection with the relevant Person's business; (iv) Liens securing financing or credit arrangements existing as of the Closing Date; (v) Liens arising under leases in effect as of the Closing Date; (vi) any exceptions contained in any title policy (including any policy issued to a secured lender) relating to the Properties as of the Closing Date; (vii) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the ordinary course of business that are not yet due and payable and which are not, in the aggregate, material to the business, operations and financial condition of the Properties so encumbered; and (viii) any matters that would not have an SPE Material Adverse Effect.

(x) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

(y) "Pre-Formation Interests" means the interests held by the Pre-Formation Participants in the American Assets Entities.

(z) "Pre-Formation Participants" means the holders of the direct and indirect equity interests in the relevant American Assets Entities immediately prior to the Formation Transactions.

(aa) "Prospectus" means the REIT's final prospectus as filed with the SEC.

(bb) "REIT Material Adverse Effect" means any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the Operating Partnership and each REIT Subsidiary, taken as a whole.

(cc) "Representation, Warranty and Indemnity Agreement" means the Representation, Warranty and Indemnity Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the Rady Trust.

(dd) "Securities Act" means the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder.

(ee) "SPE Material Adverse Effect" means any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the SPE and each SPE Subsidiary, taken as a whole.

(ff) "Subsidiary" of any Person means any corporation, partnership, limited liability company, joint venture, trust or other legal entity of which such Person owns (either directly or through or together with another Subsidiary of such Person) either (i) a general partner, managing member or other similar interest, or (ii)(A) ten percent (10%) or more of the voting power of the voting capital stock or other equity interests, or (B) ten percent (10%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other legal entity.

(gg) "Target Asset" has the meaning set forth in Schedule II hereto.

(hh) "Tax" means all federal, state, local and foreign income, gross receipts, license, property, withholding, sales, franchise, employment, payroll, goods and services, stamp, environmental, customs duties, capital stock, social security, transfer, alternative minimum, excise and other taxes, tariffs or governmental charges of any nature whatsoever, including estimated taxes, together with penalties, interest or additions to Tax with respect thereto, whether or not disputed.

(ii) "Underwriting Agreement" means that certain underwriting agreement, by and between the REIT, the Operating Partnership and certain underwriters set forth therein, pursuant to which the REIT will issue and sell shares in the IPO.

Section 8.03 COUNTERPARTS. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party and delivered to each other party.

Section 8.04 ENTIRE AGREEMENT; THIRD-PARTY BENEFICIARIES. This Agreement, the other Formation Transaction Documentation and the Consent Forms to which the parties hereto are a party, including, without limitation, the exhibits and schedules hereto and thereto, constitute the entire agreement and, except as set forth in Section 1.09, supersede each prior agreement and understanding, whether written or oral, among the parties regarding the subject matter of this Agreement. This Agreement is not intended to confer any rights or remedies on any Person other than the parties hereto.

Section 8.05 GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of California, regardless of any Laws that might otherwise govern under applicable principles of conflicts of laws thereof.

Section 8.06 ASSIGNMENT. This Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns; *provided, however*, that this Agreement may not be assigned (except by operation of law) by any party without the prior written consent of the other parties, and any attempted assignment without such consent shall be null and void and of no force and effect, except that the REIT may assign its rights and obligations hereunder to an Affiliate.

Section 8.07 JURISDICTION. The parties hereto hereby (a) submit to the exclusive jurisdiction of any state or federal court sitting in the County of San Diego, with respect to any dispute arising out of this Agreement or any transaction contemplated hereby to the extent such

courts would have subject matter jurisdiction with respect to such dispute and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, or that the venue of the action is improper.

Section 8.08 DISPUTE RESOLUTION. The parties intend that this Section 8.08 will be valid, binding, enforceable, exclusive and irrevocable and that it shall survive any termination of this Agreement.

(a) Upon any dispute, controversy or claim arising out of or relating to this Agreement or the enforcement, breach, termination or validity thereof ("Dispute"), the party raising the Dispute will give written notice to the other parties to the Dispute describing the nature of the Dispute following which the parties to such Dispute shall attempt for a period of ten (10) Business Days from receipt by the parties of notice of such Dispute to resolve such Dispute by negotiation between representatives of the parties hereto who have authority to settle such Dispute. All such negotiations shall be confidential and any statements or offers made therein shall be treated as compromise and settlement negotiations for purposes of any applicable rules of evidence and shall not be admissible as evidence in any subsequent proceeding for any purpose. The statute of limitations applicable to the commencement of a lawsuit shall apply to the commencement of an arbitration hereunder, except that no defense based on the running of the statute of limitations will be available based upon the passage of time during any such negotiation. Regardless of the foregoing, a party shall have the right to seek immediate injunctive relief pursuant to Section 8.08(c) below without regard to any such ten (10) Business Day negotiation period.

(b) Any Dispute (including the determination of the scope or applicability of this agreement to arbitrate) that is not resolved pursuant to Section 8.08(a) above shall be submitted to final and binding arbitration in California before one neutral and impartial arbitrator, in accordance with the Laws of the State of California for agreements made in and to be performed in that State. The arbitration shall be administered by JAMS, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. Each of the REIT and the SPE shall appoint one arbitrator within fifteen (15) days of a demand for arbitration. If the REIT and the SPE cannot mutually agree upon an arbitrator within such 15-day period, the arbitrator shall be appointed by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. The arbitrator shall designate the place and time of the hearing. The hearing shall be scheduled to begin as soon as practicable and no later than sixty (60) days after the appointment of the arbitrator (unless such period is extended by the arbitrator for good cause shown) and shall be conducted as expeditiously as possible. The award, which shall set forth the arbitrator's findings of fact and conclusions of law, shall be filed with JAMS and mailed to the parties no later than thirty (30) days after the close of the arbitration hearing. The arbitration award shall be final and binding on the parties and not subject to collateral attack. Judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(c) Notwithstanding the parties' agreement to submit all Disputes to final and binding arbitration before JAMS, the parties shall have the right to seek and obtain

temporary or preliminary injunctive relief in any court having jurisdiction thereof. Such courts shall have authority to, among other things, grant temporary or provisional injunctive relief in order to protect any party's rights under this Agreement. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitral tribunal shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitral tribunal's orders to that effect.

(d) The prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, and the non-prevailing party shall pay all expenses and fees of JAMS, all costs of the stenographic record, all expenses of witnesses or proofs that may have been produced at the direction of the arbitrator, and the fees, costs, and expenses of the arbitrator. The arbitrator shall allocate such costs and designate the prevailing party or parties for these purposes.

Section 8.09 SEVERABILITY. Each provision of this Agreement will be interpreted so as to be effective and valid under applicable law, but if any provision is held invalid, illegal or unenforceable under applicable law in any jurisdiction, then such invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been included herein.

Section 8.10 RULES OF CONSTRUCTION.

(a) The parties hereto agree that they have had the opportunity to be represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(b) The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." All terms defined in this Agreement shall have the defined meanings contained herein when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Unless explicitly stated otherwise herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time, amended, qualified or supplemented, including (in the case of agreements and instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 8.11 EQUITABLE REMEDIES. The parties agree that irreparable damage would occur to the REIT in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the REIT shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the SPE and to enforce specifically the terms and provisions hereof in any federal or state court located in California, this being in addition to any other remedy to which the REIT is entitled under this Agreement or otherwise at law or in equity.

Section 8.12 WAIVER OF SECTION 1542 PROTECTIONS. As of the Closing, the SPE expressly acknowledges that it has had, or has had and waived, the opportunity to be advised by independent legal counsel and hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the California Civil Code and does so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542 which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Section 8.13 TIME OF THE ESSENCE. Time is of the essence with respect to all obligations under this Agreement.

Section 8.14 DESCRIPTIVE HEADINGS. The descriptive headings herein are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Section 8.15 NO PERSONAL LIABILITY CONFERRED. This Agreement shall not create or permit any personal liability or obligation on the part of any officer, director, partner, employee or shareholder of the REIT, Merger Sub or the SPE.

Section 8.16 AMENDMENTS. This Agreement may be amended by appropriate instrument, without the consent of the SPE, at any time prior to the Effective Time; *provided*, that no such amendment, modification or supplement shall be made that alters the amount or changes the form of the consideration to be delivered to the SPE, without the prior written consent of the SPE in the event that the SPE would be adversely affected by such proposed amendment, modification or supplement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized officers, all as of the date first written above.

AMERICAN ASSETS TRUST, INC.,
a Maryland corporation

By: _____
Name: John W. Chamberlain
Title: President

[REIT SUB FORWARD MERGER ENTITY]
a [_____]

By: _____
Name:
Title:

[Signature Page to REIT Sub Forward Merger Agreement]

AGREED AND ACCEPTED as of

[_____], 2010,

[REIT SUB FORWARD MERGER ENTITY MERGER SUB],
a Delaware limited liability company

By: AMERICAN ASSETS TRUST, INC.,
a Maryland corporation
Its Sole Member

By: _____
Name: _____
Title: _____

[Signature Page to REIT Sub Forward Merger Agreement]

Schedule I

List of Forward OP Merger Entities:

1. Solana Beach Towne Centres Investments, L.P.
2. Pacific San Jose Holdings, L.P.
3. Pacific Sorrento Mesa Holdings, L.P.
4. Hillside 104, a California limited partnership
5. Hillside 276, a California limited partnership
6. Desert Hillside Holdings, LLC
7. BWH Holdings, LLC
8. Waikele Center Holdings, LP

List of Forward REIT Merger Entities:

1. Pacific Stonecrest Assets, Inc.
2. Pacific National City Assets, Inc.
3. Western Assets, Inc.
4. Pacific Towne Centre Assets, Inc.
5. Pacific Oceanside Assets, Inc.
6. Pacific San Jose Assets, Inc.
7. KMBC Assets, Inc.
8. Hero Retail, Inc.
9. Pacific Sorrento Valley Assets I, Inc.
10. Pacific Sorrento Mesa Assets, Inc.
11. Beach Walk Assets, Inc.
12. ICW Plaza, Inc. [d/b/a Delaware ICW Plaza, Inc.]
13. ICW Valencia, Inc.
14. Pacific Torrey Reserve Assets, Inc.
15. Landmark Assets, Inc.
16. Landmark One Market, Inc.
17. Pacific Novato Assets, Inc.
18. Waikele Center Assets, Inc.

List of OP Sub Forward Merger Entities:

1. Pacific Stonecrest Holdings, L.P.
2. Rancho Carmel Plaza, a California limited partnership
3. Pacific Oceanside Holdings, L.P.
4. Kearny Mesa Business Center, a California limited partnership
5. Del Monte Center Holdings, LP
6. Beach Walk Holdings, LP
7. ICW Plaza, L.P., a California limited partnership
8. ICW Valencia, L.P.
9. Desert Oceanside Holdings, LLC
10. San Diego Loma Palisades, L.P.

List of OP Sub Reverse Merger Entities:

1. Pacific Waikiki Holdings, L.P.
2. ABW Lewers LLC
3. King Street Holdings, LP
4. Loma Palisades, a California general partnership

List of REIT Sub Forward Merger Entities:

1. Pacific Del Mar Assets, Inc.
2. Pacific Carmel Mountain Assets, Inc.
3. Pacific Solana Beach Assets, Inc.
4. Pacific Waikiki Assets, Inc.
5. King Street Assets, Inc.
6. Pacific Sorrento Valley Assets II, Inc.
7. Pacific Santa Fe Assets, Inc.

List of Contributed Entities:

1. American Assets Trust Management, LLC
2. Winrad Vista Hacienda, a California general partnership
3. Vista Hacienda, a California limited partnership
4. Pacific American Assets Holdings, L.P., a California limited partnership
5. Carmel Country Plaza, L.P.
6. Pacific Carmel Mountain Holdings, L.P.
7. Pacific National City Holdings, L.P.
8. Pacific Solana Beach Holdings, L.P.
9. Pacific San Jose Holdings, L.P.
10. Winrad Kearny Mesa Business Center, a California general partnership
11. Pacific Sorrento Valley Holdings I, L.P.
12. Pacific Sorrento Mesa Holdings, L.P.
13. Beach Walk Holdings, LP
14. ICW Plaza, L.P., a California limited partnership
15. ICW Valencia, L.P.

16. Pacific Sorrento Valley Holdings II, L.P.

17. EBW Hotel LLC

18. Imperial Strand, a California limited partnership

19. Winrad Imperial Strand, a California general partnership

20. San Diego Loma Palisades, L.P.

21. Mariner’s Point, LLC

22. Pacific Santa Fe Holdings, L.P.

Schedule II

Calculation of Equity Value

For purposes of all Formation Transaction Documentation, "Equity Value" of any Target Asset directly or indirectly owned by the American Assets Entity subject to such agreement shall be calculated pursuant to the formula set forth below. Capitalized terms used in this Schedule II shall have the meanings set forth below and capitalized terms used herein without definition shall have the meanings assigned to such terms in the Agreement.

$$EV = EP \times [TFTV-TPA]+AA;$$

where:

EV = Equity Value;
EP = Equity Percentage;
TFTV= Total Formation Transaction Value;
TPA = Total Portfolio Adjustment; and
AA = Asset Adjustment;

provided, however, that if the resulting Equity Value for a Target Asset is a negative amount (a "Net Deficit"), then the REIT shall exercise one of the following options, as determined by the REIT in its sole and absolute discretion: (i) select the Target Asset as an Eliminated Asset or (ii) if one or more entities that are subject to the Formation Transaction Documentation that are the direct or indirect owners of such Target Asset would otherwise possess Excluded Assets the value of which in the aggregate would equal or exceed the amount of such Net Deficit, increase the Target Net Working Capital with respect to such entity or entities by the absolute value of such Net Deficit; and *provided further* that if the REIT shall have exercised option (ii) with respect to any Target Asset, the Equity Value with respect to such Target Asset shall be deemed to be equal to zero;

provided further, that if the Equity Value for ICW Valencia/Valencia Corporate Center as calculated above would result in the holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. having an amount of Allocated Shares, prior to the application of the Intercompany Debt Adjustments, that is less than the value of the Intercompany Debt owed by ICW Valencia, L.P. to ICW Plaza, L.P. (such shortfall being referred to as the "Intercompany Debt Shortfall"), then (i) Western Insurance Holdings, Inc. shall issue a promissory note with a term of three years to ICW Valencia, L.P. which shall be treated as an Asset Adjustment with respect to ICW Valencia/Valencia Corporate Center and such promissory note (the "WIH Note") shall have such face amount as shall be necessary to increase the Equity Value of ICW Valencia/Valencia Corporate Center such that the Allocated Shares of holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. shall increase by an amount, prior to the application of the Intercompany Debt Adjustments, equal to the Intercompany Debt Shortfall and (ii) the Equity Value for ICW Valencia/Valencia Corporate Center shall be recalculated to give effect to the Asset Adjustment attributable to the issuance of the WIH Note.

Attached as ***Appendix A*** to this Schedule II are illustrative calculations of Equity Value for a hypothetical portfolio of Target Assets.

"Actual Balance" shall mean: (i) with respect to each Existing Loan to be assumed in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such assumption and all assumption fees and any related expenses with respect to such Existing Loan; and (ii) with respect to each Existing Loan to be prepaid, repaid or refinanced in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such prepayment, repayment or refinancing and any related prepayment penalties and any related expenses; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Actual Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed. With respect to each Existing Loan to be assumed, prepaid, repaid or refinanced in connection with the Formation Transactions, the Actual Balance as of the Closing Date shall be determined by the REIT within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

"Asset Adjustment" shall mean with respect to each Target Asset and any Existing Loan relating to such Target Asset, an amount equal to the Base Balance minus the Actual Balance (expressed as a positive or negative number, as applicable) with respect to all Existing Loans relating to such Target Asset, and in the case of ICW Valencia/Valencia Corporate Center, the face value of the WIH Note shall be deemed to reduce the Actual Balance of the Existing Loan relating to ICW Valencia/Valencia Corporate Center.

"Base Balance" shall mean with respect to each Existing Loan, the principal amount of such Existing Loan set forth on ***Appendix C*** to this Schedule II; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Base Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Eliminated Asset" shall mean any Target Asset subject to the Formation Transaction Documentation that is excluded pursuant to the terms of the Formation Transaction Documentation from the Formation Transactions.

"Equity Percentage" shall mean with respect to each Target Asset, the percentage (expressed as a decimal) set forth opposite the name of such Target Asset on ***Appendix B*** to this Schedule II (which percentage is based on the Fairness Opinion of Duff & Phelps, LLC and represents such

Target Asset's percentage of the net asset values of the Target Assets (other than the Management Company) and the net equity value of the Management Company, taken as a whole); *provided, however*, that in the event a Target Asset is selected as or otherwise becomes for any reason an Eliminated Asset, then: (i) the Equity Percentage for each remaining Target Asset shall be recalculated as a fraction, the numerator of which is the original Equity Percentage for such remaining Target Asset and the denominator of which is (A) 100 minus (B) the original Equity Percentage of the Eliminated Asset; and (ii) the Equity Percentage of the Eliminated Asset shall be zero; and *provided, further*, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then, after giving effect to any Eliminated Assets pursuant to the preceding proviso, the Equity Percentage for such Target Asset and for each other remaining Target Asset subject directly or indirectly to the Formation Transaction Documentation shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Excluded Assets" has the meaning set forth in Section 5.03 to the Agreement.

"Existing Loan" shall mean (i) each mortgage or mezzanine loan secured by a Target Asset listed on ***Appendix C*** to this Schedule II and (ii) all unsecured indebtedness of an American Assets Entity or of an entity in which an American Assets Entity has a direct or indirect interest that will be assumed, prepaid, repaid or refinanced in connection with the IPO and that is set forth on ***Appendix D*** to this Schedule II (all indebtedness falling within the scope of this clause (ii) shall be referred to as "Entity Specific Debt"); for the avoidance of doubt, no Intercompany Debt shall constitute an Existing Loan (in order to avoid double counting, as Intercompany Debt is adjusted for through the definition of "Allocated Share"). Existing Entity Specific Debt will be deemed to relate to the Target Asset(s) and, if to multiple Target Assets, in the proportions set forth opposite the name of such Entity Specific Debt on ***Appendix D*** to this Schedule II, and all such Entity Specific Debt will be deemed to have a Base Balance of zero (because "Equity Percentage" as determined by Duff & Phelps, LLC was determined at the property level and did not take into account Entity Specific Debt, Entity Specific Debt is deemed to be zero in order to cause a readjustment of "Equity Value" of all Target Assets after taking into account such Entity Specific Debt).

"Target Asset" shall mean each property set forth on Appendix B to this Schedule II and the property management business of American Assets, Inc. (the "Management Company").

"Target Net Working Capital" has the meaning set forth in Schedule 5.03 to the Agreement.

"Total Portfolio Adjustment" shall mean the sum (which may be a positive or negative number) of all Asset Adjustments for every Target Asset, excluding Eliminated Assets.

"Total Formation Transaction Value" shall mean the aggregate dollar value of (i) the cash, (ii) the REIT Shares and (iii) the OP Units that are issued or issuable to all Pre-Formation Participants in the Formation Transactions as set forth in the Prospectus. Total Formation Transaction Value will be determined valuing REIT Shares and OP Units at a value per REIT Share or OP Unit equal to the IPO Price.

EXHIBITS

Exhibit A:	**Formation Transaction Documentation**
Exhibit B:	**REIT Charter**
Exhibit C:	**Form of Registration Rights Agreement**
Exhibit D:	**Order of Mergers**
Exhibit E:	**Lock-Up Agreement**
Exhibit F:	**Operating Partnership Agreement**

Exhibit A

Formation Transaction Documentation

Form of Forward REIT Merger Agreement

Form of REIT Sub Forward Merger Agreement

Form of Forward OP Merger Agreement

Form of OP Sub Forward Merger Agreement

Form of OP Sub Reverse Merger Agreement

Form of OP Contribution Agreement

Form of OP Sub Contribution Agreement

Form of Alternate Contribution Agreement

Form of Tax Protection Agreement

Amended and Restated Agreement of Limited Partnership of American Assets Trust, L.P.

Registration Rights Agreement

Representation, Warranty and Indemnity Agreement

Indemnity Escrow Agreement

Lock-Up Agreement

Articles of Amendment and Restatement of American Assets Trust, Inc.

Bylaws of American Assets Trust, Inc.

Management Business Contribution Agreement

Exhibit B

REIT Charter

See Attached.

Exhibit C

Form of Registration Rights Agreement

See Attached.

Exhibit D

Order of Mergers

Each step within each "Transaction Step" below must be completed before the transactions in the following "Transaction Step" may be completed. All transactions within each "Transaction Step" may be completed simultaneously or in any order.

Transaction Step 1

All Forward REIT Mergers
All REIT Sub Forward Mergers

Transaction Step 2

All Contributions to the OP (including the REIT's contribution to the OP of the assets acquired in Step 1)

Transaction Step 3

All Contributions to subsidiaries of the OP (including, where applicable, the OP's contribution to the applicable subsidiary of assets acquired in Step 2)

Transaction Step 4

All OP Forward Mergers ***except*** the OP Forward Merger set forth in Transaction Step 5 and Transaction Step 7 below

Transaction Step 5

Forward Merger of Desert Hillside Holdings LLC with and into the Operating Partnership

Transaction Step 6

All OP Sub Forward Mergers ***except*** the OP Sub Forward Merger set forth in Transaction Step 7 below

Transaction Step 7

Forward Merger of BWH Holdings LLC with and into the Operating Partnership

Forward Merger of Desert Oceanside Holdings LLC with and into Pacific Oceanside Holdings LLC.

Transaction Step 8

All OP Sub Reverse Mergers

Exhibit E

Lock-Up Agreement

See Attached.

Exhibit F

Operating Partnership Agreement

See Attached.

Exhibit 10.14

OP CONTRIBUTION AGREEMENT

DATED AS OF SEPTEMBER 13, 2010

BY AND AMONG AMERICAN ASSETS TRUST, L.P.,
a Maryland limited partnership

AMERICAN ASSETS TRUST, INC.,
a Maryland corporation

AND

THE CONTRIBUTORS
as set forth on Schedule I hereto

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OP CONTRIBUTION AGREEMENT

THIS OP CONTRIBUTION AGREEMENT is made and entered into as of September 13, 2010 (this "Agreement"), by and among American Assets Trust, L.P., a Maryland limited partnership (the "Operating Partnership"), American Assets Trust, Inc., a Maryland corporation (the "REIT"), and the contributors whose names appear on Schedule I hereto (each a "Contributor" and, collectively the "Contributors"). Certain capitalized terms are defined in Section 6.02 of this Agreement.

RECITALS

WHEREAS, the REIT desires to consolidate the ownership of a portfolio of properties currently owned, directly or indirectly, by certain entities each as described on Exhibit A hereto;

WHEREAS, concurrently with the execution of this Agreement, each of the entities identified on Exhibit A hereto as "Forward REIT Merger Entities" (the "Forward REIT Merger Entities") will enter into an agreement and plan of merger with the REIT pursuant to which each such Forward REIT Merger Entity will merge with and into the REIT and the equity interest in each Forward REIT Merger Entity will be converted automatically into the right to receive cash, without interest, or shares of common stock of the REIT, par value $.01 per share (the "REIT Shares");

WHEREAS, concurrently with the execution of this Agreement, the REIT will enter into agreements and plans of merger with certain American Assets Entities identified as "REIT Sub Forward Merger Entities" on Exhibit A hereto (the "REIT Sub Forward Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, each of the REIT Sub Forward Merger Entities will merge with and into wholly owned subsidiaries of the REIT;

WHEREAS, immediately following the completion of the mergers described in the preceding paragraphs, the REIT will contribute to the Operating Partnership, (i) all of the assets, rights and obligations of the Forward REIT Merger Entities acquired by the REIT as a result of the mergers between it and the Forward REIT Merger Entities and (ii) all of the REIT's interests in the surviving entities of the mergers of the REIT Sub Forward Merger Entities with and into wholly owned subsidiaries of the REIT;

WHEREAS, pursuant to this Agreement, immediately following the completion of the mergers and contributions described in the preceding paragraphs, each Contributor shall contribute to the Operating Partnership all of such Contributor's interests (the "Contributed Interest") in the American Assets Entities identified as "Contributed Entities" on Exhibit A hereto, and the Operating Partnership shall acquire from each Contributor all of each Contributor's right, title and interest as a holder of the Contributed Interests; *provided*, that if any Contributed Entity shall no longer exist as of the time of consummation of this agreement, the term Contributed Interest shall include all interests in any entity held by such Contributed Entity at the time such Contributed Entity shall have ceased to exist;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into an agreement and plan of merger with certain American Assets

Entities identified as "Forward OP Merger Entities" on Exhibit A hereto (collectively, the "Forward OP Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraphs, each Forward OP Merger Entity will merge with and into the Operating Partnership in the order set forth in the merger agreement for such entities;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Assets Entities identified as "OP Sub Forward Merger Entities" on Exhibit A hereto (collectively, the "OP Sub Forward Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraph, each OP Sub Forward Merger Entity will merge with and into a separate wholly owned subsidiary of the Operating Partnership;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Assets Entities identified as "OP Sub Reverse Merger Entities" on Exhibit A hereto (collectively, the "OP Sub Reverse Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, a separate wholly-owned subsidiary of the Operating Partnership will merge with and into each OP Sub Reverse Merger Entity;

WHEREAS, in lieu of one or more of the mergers described in the preceding paragraphs and at the same time as such mergers would have otherwise occurred, certain holders (the "Consenting Holders") of interests in certain American Assets Entities shall contribute to the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, all of their interests in the applicable American Assets Entity, and the Operating Partnership or such subsidiary shall acquire from each Consenting Holder, all of each Consenting Holder's right, title and interest as a holder of interests in such American Assets Entities;

WHEREAS, the Formation Transactions relate to the proposed initial public offering (the "IPO") of the REIT Shares, following which the REIT will operate as a self-administered and self-managed real estate investment trust within the meaning of Section 856 of the Code; and

WHEREAS, all necessary approvals have been obtained by each of the Operating Partnership and the Contributor to consummate the transactions contemplated herein and by the other Formation Transaction Documentation.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and other terms contained in this Agreement, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I

CONTRIBUTION

Section 1.01 CONTRIBUTION TRANSACTION; ASSIGNMENT AND ASSUMPTION.

(a) At the Closing and subject to the terms and conditions contained in this Agreement, each Contributor hereby contributes, assigns, sets over, transfers, conveys and delivers to the Operating Partnership, absolutely and unconditionally and free and clear of all Liens (other than those arising under the partnership, limited liability company or similar agreement(s) of the applicable American Assets Entities (the "Organizational Documents")), all of its right, title and interest in and to its Contributed Interests, including all rights to indemnification in favor of such Contributor under the Organizational Documents; *provided*, that the Operating Partnership accepts the assignment by each Contributor and agrees to be bound by the terms of the Organizational Documents governing each Contributor's Contributed Interest and undertakes, assumes and agrees punctually and faithfully to perform, pay or discharge when due and otherwise in accordance with its terms, all agreements, covenants, conditions, obligations and liabilities of each Contributor in the applicable American Assets Entities with respect to each Contributor's Contributed Interest on or after the Closing Date.

(b) In accordance with the terms of the Organizational Documents governing each Contributor's Contributed Interest, this Agreement shall serve as notice to the partners, managers or members, as the case may be, of each of the applicable American Assets Entities of the transfer of each Contributor's Contributed Interest, and such partners, managers or members, as the case may be, of each of the applicable American Assets Entities consents to, and agrees and acknowledges that all requirements and conditions for such transfer and the admission of the Operating Partnership as a substituted partner or member have been satisfied or otherwise waived.

(c) All of the parties hereto agree that, as a result of the assignment and assumptions hereunder, for purposes of the Organizational Documents governing each Contributor's Contributed Interest, the Operating Partnership shall be a substituted limited partner or member, as the case may be, of the applicable American Assets Entity.

Section 1.02 CONSIDERATION.

(a) Under and subject to the terms and conditions set forth herein, as the result of an irrevocable election indicated on a Consent Form submitted by a Contributor, or as a result of the failure of a Contributor to submit a Consent Form, each Contributor is irrevocably bound to accept and entitled to receive, in consideration for the Contributed Interests contributed pursuant to this Agreement, a specified share of the aggregate pre-IPO equity value of the American Assets Entities in the form of the right to receive cash, REIT Shares and/or OP Units.

(b) At Closing, subject to the terms and conditions contained in this Agreement, in exchange for its Contributed Interests, each Contributor shall receive cash, OP Units and/or REIT Shares with an aggregate value equal to the portion of Equity Value represented by the Contributed Interests as set forth on Schedule I hereto (collectively referred to as the "Contribution Consideration").

Subject to Section 1.03, the amount of cash, number of OP Units and/or REIT Shares comprising the Contribution Consideration for each Contributed Interest shall be as follows:

(i) Cash. One hundred percent (100%) of the Allocated Share for each Contributed Interest held by a Contributor who is not an Accredited Investor shall be paid in cash.

(ii) OP Units. The Elected OP Unit Percentage of the Allocated Share for each Contributed Interest or portion thereof held by a Contributor who is an Accredited Investor shall be distributed in OP Units in the form of a number of OP Units equal to the applicable portion of such Allocated Share divided by the IPO Price; and

(iii) REIT Shares. The Elected REIT Shares Percentage of the Allocated Share for each Contributed Interest or portion thereof held by a Contributor who is an Accredited Investor shall be distributed in whole REIT Shares in the form of a number of REIT Shares equal to the applicable portion of such Allocated Share divided by the IPO Price; *provided*, that to the extent such distribution of REIT Shares to the Contributor would result in a violation of the restrictions on ownership and transfer set forth in Section 6.3 of the REIT's charter (the "Ownership Limits"), such Contributor shall receive (x) the maximum number of whole REIT Shares that would not result in such a violation of the Ownership Limits, and (y) that number of OP Units equal to the remaining number of REIT Shares not distributed as a result of the application of the foregoing clause (x).

(c) At Closing, each Contributor receiving OP Units in exchange for a Contributed Interest shall be admitted as a limited partner of the Operating Partnership. By executing and delivering this Agreement, each Contributor agrees and accepts all of the terms and conditions of the Operating Partnership Agreement and shall be deemed to have executed and delivered a counterpart signature page to the Operating Partnership Agreement.

Section 1.03 FRACTIONAL INTEREST. No fractional OP Units or REIT Shares shall be issued pursuant to this Agreement. All fractional OP Units that a Contributor would otherwise be entitled to receive as a result of the contribution and the other Formation Transactions shall be aggregated, and each Contributor shall receive the number of whole OP Units resulting from such aggregation and, in lieu of any fractional OP Unit resulting from such aggregation, an amount in cash determined by multiplying that fraction of an OP Unit to which such Contributor would otherwise have been entitled, by the IPO Price. All fractional REIT Shares that a Contributor would otherwise be entitled to receive as a result of the contribution and the other Formation Transactions shall be aggregated, and each Contributor shall receive the number of whole REIT Shares resulting from such aggregation and, in lieu of any fractional REIT Share resulting from such aggregation, an amount in cash determined by multiplying that fraction of a REIT Shares to which such Contributor would otherwise have been entitled, by the IPO Price. No interest will be paid or will accrue on any cash paid or payable in lieu of any fractional OP Unit or REIT Share.

Section 1.04 FURTHER ACTION. If, at any time after the Closing, the Operating Partnership shall determine or be advised that any deeds, bills of sale, assignments, assurances or other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Operating Partnership the right, title or interest in or to a Contributed Interests, the Contributor of such Contributed Interest shall execute and deliver all such deeds, bills of sale, assignments and assurances and take and do all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in such Contributed Interests or otherwise to carry out this Agreement.

Section 1.05 CALCULATION OF CONTRIBUTION CONSIDERATION. As soon as practicable following the determination of the IPO Price and prior to the Closing, all calculations relating to the Contribution Consideration shall be performed in good faith by, or under the direction of, the REIT and the Operating Partnership and the parties hereby agree that, absent manifest error, such calculations shall be final and binding upon the Contributors.

ARTICLE II

CLOSING

Section 2.01 CONDITIONS PRECEDENT.

(a) Condition to Each Party's Obligations. The respective obligation of each party to effect the contributions contemplated by this Agreement and to consummate the other transactions contemplated hereby to occur on the Closing Date is subject to the satisfaction or waiver on or prior to the Closing of the following conditions:

(i) Registration Statement. The Registration Statement shall have become effective under the Securities Act and shall not be the subject of any stop order or proceedings by the Securities and Exchange Commission ("SEC") seeking a stop order. This condition may not be waived by any party.

(ii) No Injunction. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, judgment, injunction or other order (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of any of the transactions contemplated in this Agreement nor shall any of the same brought by a Governmental Authority of competent jurisdiction be pending that seeks the foregoing.

(b) Conditions to Obligations of the Operating Partnership. The obligations of the Operating Partnership are further subject to satisfaction of the following conditions (any of which may be waived by the Operating Partnership in whole or in part):

(i) Representations and Warranties. Except as would not have a material adverse effect, the representations and warranties of each Contributor contained in this Agreement, as well as those of the Ernest Rady Trust U/D/T March 10, 1983, as amended (the Rady Trust") contained in the Representation, Warranty and Indemnity Agreement, shall be true and correct in all material respects at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(ii) Performance by the Contributors. Each Contributor shall have performed each of the agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date and each Contributor shall not have breached any of its covenants contained herein in any material respect.

(iii) IPO Closing. The closing of the IPO shall occur substantially concurrently with to the Closing.

(iv) Consents, Etc. All necessary consents and approvals of Governmental Authorities or third parties (including lenders) for each Contributor to consummate the transactions contemplated hereby shall have been obtained.

(v) No Material Adverse Change. There shall have not occurred between the date hereof and the Closing Date any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of any American Assets Entity in which the Contributed Interests are being contributed or any other Properties held by such American Assets Entity.

(vi) Representation, Warranty and Indemnity Agreement. The Rady Trust and each other party thereto shall have entered into the Representation, Warranty and Indemnity Agreement.

(vii) Escrow Agreement. Each party thereto shall have entered into the Escrow Agreement.

(viii) Formation Transactions. The Formation Transactions shall have been or shall simultaneously be consummated in accordance with the timing set forth in the respective Formation Transaction Documentation.

(ix) Lock-Up Agreement. The Contributor shall have entered into the Lock-Up Agreement substantially in the form attached as Exhibit B.

(x) Tax Protection Agreement. Each Contributor that (1) owns, directly or indirectly, an interest in any Property specified in the Tax Protection Agreement or (2) has been provided an opportunity to guarantee debt as set forth in the Tax Protection Agreement shall have entered into the Tax Protection Agreement substantially in the form attached as Exhibit C, if applicable.

(c) Conditions to Obligations of the Contributor. The obligation of each Contributor to effect the contribution contemplated by this Agreement and to consummate the other transactions contemplated hereby to occur on the Closing Date are further subject to satisfaction of the following conditions (any of which may be waived by such Contributor in whole or in part):

(i) Representations and Warranties. Except as would not have an OP Material Adverse Effect, the representations and warranties of the Operating Partnership contained in this Agreement shall be true and correct at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(ii) Performance by the Operating Partnership. Except as would not have an OP Material Adverse Effect, the Operating Partnership shall have performed all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(iii) Registration Rights Agreement. The REIT shall have entered into the registration rights agreement, substantially in the form attached as Exhibit D hereto. This condition may not be waived by any party hereto.

(iv) Tax Protection Agreement. Solely with respect to each Contributor that (1) owns, directly or indirectly, an interest in any Property specified in the Tax Protection Agreement or (2) has been provided an opportunity to guarantee debt as set forth in the Tax Protection Agreement, the REIT and the Operating Partnership shall have entered into the Tax Protection Agreement substantially in the form attached as Exhibit C, if applicable.

Section 2.02 TIME AND PLACE. Unless this Agreement shall have been terminated pursuant to Section 2.06 hereof, and subject to satisfaction or waiver of the conditions in Section 2.01 hereof, the closing of the contributions contemplated by Section 1.01 and the other transactions contemplated hereby shall occur substantially concurrently with the receipt by the REIT of the proceeds from the IPO from the underwriters (the "Closing" or the "Closing Date") in the order set forth on Exhibit E. The Closing shall take place at the offices of Latham & Watkins LLP, 12636 High Bluff Drive, Suite 400, San Diego, California 92130 or such other place as determined by the Operating Partnership in its sole discretion.

Section 2.03 DELIVERY OF CONTRIBUTION CONSIDERATION. As soon as reasonably practicable after the Closing, the Operating Partnership shall deliver to each Contributor the Contribution Consideration payable to such Contributor in the amounts and form provided in Section 1.02(b) hereof. The issuance of OP Units pursuant to Section 1.02(b)(ii) shall be evidenced by an amendment to the Operating Partnership Agreement, and the Operating Partnership shall deliver, or cause to be delivered, an executed copy of such amendment to each Contributor receiving OP Units hereunder. Any certificate representing REIT Shares issuable as Contribution Consideration shall bear the following legend:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS THE TRANSFEROR DELIVERS TO THE CORPORATION AN OPINION OF COUNSEL SATISFACTORY TO

THE CORPORATION, TO THE EFFECT THAT THE PROPOSED SALE, TRANSFER OR OTHER DISPOSITION MAY BE EFFECTED WITHOUT REGISTRATION UNDER THE ACT AND UNDER APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON BENEFICIAL AND CONSTRUCTIVE OWNERSHIP AND TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). SUBJECT TO CERTAIN FURTHER RESTRICTIONS AND EXCEPT AS EXPRESSLY PROVIDED IN THE CORPORATION'S CHARTER, (I) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF THE CORPORATION'S COMMON STOCK IN EXCESS OF [__]% (IN VALUE OR NUMBER OF SHARES) OF THE OUTSTANDING SHARES OF COMMON STOCK OF THE CORPORATION UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (II) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK OF THE CORPORATION IN EXCESS OF [__]% OF THE VALUE OF THE TOTAL OUTSTANDING SHARES OF CAPITAL STOCK OF THE CORPORATION, UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (III) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN CAPITAL STOCK THAT WOULD RESULT IN THE CORPORATION BEING "CLOSELY HELD" UNDER SECTION 856(h) OF THE CODE OR OTHERWISE CAUSE THE CORPORATION TO FAIL TO QUALIFY AS A REIT; AND (IV) NO PERSON MAY TRANSFER SHARES OF CAPITAL STOCK IF SUCH TRANSFER WOULD RESULT IN THE CAPITAL STOCK OF THE CORPORATION BEING OWNED BY FEWER THAN 100 PERSONS. ANY PERSON WHO BENEFICIALLY OR CONSTRUCTIVELY OWNS OR ATTEMPTS TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK WHICH CAUSES OR WILL CAUSE A PERSON TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK IN EXCESS OR IN VIOLATION OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE CORPORATION. IF ANY OF THE RESTRICTIONS ON TRANSFER OR OWNERSHIP SET FORTH IN (I) THROUGH (III) ABOVE ARE VIOLATED, THE SHARES OF CAPITAL STOCK REPRESENTED HEREBY WILL BE AUTOMATICALLY TRANSFERRED TO A TRUSTEE OF A TRUST FOR THE BENEFIT OF ONE OR MORE CHARITABLE BENEFICIARIES. IN ADDITION, THE CORPORATION MAY TAKE OTHER ACTIONS, INCLUDING

REDEEMING SHARES UPON THE TERMS AND CONDITIONS SPECIFIED BY THE BOARD OF DIRECTORS IN ITS SOLE AND ABSOLUTE DISCRETION IF THE BOARD OF DIRECTORS DETERMINES THAT OWNERSHIP OR A TRANSFER OR OTHER EVENT MAY VIOLATE THE RESTRICTIONS DESCRIBED ABOVE. FURTHERMORE, UPON THE OCCURRENCE OF CERTAIN EVENTS, ATTEMPTED TRANSFERS IN VIOLATION OF THE RESTRICTIONS DESCRIBED ABOVE MAY BE VOID *AB INITIO*. ALL UNDERLINED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN THE CHARTER OF THE CORPORATION, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER AND OWNERSHIP, WILL BE FURNISHED TO EACH HOLDER OF CAPITAL STOCK OF THE CORPORATION ON REQUEST AND WITHOUT CHARGE. REQUESTS FOR SUCH A COPY MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL OFFICE.

Section 2.04 CLOSING DELIVERIES. At the Closing, the parties shall make, execute, acknowledge and deliver, or cause to be made, executed, acknowledged and delivered, any other documents reasonably requested by the Operating Partnership or reasonably necessary or desirable to assign, transfer, convey, contribute and deliver the Contributed Interests, free and clear of all Liens and to effectuate the transactions contemplated hereby.

Section 2.05 CLOSING COSTS. If the Closing occurs, the REIT and the Operating Partnership shall be solely responsible for all transaction costs and expenses of the REIT, the Operating Partnership and the American Assets Entities in connection with the Formation Transactions and the IPO, which include, but are not limited to, the underwriting discounts and commissions. In the event the Closing does not occur, each party shall be responsible for its allocable portion of such costs and expenses in accordance with the terms of those certain letter agreements identified on Schedule II.

Section 2.06 TERM OF THE AGREEMENT. This Agreement shall terminate automatically if (i) the initial registration statement of the REIT for the IPO (the "Registration Statement") has not been filed with the SEC by March 31, 2011, or (ii) the contributions contemplated herein shall not have been consummated on or prior to December 31, 2011 (such date is hereinafter referred to as the "Outside Date").

Section 2.07 EFFECT OF TERMINATION. In the event of termination of this Agreement for any reason, all obligations on the part of the Operating Partnership and any Contributor under this Agreement shall terminate, except that the obligations set forth in Article VI shall survive, it being understood and agreed, however, for the avoidance of doubt, that if this Agreement is terminated because one or more of the conditions to the non-breaching party's obligations under this Agreement are not satisfied by the Outside Date as a result of the other party's material breach of a covenant, representation, warranty or other obligation under this Agreement or any other Formation Transaction Documentation, the non-breaching party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

Section 2.08 TAX WITHHOLDING. The Operating Partnership shall be entitled to deduct and withhold from the consideration payable pursuant to this Agreement to any holder of Contributed Interest such amounts as the Operating Partnership is required to deduct and withhold with respect to the making of such payment under the Code or any provision of state, local or foreign tax law. To the extent that amounts are so withheld by the Operating Partnership, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the former holder of Contributed Interest in respect of which such deduction and withholding was made.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE OPERATING PARTNERSHIP

The Operating Partnership hereby represents and warrants to each Contributor as follows:

Section 3.01 ORGANIZATION; AUTHORITY.

(a) The Operating Partnership has been duly formed and is validly existing and in good standing under the Laws of its jurisdiction of formation, and, upon the effectiveness of the Operating Partnership Agreement, will have all requisite power and authority to enter into this Agreement and the other Formation Transaction Documentation and to carry out the transactions contemplated hereby and thereby, and to own, lease and/or operate its property and to carry on its business as presently conducted and, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

(b) Schedule 3.01(b) sets forth as of the date hereof, (i) each Subsidiary of the Operating Partnership (each an "Operating Partnership Subsidiary"), (ii) the ownership interest therein of the Operating Partnership, and (iii) if not wholly owned by the Operating Partnership, the identity and ownership interest of each of the other owners of such Operating Partnership Subsidiary. Each Operating Partnership Subsidiary has been duly organized or formed and is validly existing and is in good standing under the Laws of its jurisdiction of organization or formation, as applicable, has all requisite power and authority to own, lease and/or operate its property and to carry on its business as presently conducted and, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.02 DUE AUTHORIZATION. The execution, delivery and performance of this Agreement and the other Formation Transaction Documentation (including each agreement, document and instrument executed and delivered by or on behalf of the Operating Partnership

pursuant to this Agreement or the other Formation Transaction Documentation) by the Operating Partnership has been duly and validly authorized by all necessary actions required of the Operating Partnership. This Agreement, the other Formation Transaction Documentation and each agreement, document and instrument executed and delivered by or on behalf of the Operating Partnership pursuant to this Agreement or the other Formation Transaction Documentation constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of the Operating Partnership, enforceable against the Operating Partnership in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.03 CONSENTS AND APPROVALS. Except in connection with the IPO and the consummation of the other Formation Transactions or as shall have been obtained on or prior to the Closing Date, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration or filing with, any Person or Governmental Authority or under any applicable Laws is required to be obtained by the Operating Partnership in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby, except for (i) those consents, waivers, approvals, authorizations, orders, licenses, permits, registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect, or (ii) those consents of the Pre-Formation Participants under the organizational documents of the applicable American Assets Entity, the failure of which to obtain would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.04 NO VIOLATION. None of the execution, delivery or performance of this Agreement, the other Formation Transaction Documentation, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the organizational documents of the Operating Partnership, (B) any agreement, document or instrument to which the Operating Partnership or any of its respective assets are bound or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on the Operating Partnership, except for, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.05 VALIDITY OF OP UNITS. Any OP Units to be issued pursuant to this Agreement will have been duly authorized and, when issued against the consideration therefor, will be validly issued by the Operating Partnership, free and clear of all Liens created by the Operating Partnership (other than any Liens created by the Agreement of Limited Partnership of the Operating Partnership (the "Operating Partnership Agreement")).

Section 3.06 LITIGATION. Except for actions, suits or proceedings covered by policies of insurance, there is no action, suit or proceeding pending or, to the knowledge of the Operating Partnership, threatened against the Operating Partnership or any Operating Partnership Subsidiary, other than actions, suits, proceedings that individually or in the aggregate, would not reasonably be expected, (a) if adversely determined, to have an OP Material Adverse Effect, or

(b) to impair the ability of the Operating Partnership to execute or deliver, or materially perform its obligations under, this Agreement and the documents executed by it pursuant to this Agreement or to consummate the transactions contemplated hereby or thereby, to such an extent as would result in an OP Material Adverse Effect.

Section 3.07 OPERATING PARTNERSHIP AGREEMENT. Attached as Exhibit F hereto is a true and correct copy of the Operating Partnership Agreement in substantially final form.

Section 3.08 LIMITED ACTIVITIES. Except for activities in connection with the IPO or the Formation Transactions or in the ordinary course of business, the Operating Partnership and the Operating Partnership Subsidiaries have not engaged in any material business or incurred any material obligations.

Section 3.09 NO BROKER. The Operating Partnership has not entered into, and covenants that it will not enter into, any agreement, arrangement or understanding with any Person or firm which will result in the obligation of the Contributor or any Affiliates thereof to pay any finder's fee, brokerage commission or similar payment in connection with the transaction contemplated by this Agreement (other than underwriting discounts, commissions and other fees and expenses to be paid by the REIT in connection with the IPO and any related financing transactions).

Section 3.10 NO OTHER REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article III and any other agreement entered into in connection with the Formation Transactions, the Operating Partnership shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby. All representations, warranties and covenants of the Operating Partnership contained in this Agreement shall expire at Closing.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE CONTRIBUTORS

Except as disclosed in the Prospectus or the schedules hereto, each Contributor hereby represents, warrants and agrees that as of the Closing Date:

Section 4.01 ORGANIZATION; AUTHORITY. If a Contributor is a natural person, such Contributor has the legal capacity and authority to execute, deliver and perform its obligations under this Agreement, and no Person has any community property rights, by virtue of marriage or otherwise, with respect to the Contributed Interest. If a Contributor is a Person other than a natural person, such Contributor has been duly formed, is validly existing and (to the extent such concept is applicable to such Person) in good standing under the Laws of its jurisdiction of formation, and has all requisite power and authority to enter into this Agreement, each agreement contemplated hereby and the other Formation Transaction Documentation to which it is a party (including any agreement, document and instrument executed and delivered by or on behalf of such Contributor pursuant to this Agreement or the other Formation Transaction Documentation) and to carry out the transactions contemplated hereby and thereby.

Section 4.02 DUE AUTHORIZATION. If a Contributor is a Person other than a natural person, the execution, delivery and performance of this Agreement (including any agreement, document and instrument executed and delivered pursuant to this Agreement) by such Contributor have been duly and validly authorized by all necessary actions required of such Contributor. This Agreement and each agreement, document and instrument executed and delivered by or on behalf of such Contributor pursuant to this Agreement constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of such Contributor, each enforceable against such Contributor in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.03 OWNERSHIP OF CONTRIBUTED INTERESTS. Each Contributor is the sole record owner of all of its Contributed Interests and has the power and authority to transfer, sell, assign and convey to the Operating Partnership the Contributed Interests free and clear of any Liens and, upon delivery of the consideration for such Contributed Interests as provided herein, the Operating Partnership will acquire good and valid title thereto, free and clear of any Liens (other than those Liens created by the Organizational Documents governing such Contributed Interest). Except as provided for or contemplated by this Agreement or the other applicable Formation Transaction Documentation, there are no rights to purchase, veto rights with respect to transfers, subscriptions, warrants, options, conversion rights, preemptive rights, agreements, instruments or understandings of any kind outstanding (i) relating to the Contributed Interests or (ii) to purchase, transfer or to otherwise acquire, or to in any way encumber, any of the interests which comprise the Contributed Interests or any securities or obligations of any kind convertible into any of the interests which comprise the Contributed Interests. Each Contributor has no equity interest, either direct or indirect, in the Properties, except for such Contributor's Contributed Interests.

Section 4.04 CONSENTS AND APPROVALS. Except as shall have been obtained or satisfied on or prior to the Closing Date, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration, or filing with, any Person or Governmental Authority or under any applicable Laws is required to be obtained by any Contributor in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby, except for those consents, waivers, approvals, authorizations or registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have a material adverse effect.

Section 4.05 NO VIOLATION. None of the execution, delivery or performance of this Agreement, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the organizational documents of each Contributor which is a person other than a natural Person, (B) any agreement, document or instrument to which any Contributor is a party or by which a Contributor or its Contributed Interests are bound or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on any Contributor (or its assets or properties), except, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a material adverse effect.

Section 4.06 TAXES. Except as set forth in Schedule 4.06, each Contributor has included all income, gain, loss, deduction or other Tax items in the Contributor's income Tax returns in a manner consistent with the Schedule K-1's received by such Contributor from each American Assets Entity, the interests of which are being contributed by Contributor.

Section 4.07 NON-FOREIGN PERSON. Unless otherwise indicated on the Contributor's Consent Form, each Contributor is a United States person (as defined in the Code).

Section 4.08 LITIGATION. Except as set forth in Schedule 4.08, to each Contributor's knowledge, there is no action, suit or proceeding pending or threatened against such Contributor affecting all or any portion of its Contributed Interests or such Contributor's ability to consummate the transactions contemplated hereby which, if adversely determined, would adversely affect such Contributor's ability to so consummate the transactions contemplated hereby. Each Contributor knows of no outstanding order, writ, injunction or decree of any Governmental Authority against or affecting all or any portion of such Contributor's Contributed Interests, which in any such case would impair such Contributor's ability to enter into and perform all of its obligations under this Agreement.

Section 4.09 INSOLVENCY. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to such Contributor's knowledge, threatened against such Contributor, nor are any such proceedings contemplated by such Contributor.

Section 4.10 INVESTMENT. Each Contributor acknowledges that the offering and issuance of the REIT Shares and/or OP Units to be acquired pursuant to this Agreement are intended to be exempt from registration under the Securities Act and that the REIT's and Operating Partnership's reliance on such exemptions is predicated in part on the accuracy and completeness of the representations and warranties of such Contributor contained herein and in such Contributor's Consent Form. In furtherance thereof, each Contributor represents and warrants to the Operating Partnership as follows:

(a) Each Contributor is an "accredited investor" (as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act).

(b) Each Contributor is acquiring the REIT Shares and/or OP Units solely for its own account for the purpose of investment and not as a nominee or agent for any other Person and not with a view to, or for offer or sale in connection with, any distribution of any thereof in violation of the securities Laws.

(c) Each Contributor is knowledgeable, sophisticated and experienced in business and financial matters; each Contributor has previously invested in securities similar to the REIT Shares and/or OP Units and fully understands the limitations on transfer imposed by the federal securities Laws. Each Contributor is able to bear the economic risk of holding the REIT Shares and/or OP Units for an indefinite period and is able to afford the complete loss of its investment in the REIT Shares and/or OP Units; each Contributor has received and reviewed

all information and documents about or pertaining to the Operating Partnership and the business and prospects of the Operating Partnership and the issuance of the REIT Shares and/or OP Units as such Contributor deems necessary or desirable, and has been given the opportunity to obtain any additional information or documents and to ask questions and receive answers about such information and documents, the REIT, the Operating Partnership and the business and prospects of the REIT and the Operating Partnership which such Contributor deems necessary or desirable to evaluate the merits and risks related to its investment in the REIT Shares and/or OP Units; and each Contributor understands and has taken cognizance of all risk factors related to the purchase of the REIT Shares and/or OP Units. Each Contributor is relying upon its own independent analysis and assessment (including with respect to taxes), and the advice of such Contributor's advisors (including tax advisors), and not upon that of the Operating Partnership or any of the Operating Partnership's Affiliates, for purposes of evaluating, entering into, and consummating the transactions contemplated hereby.

(d) Each Contributor acknowledges that (i) the OP Units are not redeemable or exchangeable for cash or REIT Shares for a minimum of 14 months after the date of issuance, and (ii) the REIT Shares and/or OP Units have not been registered under the Securities Act and, therefore, unless registered under the Securities Act or an exemption from registration is available, must be held (and the Contributor must continue to bear the economic risk of the investment in the REIT Shares and/or OP Units) indefinitely and may not be transferred or sold.

Section 4.11 NO OTHER REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article IV and any other agreement entered into by such Contributor in connection with the Formation Transactions, each Contributor shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby.

Section 4.12 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. The parties hereto agree and acknowledge that the representations and warranties set forth in this Article IV (other than Section 4.01, Section 4.02, Section 4.03, Section 4.07 and Section 4.10) shall not survive the Closing.

ARTICLE V

COVENANTS AND OTHER AGREEMENTS

Section 5.01 COVENANTS OF THE CONTRIBUTORS. From the date hereof through the Closing, except as otherwise provided for or as contemplated by this Agreement or the other applicable Formation Transaction Documentation, each Contributor shall not without the prior written consent of the Operating Partnership, which consent may be withheld by the Operating Partnership in its sole discretion:

(a) Sell, transfer or otherwise dispose, or agree to sell, transfer or otherwise dispose of, all or any portion of the Contributed Interests, or cause the sale, transfer or disposal of all or any portion of the Contributed Interests;

(b) Mortgage, pledge, hypothecate, encumber (or agree, permit or cause to become encumbered) all or any portion of the Contributed Interests;

(c) Cause the applicable American Assets Entity or its Subsidiaries to: file an entity classification election pursuant to Treasury Regulation Section 301.7701-3(c) on Internal Revenue Service Form 8832 (Entity Classification Election) to treat such American Assets Entity or any of its Subsidiaries as an association taxable as a corporation for United States federal income tax purposes; make or change any other Tax elections; settle or compromise any claim, notice, audit report or assessment in respect of Taxes; change any annual Tax accounting period; adopt or change any method of Tax accounting; file any amended Tax return; enter into any tax allocation agreement, tax sharing agreement, tax indemnity agreement or closing agreement relating to any Tax; surrender of any right to claim a Tax refund; or consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment; or

(d) Authorize or consent to, permit or cause any American Assets Entity to take, any of the actions prohibited by the Formation Transaction Documentation.

Section 5.02 COMMERCIALLY REASONABLE EFFORTS BY THE OPERATING PARTNERSHIP AND THE CONTRIBUTORS. Each of the Operating Partnership and each Contributor shall use commercially reasonable efforts and cooperate with each other in (i) promptly determining whether any filings are required to be made or consents, approvals, waivers, permits or authorizations are required to be obtained (under any applicable Law or regulation or from any Governmental Authority or third party) in connection with the transactions contemplated by this Agreement, and (ii) promptly making any such filings, in furnishing information required in connection therewith and in timely seeking to obtain any such consents, approvals, waivers, permits or authorizations.

Section 5.03 TAX MATTERS.

(a) So long as some portion of the Contribution Consideration with respect to the Contributed Interests is in the form of OP Units, the parties hereto intend and agree that, for United States federal income tax purposes, the contribution of such Contributed Interests shall constitute an "assets-over" partnership merger within the meaning of Treasury Regulations Section 1.708-1(c)(3)(i), and, as a result, that (i) any payment of cash or REIT Shares for the Contributed Interests shall be treated as a sale of such Contributed Interests by the holder and a purchase of such Contributed Interests by the Operating Partnership for the cash and/or REIT Shares so paid under the terms of this Agreement in accordance with Treasury Regulations Section 1.708-1(c)(4), and (ii) each such holder of the Contributed Interests who accepts cash and/or REIT Shares shall explicitly agree and consent (the "Sale Consent") to such treatment in their Consent Form as a condition to electing such consideration. To the extent the Operating Partnership acquires any Contributed Interests as described above, or previously acquired such interest, for United States federal income tax purposes the receipt by the Operating Partnership of the portion of property attributable to such Contributed Interests shall be treated as a distribution by applicable American Assets Entity in redemption of such Contributed Interests. Notwithstanding Section 1.02 and any holder's election as to the form of their Contribution Consideration, if any holder (other than a non-accredited investor), fails to execute a Sale Consent prior to the Closing, such holder's Contribution Consideration shall consist solely of OP Units. Any cash paid as the Contribution Consideration to a non-accredited investor for a Contributed Interest shall be paid only after the receipt of a Sale Consent from such holder.

(b) The Operating Partnership shall prepare or cause to be prepared and file or cause to be filed all income Tax returns of each American Assets Entity the Contributed Interests of which have been contributed pursuant to this agreement and any Subsidiary of such American Assets Entity which are due after the Closing Date. All such income Tax returns (including, for the avoidance of doubt, any amended Tax returns) shall be prepared in a manner consistent with past practice, except as otherwise required by applicable law. No later than ten (10) days prior to the due date (including extensions) for filing such income Tax returns, the Operating Partnership shall deliver such income Tax returns to American Assets, Inc. for its review and approval, which shall not be unreasonably withheld.

(c) The Operating Partnership shall prepare or cause to be prepared all other Tax returns of each American Assets Entity the Contributed Interests of which have been contributed pursuant to this agreement and any Subsidiary of such American Assets Entity.

(d) The REIT, the Operating Partnership and each Contributor shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax returns related to the transactions pursuant to this Agreement and any audit, litigation or administrative, judicial or other inquiry or proceeding with respect to Taxes related to the transactions pursuant to this Agreement. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such action or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The REIT, the Operating Partnership and each Contributor further agree, upon request, to use their reasonable efforts to obtain any certificate or other document from any governmental authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed with respect to the transactions contemplated hereby.

(e) Prior to Closing, each Contributor shall deliver to the Operating Partnership a properly executed certificate prepared in accordance with Treasury regulations section 1.1445-2(b) certifying such Contributor's non-foreign status, and if requested by the Operating Partnership, and any similar withholding certificates or other forms under applicable state, local or foreign Tax laws.

(f) The REIT and the Operating Partnership make no representations or warranties to the Contributors or to the American Assets Entities regarding the Tax treatment of the contributions pursuant to this Agreement or of the other Formation Transactions, or with respect to any other Tax consequences to any Contributor or any American Assets Entity of this Agreement or the other Formation Transactions. Each Contributor acknowledges that each American Assets Entity and each Contributor are relying solely on their own Tax advisors in connection with this Agreement and the other Formation Transactions.

Section 5.04 CONSENT AND WAIVER OF RIGHTS UNDER ORGANIZATIONAL DOCUMENTS. As of the Closing, each Contributor waives and relinquishes all rights and benefits otherwise afforded to the Contributor (a) under the Organizational Documents of the

applicable American Assets Entity including, without limitation, any rights of appraisal, rights of first offer or first refusal, buy/sell agreements, put, option, or similar parallel exit or dissenter rights in connection with the Formation Transactions and the IPO, and any right to consent to or approve of the sale or contribution or other transaction undertaken by the other equity holders of the applicable American Assets Entity of their Contributed Interests to the Operating Partnership, the REIT or any direct or indirect subsidiary thereof and any and all notice provisions related thereto, (b) to the extent permissible under applicable Laws, any statutory rights with respect to the Contributed Interests or the applicable American Assets Entity and (c) for claims against the REIT or the Operating Partnership for breach by any Contributor or any of their respective present or former officers, directors, managing members, general partners or Affiliates of their fiduciary duties or similar obligations (including duties of disclosure) to any of their respective present or former shareholders, members, partners, equity interest holders or Affiliates or the terms of the applicable Organizational Documents. Each Contributor acknowledges that the agreements contained herein and the transactions contemplated hereby and any actions taken in contemplation of the transactions contemplated hereby may conflict with, and may not have been contemplated by, the Organizational Documents of the applicable American Assets Entity or other agreements among one or more holders of such Contributed Interests or one or more of the partners or members of any such American Assets Entity. With respect to each American Assets Entity and each Property in which a Contributed Interest of the Contributor represents a direct or indirect interest, each Contributor expressly gives all consents (and any consents necessary to authorize the proper parties in interest to give all consents) and waivers it is entitled to give that are necessary or desirable to facilitate the contribution or other Formation Transactions relating to such American Assets Entity or property. In addition, if the transactions contemplated hereby occur, this Agreement shall be deemed to be an amendment to the Organizational Documents of the applicable American Assets Entity to the extent the terms herein conflict with the terms thereof, including without limitation, terms with respect to allocations, distributions and the like. In the event the transactions contemplated by this Agreement do not occur, nothing in this Agreement shall be deemed to be or construed as an amendment or modification of, or commitment of any kind to amend or modify, the Organizational Documents of the applicable American Assets Entity, which shall remain in full force and effect without modification.

Section 5.05 EXCLUDED ASSETS. Prior to the Closing or, as specified in Schedule 5.03, as soon as possible following the Closing and after such amounts are reasonably determinable, each American Assets Entity and its Subsidiaries shall distribute or cause to be distributed or paid out the assets identified on Schedule 5.05 (the "Excluded Assets").

Section 5.06 ALTERNATE TRANSACTION. In the event that the Operating Partnership determines that a structure change is necessary, advisable or desirable, the Operating Partnership may elect, in its sole and absolute discretion, to effect the Alternate Transaction, without the need for the Operating Partnership to seek any further consent or action from any Contributor, and each Contributor shall, and it shall cause its stockholders, members or partners, as applicable, and Subsidiaries to, enter into such agreements as shall be necessary to consummate the Alternate Transaction.

Section 5.07 EXCLUSION OF INTERESTS. The parties hereby agree that the Operating Partnership shall have the right, in its sole discretion, to exclude any Contributed Interest, or any interest held directly or indirectly through a Contributed Interest, from this contribution after the date hereof until the Effective Time, provided that the Operating Partnership shall provide prior written notice to such Contributor regarding such exclusion.

ARTICLE VI

GENERAL PROVISIONS

Section 6.01 NOTICES. All notices and other communications under this Agreement shall be in writing and shall be deemed given when (a) delivered personally, (b) five (5) Business Days after being mailed by certified mail, return receipt requested and postage prepaid, (c) one (1) Business Day after being sent by a nationally recognized overnight courier or (d) transmitted by facsimile if confirmed within twenty-four (24) hours thereafter by a signed original sent in the manner provided in clause (a), (b) or (c) to the parties at the following addresses (or at such other address for a party as shall be specified by notice from such party):

(a) if to the Operating Partnership to:

American Assets Trust, L.P.
c/o American Assets Trust, Inc.
11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620
Attention: Chief Executive Officer

(b) If to the Contributor, to the address set forth opposite such Contributor's name on Schedule I hereto.

Section 6.02 DEFINITIONS. For purposes of this Agreement, the following terms shall have the following meanings.

(a) "Accredited Investor" has the meaning set forth under Regulation D of the Securities Act.

(b) "Affiliate" means, with respect to any Person, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

(c) "Allocated Share" means the amount that would be allocated to a Pre-Formation Participant that is the holder of an interest in an American Assets Entity in accordance with the provisions of the existing Organizational Documents of such entity relating to distributions of distributable net proceeds from sales of directly or indirectly owned properties or assets, and assuming the sale of the relevant Target Asset or Target Assets that are directly or indirectly owned by such entity for a value equal to such Target Asset's or Target Assets' respective Equity Value(s).

Notwithstanding the foregoing, the Allocated Share of any Pre-Formation Participant shall reflect the following adjustments:

1. Intercompany Debt Adjustment. In calculating Allocated Share, all Intercompany Debt shall be taken into account so that the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligor of Intercompany Debt collectively are reduced, and the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligee of such Intercompany Debt collectively are increased, in each case by the amount of such Intercompany Debt (such adjustments being referred to as "Intercompany Debt Adjustments").

2. Entity Specific Debt Adjustment. To the extent that Entity Specific Debt is allocated to a Target Asset, in calculating Allocated Shares of holders of direct or indirect Pre-Formation Interests in the American Assets Entity or Entities owning such Target Asset, the amount of the decrease in Equity Value of such Target Asset attributable to the allocation of such Entity Specific Debt to such Target Asset (through the operation of the formula set forth on Schedule III) (in each case, such decrease being the "Decrease") shall be taken into account so that:

    a. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in any obligor(s) under such Entity Specific Debt collectively shall be (i) reduced by the amount equal to the excess of (w) the amount of the Entity Specific Debt owed by such obligor over (x) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset; or (ii) increased by the amount equal to the excess of (y) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset over (z) the amount of the Entity Specific Debt owed by such obligor; and

    b. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in American Assets Entities owning such Target Asset that are not obligors under such Entity Specific Debt collectively shall be increased by the amount equal to the amount of the Decrease allocated pro rata to such holders as direct or indirect owner of the Target Asset;

with the net effect under the foregoing clauses (a)(i), (a)(ii) and (b) being that the adverse economic impact of the Decrease shall be borne equitably by the holders of direct or indirect Pre-Formation Interests in the actual obligor(s) under such Entity Specific Debt and not by any other holder of direct or indirect Pre-Formation Interests in the American Assets Entities owning such Target Asset.

Illustrative examples of the application of the foregoing Allocated Share adjustments using hypothetical numbers are included as Example 3 and Example 4 in ***Appendix A*** to Schedule III.

"Alternate Transaction" means (i) a contribution of all or a portion of the assets of the Contributed Entity held directly or indirectly by a Contributor to the Operating Partnership in exchange for the amount of cash and the number of OP Units and/or REIT Shares that were to be issued pursuant to this Agreement (or a portion thereof equal in value to the value of the portion of such assets contributed to the Operating Partnership), (ii) a contribution by each holder of direct or indirect equity interests in a Contributor to the Operating Partnership in exchange for the amount of cash and the number of OP Units and/or REIT Shares that would have otherwise been received by such holder of direct or indirect equity interests pursuant to this Agreement, (iii) the restructuring of this transaction as either (x) a merger of the Contributed Entity with and into either the REIT or a wholly owned subsidiary of the REIT, or the Operating Partnership or a wholly owned Subsidiary of the Operating Partnership or (y) a merger of a wholly owned subsidiary of either the REIT or the Operating Partnership with and into the Contributed Entity, in each case in exchange for the amount of cash and the number of OP Units and/or REIT Shares that were to be issued pursuant to this Agreement, or (iv) any other transaction pursuant to which the REIT, the Operating Partnership or any of their Subsidiaries acquire the Contributed Entity or all or a portion of the assets held directly or indirectly by a Contributor or the Contributed Entity in a transaction pursuant to which such Contributor receives the amount of cash, the number of OP Units and/or the number of REIT Shares that were to be received by such Contributor pursuant to this Agreement (or a portion thereof equal in value to the value of the portion of such assets acquired by the REIT, the Operating Partnership or any of their Subsidiaries pursuant to such Alternate Transaction).

(e) "American Assets Entity" means a Forward OP Merger Entity, Forward REIT Merger Entity, OP Sub Reverse Merger Entity, OP Sub Forward Merger Entity, REIT Sub Forward Merger Entity, or Contributed Entity, as applicable. As used herein, "American Assets Entities" refer to each American Assets Entity, collectively.

(f) "Business Day" means any day that is not a Saturday, Sunday or legal holiday in the State of California.

(g) "Code" means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated or issued thereunder.

(h) "Consent Form" means the forms provided to each holder of Pre-Formation Interests to consent to the Formation Transactions and to make such holder's irrevocable elections with respect to consideration to be received in the Formation Transactions.

(i) "Elected OP Unit Percentage" means, with respect to the Contribution Consideration to be received by any Contributor for any Contributed Interest, the percentage of the Allocated Share represented by such Contributed Interest that the Contributor has made a Valid Election to receive in the form of OP Units.

(j) "Elected REIT Share Percentage" means, with respect to the Contribution Consideration to be received by any Contributor for any Contributed Interest, the percentage of the Allocated Share represented by such Contributed Interest that the Contributor has made a Valid Election to receive in the form of REIT Shares.

(k) "Equity Value" has the meaning set forth in Schedule III hereto.

(l) "Escrow Agreement" means the Indemnity Escrow Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the REIT, acting in the capacity of Escrow Agent.

(m) "Formation Transaction Documentation" means all of the agreements and plans of merger relating to all target entities and all contribution agreements (including this Agreement) and related documents and agreements substantially in the forms accompanying the Request for Consent dated July 31, 2010 and identified in Exhibit G hereto, pursuant to which all of the American Assets Entities and/or the equity interests in the American Assets Entities held by the Pre-Formation Participants are to be acquired by the REIT or the Operating Partnership, directly or indirectly, as part of the Formation Transactions.

(n) "Formation Transactions" means the transactions contemplated by this Agreement and the other Formation Transaction Documentation.

(o) "Governmental Authority" means any government or agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

(p) "Intercompany Debt" means loans or advances among American Assets Entities and/or their Subsidiaries or among holders of Pre-Formation Interests on the one hand and American Assets Entities and/or their Subsidiaries on the other hand, other than those promissory notes set forth on ***Appendix D*** to Schedule III for which Del Monte Center is listed as the associated Target Asset, each of which loans or advances are set forth on Schedule IV hereto. Intercompany Debt shall not be discharged pursuant to the Formation Transactions except to the extent any such Intercompany Debt merges out of existence by operation of law as a result of such transactions (e.g., if the Operating Partnership acquires both the obligor and obligee interest in a loan which reflects an Intercompany Debt). After the closing of the Formation Transactions, and except as provided below, to the extent any such loans are acquired by the REIT, Operating Partnership or their Subsidiaries (e.g., an obligor or obligee with respect to such loans is merged with or into, or acquired by, one of such entities), the REIT, Operating Partnership or their Subsidiaries (as applicable) shall be permitted to take any actions (including repayment) with respect to such Intercompany Debt as they deem appropriate. Intercompany Debt with respect to which either the obligor or the obligee (but not both such parties) under such Intercompany Debt is acquired, directly or indirectly, by the REIT, Operating Partnership or their Subsidiaries, shall be deemed to be discharged immediately after the Formation Transactions by (i) the REIT, Operating Partnership or their Subsidiaries (as applicable) as obligor, or (ii) the obligor to the REIT, Operating Partnership or their Subsidiaries (as applicable) as obligee, in each case in exchange for the consideration payable as set forth in the applicable Formation Transaction Documentation. The amounts payable and receivable with respect to each item of Intercompany Debt shall be determined by the REIT, for purposes of determining the Intercompany Debt Adjustments, within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

(q) "IPO Closing Date" means the closing date of the IPO.

(r) "IPO Price" means the initial public offering price of a REIT Share in the IPO.

(s) "Laws" means laws, statutes, rules, regulations, codes, orders, ordinances, judgments, injunctions, decrees and policies of any Governmental Authority, including, without limitation, zoning, land use or other similar rules or ordinances.

(t) "Liens" means all pledges, claims, liens, charges, restrictions, controls, easements, rights of way, exceptions, reservations, leases, licenses, grants, covenants and conditions, encumbrances and security interests of any kind or nature whatsoever.

(u) "Lock-Up Agreement" means that certain Lock-Up Agreement, by and between the underwriters and each investor of the REIT and/or the Operating Partnership.

(v) "OP Material Adverse Effect" means any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the Operating Partnership and each Operating Partnership Subsidiary, taken as a whole.

(w) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

(x) "Pre-Formation Interests" means the interests held by the Pre-Formation Participants in the American Assets Entities.

(y) "Pre-Formation Participants" means the holders of the equity interests in the relevant American Assets Entities immediately prior to the Formation Transactions.

(z) "Properties" means the office or other property owned by the American Assets Entities or any of their Subsidiaries or leased pursuant to a ground lease.

(aa) "Prospectus" means the REIT's final prospectus as filed with the SEC.

(bb) "Representation, Warranty and Indemnity Agreement" means the Representation, Warranty and Indemnity Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the Rady Trust.

(cc) "Securities Act" means the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder.

(dd) "Subsidiary" of any Person means any corporation, partnership, limited liability company, joint venture, trust or other legal entity of which such Person owns (either directly or through or together with another Subsidiary of such Person) either (i) a general partner, managing member or other similar interest, or (ii)(A) ten percent (10%) or more of the voting power of the voting capital stock or other equity interests, or (B) ten percent (10%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other legal entity.

(ee) "Target Asset" has the meaning set forth in Schedule III hereto.

(ff) "Tax" means all federal, state, local and foreign income, gross receipts, license, property, withholding, sales, franchise, employment, payroll, goods and services, stamp, environmental, customs duties, capital stock, social security, transfer, alternative minimum, excise and other taxes, tariffs or governmental charges of any nature whatsoever, including estimated taxes, together with penalties, interest or additions to Tax with respect thereto, whether or not disputed.

(gg) "Tax Protection Agreement" means that certain Tax Protection Agreement, by and among the REIT, the Operating Partnership and the parties identified as a signatory on Schedule A thereto.

(hh) "Valid Election" means, with respect to any Contributed Interest, an irrevocable election to receive all or a portion of its Allocated Share in the form of OP Units or REIT Shares as indicated on the properly completed and timely received Consent Form of the Contributor or a Consent Form as to which any deficiencies have been waived by the REIT.

Section 6.03 COUNTERPARTS. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party and delivered to each other party.

Section 6.04 ENTIRE AGREEMENT; THIRD-PARTY BENEFICIARIES. This Agreement, the other Formation Transaction Documentation and the Consent Forms to which the parties hereto are a party, including, without limitation, the exhibits and schedules hereto and thereto, constitute the entire agreement and, except as set forth in Section 2.05, supersede each prior agreement and understanding, whether written or oral, among the parties regarding the subject matter of this Agreement. This Agreement is not intended to confer any rights or remedies on any Person other than the parties hereto.

Section 6.05 GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of California, regardless of any Laws that might otherwise govern under applicable principles of conflicts of laws thereof.

Section 6.06 ASSIGNMENT. This Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns; *provided, however*, that this Agreement may not be assigned (except by operation of law) by any party without the prior written consent of the other parties, and any attempted assignment without such consent shall be null and void and of no force and effect, except that the Operating Partnership may assign its rights and obligations hereunder to an Affiliate.

Section 6.07 JURISDICTION. The parties hereto hereby (a) submit to the exclusive jurisdiction of any state or federal court sitting in the County of San Diego, with respect to any dispute arising out of this Agreement or any transaction contemplated hereby to the extent such courts would have subject matter jurisdiction with respect to such dispute, and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, or that the venue of the action is improper.

Section 6.08 DISPUTE RESOLUTION. The parties intend that this Section 6.08 will be valid, binding, enforceable, exclusive and irrevocable and that it shall survive any termination of this Agreement.

(a) Upon any dispute, controversy or claim arising out of or relating to this Agreement or the enforcement, breach, termination or validity thereof ("Dispute"), the party

raising the Dispute will give written notice to the other parties to the Dispute describing the nature of the Dispute following which the parties to such Dispute shall attempt for a period of ten (10) Business Days from receipt by the parties of notice of such Dispute to resolve such Dispute by negotiation between representatives of the parties hereto who have authority to settle such Dispute. All such negotiations shall be confidential and any statements or offers made therein shall be treated as compromise and settlement negotiations for purposes of any applicable rules of evidence and shall not be admissible as evidence in any subsequent proceeding for any purpose. The statute of limitations applicable to the commencement of a lawsuit shall apply to the commencement of an arbitration hereunder, except that no defense based on the running of the statute of limitations will be available based upon the passage of time during any such negotiation. Regardless of the foregoing, a party shall have the right to seek immediate injunctive relief pursuant to Section 6.08(c) below without regard to any such ten (10) Business Day negotiation period.

(b) Any Dispute (including the determination of the scope or applicability of this agreement to arbitrate) that is not resolved pursuant to Section 6.08(a) above shall be submitted to final and binding arbitration in California before one neutral and impartial arbitrator, in accordance with the Laws of the State of California for agreements made in and to be performed in that State. The arbitration shall be administered by JAMS, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days following a demand for arbitration, the arbitrator shall be appointed by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. The arbitrator shall designate the place and time of the hearing. The hearing shall be scheduled to begin as soon as practicable and no later than sixty (60) days after the appointment of the arbitrator (unless such period is extended by the arbitrator for good cause shown) and shall be conducted as expeditiously as possible. The award, which shall set forth the arbitrator's findings of fact and conclusions of law, shall be filed with JAMS and mailed to the parties no later than thirty (30) days after the close of the arbitration hearing. The arbitration award shall be final and binding on the parties and not subject to collateral attack. Judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(c) Notwithstanding the parties' agreement to submit all Disputes to final and binding arbitration before JAMS, the parties shall have the right to seek and obtain temporary or preliminary injunctive relief in any court having jurisdiction thereof. Such courts shall have authority to, among other things, grant temporary or provisional injunctive relief in order to protect any party's rights under this Agreement. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitral tribunal shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitral tribunal's orders to that effect.

(d) The prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, and the non-prevailing party shall pay all expenses and fees of JAMS, all costs of the stenographic record, all expenses of witnesses or proofs that may have been produced at the direction of the arbitrator, and the fees, costs, and expenses of the arbitrator. The arbitrator shall allocate such costs and designate the prevailing party or parties for these purposes.

Section 6.09 SEVERABILITY. Each provision of this Agreement will be interpreted so as to be effective and valid under applicable Law, but if any provision is held invalid, illegal or unenforceable under applicable Law in any jurisdiction, then such invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been included herein.

Section 6.10 RULES OF CONSTRUCTION.

(a) The parties hereto agree that they had the opportunity to be represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(b) The words “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” All terms defined in this Agreement shall have the defined meanings contained herein when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Unless explicitly stated otherwise herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time, amended, qualified or supplemented, including (in the case of agreements and instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 6.11 EQUITABLE REMEDIES. The parties agree that irreparable damage would occur to the Operating Partnership in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Operating Partnership shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by a Contributor and to enforce specifically the terms and provisions hereof in any federal or state court located in California, this being in addition to any other remedy to which the Operating Partnership is entitled under this Agreement or otherwise at law or in equity.

Section 6.12 TIME OF THE ESSENCE. Time is of the essence with respect to all obligations under this Agreement.

Section 6.13 DESCRIPTIVE HEADINGS. The descriptive headings herein are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Section 6.14 NO PERSONAL LIABILITY CONFERRED. This Agreement shall not create or permit any personal liability or obligation on the part of any officer, director, partner, employee or shareholder of the Operating Partnership or any of the Contributors.

Section 6.15 CONSENT OF PARTNER, MANAGER or MEMBER. In accordance with the terms of certain of the agreements governing the Contributed Interests, the undersigned, in its capacity as a partner, manager or member of one or more of the American Assets Entity in which Contributed Interest are held, consents to the applicable transfers contemplated in Section 1.01 hereof and the admission of the Operating Partnership as a substituted partner or member in each applicable American Assets Entity and waives any right of first refusal which the undersigned has with respect of the transfer of any of the Contributed Interests to the Operating Partnership.

Section 6.16 WAIVER OF SECTION 1542 PROTECTIONS. As of the Closing Date, each of the parties hereto expressly acknowledges that it has had, or has had and waived, the opportunity to be advised by independent legal counsel and hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the California Civil Code and does so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542 which provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.**

Section 6.17 AMENDMENTS. This Agreement may be amended by appropriate instrument, without the consent of any Contributor, at any time prior to the Closing Date; *provided*, that no such amendment, modification or supplement shall be made that alters the amount or changes the form of the consideration to be delivered to the Contributors, without the prior written consent of the Contributor adversely affected by such proposed amendment, modification or supplement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized officers or representatives, all as of the date first written above.

AMERICAN ASSETS TRUST, L.P.,
a Maryland limited partnership

By: AMERICAN ASSETS TRUST, INC.,
a Maryland corporation
Its: General Partner

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

AMERICAN ASSETS TRUST, INC.,
a Maryland corporation

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

EACH CONTRIBUTOR LISTED ON
SCHEDULE I HERETO

By: AMERICAN ASSETS TRUST, INC.,
a Maryland corporation
Its: Attorney-in-Fact

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

Schedule I

CONTRIBUTORS

See attached.

Schedule II

Reimbursement Agreements

1. Letter Agreement by and among American Assets, Inc. and the Property Entities (as defined therein) dated May 17, 2010

Schedule III

Calculation of Equity Value

For purposes of all Formation Transaction Documentation, "Equity Value" of any Target Asset directly or indirectly owned by the American Assets Entity subject to such agreement shall be calculated pursuant to the formula set forth below. Capitalized terms used in this Schedule III shall have the meanings set forth below and capitalized terms used herein without definition shall have the meanings assigned to such terms in the Agreement.

$$EV = EP \times [TFTV\text{-}TPA] + AA;$$

where:

EV = Equity Value;
EP = Equity Percentage;
TFTV= Total Formation Transaction Value;
TPA = Total Portfolio Adjustment; and
AA = Asset Adjustment;

provided, however, that if the resulting Equity Value for a Target Asset is a negative amount (a "Net Deficit"), then the REIT shall exercise one of the following options, as determined by the REIT in its sole and absolute discretion: (i) select the Target Asset as an Eliminated Asset or (ii) if one or more entities that are subject to the Formation Transaction Documentation that are the direct or indirect owners of such Target Asset would otherwise possess Excluded Assets the value of which in the aggregate would equal or exceed the amount of such Net Deficit, increase the Target Net Working Capital with respect to such entity or entities by the absolute value of such Net Deficit; and *provided further* that if the REIT shall have exercised option (ii) with respect to any Target Asset, the Equity Value with respect to such Target Asset shall be deemed to be equal to zero;

provided further, that if the Equity Value for ICW Valencia/Valencia Corporate Center as calculated above would result in the holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. having an amount of Allocated Shares, prior to the application of the Intercompany Debt Adjustments, that is less than the value of the Intercompany Debt owed by ICW Valencia, L.P. to ICW Plaza, L.P. (such shortfall being referred to as the "Intercompany Debt Shortfall"), then (i) Western Insurance Holdings, Inc. shall issue a promissory note with a term of three years to ICW Valencia, L.P. which shall be treated as an Asset Adjustment with respect to ICW Valencia/Valencia Corporate Center and such promissory note (the "WIH Note") shall have such face amount as shall be necessary to increase the Equity Value of ICW Valencia/Valencia Corporate Center such that the Allocated Shares of holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. shall increase by an amount, prior to the application of the Intercompany Debt Adjustments, equal to the Intercompany Debt Shortfall and (ii) the Equity Value for ICW Valencia/Valencia Corporate Center shall be recalculated to give effect to the Asset Adjustment attributable to the issuance of the WIH Note.

Attached as ***Appendix A*** to this Schedule III are illustrative calculations of Equity Value for a hypothetical portfolio of Target Assets.

"Actual Balance" shall mean: (i) with respect to each Existing Loan to be assumed in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such assumption and all assumption fees and any related expenses with respect to such Existing Loan; and (ii) with respect to each Existing Loan to be prepaid, repaid or refinanced in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such prepayment, repayment or refinancing and any related prepayment penalties and any related expenses; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Actual Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed. With respect to each Existing Loan to be assumed, prepaid, repaid or refinanced in connection with the Formation Transactions, the Actual Balance as of the Closing Date shall be determined by the REIT within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

"Asset Adjustment" shall mean with respect to each Target Asset and any Existing Loan relating to such Target Asset, an amount equal to the Base Balance minus the Actual Balance (expressed as a positive or negative number, as applicable) with respect to all Existing Loans relating to such Target Asset, and in the case of ICW Valencia/Valencia Corporate Center, the face value of the WIH Note shall be deemed to reduce the Actual Balance of the Existing Loan relating to ICW Valencia/Valencia Corporate Center.

"Base Balance" shall mean with respect to each Existing Loan, the principal amount of such Existing Loan set forth on ***Appendix C*** to this Schedule III; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Base Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Eliminated Asset" shall mean any Target Asset subject to the Formation Transaction Documentation that is excluded pursuant to the terms of the Formation Transaction Documentation from the Formation Transactions.

"Equity Percentage" shall mean with respect to each Target Asset, the percentage (expressed as a decimal) set forth opposite the name of such Target Asset on ***Appendix B*** to this Schedule III (which percentage is based on the Fairness Opinion of Duff & Phelps, LLC and represents such

Target Asset's percentage of the net asset values of the Target Assets (other than the Management Company) and the net equity value of the Management Company, taken as a whole); *provided, however*, that in the event a Target Asset is selected as or otherwise becomes for any reason an Eliminated Asset, then: (i) the Equity Percentage for each remaining Target Asset shall be recalculated as a fraction, the numerator of which is the original Equity Percentage for such remaining Target Asset and the denominator of which is (A) 100 minus (B) the original Equity Percentage of the Eliminated Asset; and (ii) the Equity Percentage of the Eliminated Asset shall be zero; and *provided, further*, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then, after giving effect to any Eliminated Assets pursuant to the preceding proviso, the Equity Percentage for such Target Asset and for each other remaining Target Asset subject directly or indirectly to the Formation Transaction Documentation shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Excluded Assets" has the meaning set forth in Section 5.03 to the Agreement.

"Existing Loan" shall mean (i) each mortgage or mezzanine loan secured by a Target Asset listed on ***Appendix C*** to this Schedule III and (ii) all unsecured indebtedness of an American Assets Entity or of an entity in which an American Assets Entity has a direct or indirect interest that will be assumed, prepaid, repaid or refinanced in connection with the IPO and that is set forth on ***Appendix D*** to this Schedule III (all indebtedness falling within the scope of this clause (ii) shall be referred to as "Entity Specific Debt"); for the avoidance of doubt, no Intercompany Debt shall constitute an Existing Loan (in order to avoid double counting, as Intercompany Debt is adjusted for through the definition of "Allocated Share"). Existing Entity Specific Debt will be deemed to relate to the Target Asset(s) and, if to multiple Target Assets, in the proportions set forth opposite the name of such Entity Specific Debt on ***Appendix D*** to this Schedule III, and all such Entity Specific Debt will be deemed to have a Base Balance of zero (because "Equity Percentage" as determined by Duff & Phelps, LLC was determined at the property level and did not take into account Entity Specific Debt, Entity Specific Debt is deemed to be zero in order to cause a readjustment of "Equity Value" of all Target Assets after taking into account such Entity Specific Debt).

"Target Asset" shall mean each property set forth on Appendix B to this Schedule III and the property management business of American Assets, Inc. (the "Management Company").

"Target Net Working Capital" has the meaning set forth in Schedule 5.03 to the Agreement.

"Total Portfolio Adjustment" shall mean the sum (which may be a positive or negative number) of all Asset Adjustments for every Target Asset, excluding Eliminated Assets.

"Total Formation Transaction Value" shall mean the aggregate dollar value of (i) the cash, (ii) the REIT Shares and (iii) the OP Units that are issued or issuable to all Pre-Formation Participants in the Formation Transactions as set forth in the Prospectus. Total Formation Transaction Value will be determined valuing REIT Shares and OP Units at a value per REIT Share or OP Unit equal to the IPO Price.

Schedule IV

Intercompany Indebtedness

See attached.

EXHIBITS

Exhibit A: List of American Assets Entities

Exhibit B: Form of Lock-Up Agreement

Exhibit C: Form of Tax Protection Agreement

Exhibit D: Form of Registration Rights Agreement

Exhibit E: Order of Mergers

Exhibit F: Operating Partnership Agreement

Exhibit G: Formation Transaction Documentation

Exhibit A

List of American Assets Entities

List of Forward OP Merger Entities:

1. Solana Beach Towne Centres Investments, L.P.
2. Pacific San Jose Holdings, L.P.
3. Pacific Sorrento Mesa Holdings, L.P.
4. Hillside 104, a California limited partnership
5. Hillside 276, a California limited partnership
6. Desert Hillside Holdings, LLC
7. BWH Holdings, LLC
8. Waikele Center Holdings, LP

List of Forward REIT Merger Entities:

1. Pacific Stonecrest Assets, Inc.
2. Pacific National City Assets, Inc.
3. Western Assets, Inc.
4. Pacific Towne Centre Assets, Inc.
5. Pacific Oceanside Assets, Inc.
6. Pacific San Jose Assets, Inc.
7. KMBC Assets, Inc.
8. Hero Retail, Inc.
9. Pacific Sorrento Valley Assets I, Inc.
10. Pacific Sorrento Mesa Assets, Inc.
11. Beach Walk Assets, Inc.
12. ICW Plaza, Inc. [d/b/a Delaware ICW Plaza, Inc.]
13. ICW Valencia, Inc.
14. Pacific Torrey Reserve Assets, Inc.
15. Landmark Assets, Inc.
16. Landmark One Market, Inc.
17. Pacific Novato Assets, Inc.
18. Waikele Center Assets, Inc.

List of OP Sub Forward Merger Entities:

1. Pacific Stonecrest Holdings, L.P.
2. Rancho Carmel Plaza, a California limited partnership
3. Pacific Oceanside Holdings, L.P.
4. Kearny Mesa Business Center, a California limited partnership
5. Del Monte Center Holdings, LP
6. Beach Walk Holdings, LP
7. ICW Plaza, L.P., a California limited partnership
8. ICW Valencia, L.P.
9. Desert Oceanside Holdings, LLC
10. San Diego Loma Palisades, L.P.

List of OP Sub Reverse Merger Entities:

1. Pacific Waikiki Holdings, L.P.
2. ABW Lewers LLC
3. King Street Holdings, LP
4. Loma Palisades, a California general partnership

List of REIT Sub Forward Merger Entities:

1. Pacific Del Mar Assets, Inc.
2. Pacific Carmel Mountain Assets, Inc.
3. Pacific Solana Beach Assets, Inc.
4. Pacific Waikiki Assets, Inc.
5. King Street Assets, Inc.
6. Pacific Sorrento Valley Assets II, Inc.
7. Pacific Santa Fe Assets, Inc.

List of Contributed Entities:

1. American Assets Trust Management, LLC
2. Winrad Vista Hacienda, a California general partnership
3. Vista Hacienda, a California limited partnership
4. Pacific American Assets Holdings, L.P., a California limited partnership
5. Carmel Country Plaza, L.P.
6. Pacific Carmel Mountain Holdings, L.P.
7. Pacific National City Holdings, L.P.
8. Pacific Solana Beach Holdings, L.P.
9. Pacific San Jose Holdings, L.P.
10. Winrad Kearny Mesa Business Center, a California general partnership
11. Pacific Sorrento Valley Holdings I, L.P.
12. Pacific Sorrento Mesa Holdings, L.P.
13. Beach Walk Holdings, LP
14. ICW Plaza, L.P., a California limited partnership
15. ICW Valencia, L.P.
16. Pacific Sorrento Valley Holdings II, L.P.
17. EBW Hotel LLC
18. Imperial Strand, a California limited partnership
19. Winrad Imperial Strand, a California general partnership
20. San Diego Loma Palisades, L.P.
21. Mariner’s Point, LLC
22. Pacific Santa Fe Holdings, L.P.

Exhibit B

Form of Lock-Up Agreement

See Attached.

Exhibit C

Form of Tax Protection Agreement

See Attached.

Exhibit D

Form of Registration Rights Agreement

See Attached.

Exhibit E

Order of Mergers

Each step within each "Transaction Step" below must be completed before the transactions in the following "Transaction Step" may be completed. All transactions within each "Transaction Step" may be completed simultaneously or in any order.

Transaction Step 1

All Forward REIT Mergers
All REIT Sub Forward Mergers

Transaction Step 2

All Contributions to the OP (including the REIT's contribution to the OP of the assets acquired in Step 1)

Transaction Step 3

All Contributions to subsidiaries of the OP (including, where applicable, the OP's contribution to the applicable subsidiary of assets acquired in Step 2)

Transaction Step 4

All OP Forward Mergers ***except*** the OP Forward Merger set forth in Transaction Step 5 and Transaction Step 7 below

Transaction Step 5

Forward Merger of Desert Hillside Holdings LLC with and into the Operating Partnership

Transaction Step 6

All OP Sub Forward Mergers ***except*** the OP Sub Forward Merger set forth in Transaction Step 7 below

Transaction Step 7

Forward Merger of BWH Holdings LLC with and into the Operating Partnership

Forward Merger of Desert Oceanside Holdings LLC with and into Pacific Oceanside Holdings LLC.

Transaction Step 8

All OP Sub Reverse Mergers

Exhibit F

Operating Partnership Agreement

See Attached.

Exhibit G

Formation Transaction Documentation

Form of Forward REIT Merger Agreement

Form of REIT Sub Forward Merger Agreement

Form of Forward OP Merger Agreement

Form of OP Sub Forward Merger Agreement

Form of OP Sub Reverse Merger Agreement

Form of OP Contribution Agreement

Form of OP Sub Contribution Agreement

Form of Alternate Contribution Agreement

Form of Tax Protection Agreement

Amended and Restated Agreement of Limited Partnership of American Assets Trust, L.P.

Registration Rights Agreement

Representation, Warranty and Indemnity Agreement

Indemnity Escrow Agreement

Lock-Up Agreement

Articles of Amendment and Restatement of American Assets Trust, Inc.

Bylaws of American Assets Trust, Inc.

Management Business Contribution Agreement

Exhibit 10.15

OP SUB CONTRIBUTION AGREEMENT

DATED AS OF SEPTEMBER 13, 2010

BY AND AMONG AMERICAN ASSETS TRUST, L.P.,
a Maryland limited partnership

[OP SUBSIDIARY ENTITY],
a Delaware limited liability company

AMERICAN ASSETS TRUST, INC.,
a Maryland corporation

AND

THE CONTRIBUTORS
as set forth on Schedule I hereto

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OP SUB CONTRIBUTION AGREEMENT

THIS OP SUB CONTRIBUTION AGREEMENT is made and entered into as of September 13, 2010 (this "Agreement"), by and among American Assets Trust, L.P., a Maryland limited partnership (the "Operating Partnership"), American Assets Trust, Inc., a Maryland corporation (the "REIT"), the contributors whose names appear on Schedule I hereto (each a "Contributor" and, collectively, the "Contributors"), and **[OP Subsidiary Entity]**, a Delaware limited liability company to be formed prior to the Closing Date (defined below) and to be wholly owned by the Operating Partnership (the "OP Subsidiary"). Certain capitalized terms are defined in Section 6.02 of this Agreement.

RECITALS

WHEREAS, the REIT desires to consolidate the ownership of a portfolio of properties currently owned, directly or indirectly, by certain entities each as described on Exhibit A hereto;

WHEREAS, concurrently with the execution of this Agreement, each of the entities identified on Exhibit A hereto as "Forward REIT Merger Entities" (the "Forward REIT Merger Entities") will enter into an agreement and plan of merger with the REIT pursuant to which each such Forward REIT Merger Entity will merge with and into the REIT and the equity interest in each Forward REIT Merger Entity will be converted automatically into the right to receive cash, without interest, or shares of common stock of the REIT, par value $.01 per share (the "REIT Shares");

WHEREAS, concurrently with the execution of this Agreement, the REIT will enter into agreements and plans of merger with certain American Assets Entities identified as "REIT Sub Forward Merger Entities" on Exhibit A hereto (the "REIT Sub Forward Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, each of the REIT Sub Forward Merger Entities will merge with and into wholly owned subsidiaries of the REIT;

WHEREAS, immediately following the completion of the mergers described in the preceding paragraphs, the REIT will contribute to the Operating Partnership, (i) all of the assets, rights and obligations of the Forward REIT Merger Entities acquired by the REIT as a result of the mergers between it and the Forward REIT Merger Entities and (ii) all of the REIT's interests in the surviving entities of the mergers of the REIT Sub Forward Merger Entities with and into wholly owned subsidiaries of the REIT;

WHEREAS, pursuant to this Agreement, immediately following the completion of the mergers and contributions described in the preceding paragraphs, each Contributor shall contribute to the OP Subsidiary all of such Contributor's interests (the "Contributed Interest") in the applicable American Assets Entities identified as "Contributed Entities" on Exhibit A, and the OP Subsidiary shall acquire from each Contributor all of such Contributor's right, title and interest as a holder of the Contributed Interests; *provided*, that if any Contributed Entity shall no longer exist as of the time of consummation of this Agreement, the term Contributed Interest shall include all interests in any entity which was held by such Contributed Entity at the time such Contributed Entity shall have ceased to exist;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, will enter into a contribution agreement substantially similar to this agreement with certain other holders of interests in certain American Assets Entities, pursuant to which, concurrently with the contributions described in the preceding paragraph, each such other contributor shall contribute to the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, respectively, all of such contributor's interests in the applicable American Assets Entity, and the Operating Partnership, or such subsidiary, as applicable, shall acquire from each such other contributor all of such other contributor's right, title and interest as a holder of the interests in such American Assets Entities;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into an agreement and plan of merger with certain American Assets Entities identified as "Forward OP Merger Entities" on Exhibit A hereto (collectively, the "Forward OP Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraphs, each Forward OP Merger Entity will merge with and into the Operating Partnership in the order set forth in the merger agreement for such entities;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Assets Entities identified as "OP Sub Forward Merger Entities" on Exhibit A hereto (collectively, the "OP Sub Forward Merger Entities"), pursuant to which, immediately following the mergers and contributions identified in the preceding paragraph, each OP Sub Forward Merger Entity will merge with and into a separate wholly owned subsidiary of the Operating Partnership;

WHEREAS, concurrently with the execution of this Agreement, the Operating Partnership will enter into agreements and plans of merger with certain American Assets Entities identified as "OP Sub Reverse Merger Entities" on Exhibit A hereto (collectively, the "OP Sub Reverse Merger Entities"), pursuant to which, concurrently with the mergers identified in the preceding paragraph, a separate wholly-owned subsidiary of the Operating Partnership will merge with and into each OP Sub Reverse Merger Entity;

WHEREAS, in lieu of one or more of the mergers described in the preceding paragraphs and at the same time as such mergers would have otherwise occurred, certain holders (the "Consenting Holders") of interests in certain American Assets Entities shall contribute to the Operating Partnership, or a wholly-owned subsidiary of the Operating Partnership, all of their interests in the applicable American Assets Entity, and the Operating Partnership or such subsidiary shall acquire from each Consenting Holder, all of each Consenting Holder's right, title and interest as a holder of interests in such American Assets Entities;

WHEREAS, the Formation Transactions relate to the proposed initial public offering (the "IPO") of the REIT Shares, following which the REIT will operate as a self-administered and self-managed real estate investment trust within the meaning of Section 856 of the Code; and

WHEREAS, all necessary approvals have been obtained by each of the Operating Partnership, OP Subsidiary and each Contributor to consummate the transactions contemplated herein and by the other Formation Transaction Documentation.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and other terms contained in this Agreement, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I

CONTRIBUTION

Section 1.01 CONTRIBUTION TRANSACTION; ASSIGNMENT AND ASSUMPTION.

(a) At the Closing and subject to the terms and conditions contained in this Agreement, each Contributor hereby contributes, assigns, sets over, transfers, conveys and delivers to the OP Subsidiary, absolutely and unconditionally and free and clear of all Liens (other than those arising under the partnership, limited liability company or similar agreement(s) of the applicable American Assets Entities (the "Organizational Documents")), all of its right, title and interest in and to its Contributed Interests, including all rights to indemnification in favor of such Contributor under its Organizational Documents; *provided*, that the OP Subsidiary accepts the assignment by such Contributor and agrees to be bound by the terms of the Organizational Documents governing such Contributor's Contributed Interest and undertakes, assumes and agrees punctually and faithfully to perform, pay or discharge when due and otherwise in accordance with its terms, all agreements, covenants, conditions, obligations and liabilities of such Contributor in the applicable American Assets Entities with respect to such Contributor's Contributed Interest on or after the Closing Date.

(b) In accordance with the terms of the Organizational Documents governing each Contributor's Contributed Interest, this Agreement shall serve as notice to the partners, managers or members, as the case may be, of each of the applicable American Assets Entities of the transfer of each Contributor's Contributed Interest, and such partners, managers or members, as the case may be, of each of the applicable American Assets Entities, to the extent applicable, consents to, and agrees and acknowledges that all requirements and conditions for such transfer and the admission of the OP Subsidiary as a substituted partner or member have been satisfied or otherwise waived.

(c) All of the parties hereto agree that, as a result of the assignment and assumptions hereunder, for purposes of the Organizational Documents governing each Contributor's Contributed Interest, the OP Subsidiary shall be a substituted partner or member, as the case may be, of the applicable American Assets Entity.

Section 1.02 CONSIDERATION.

(a) Under and subject to the terms and conditions set forth herein, as the result of an irrevocable election indicated on a Consent Form submitted by each Contributor, or as a result of the failure of each Contributor to submit a Consent Form, each Contributor is

irrevocably bound to accept and entitled to receive, in consideration for the Contributed Interests contributed pursuant to this Agreement, a specified share of the aggregate pre-IPO equity value of the American Assets Entities in the form of the right to receive cash, REIT Shares and/or OP Units.

(b) At Closing, subject to the terms and conditions contained in this Agreement, in exchange for its Contributed Interests, each Contributor shall receive cash, OP Units and/or REIT Shares with an aggregate value equal to the portion of Equity Value represented by the Contributed Interests as set forth on Schedule I hereto (collectively referred to as the "Contribution Consideration").

Subject to Section 1.03, the amount of cash, number of OP Units and/or REIT Shares comprising the Contribution Consideration for each Contributed Interest shall be as follows:

(i) Cash. One hundred percent (100%) of the Allocated Share for each Contributed Interest held by a Contributor, in the event such Contributor is not an Accredited Investor, shall be paid in cash.

(ii) OP Units. The Elected OP Unit Percentage of the Allocated Share for the Contributed Interest or portion thereof held by a Contributor, in the event such Contributor is an Accredited Investor, shall be distributed in OP Units in the form of a number of OP Units equal to the applicable portion of such Allocated Share divided by the IPO Price; and

(iii) REIT Shares. The Elected REIT Shares Percentage of the Allocated Share for each Contributed Interest or portion thereof held by a Contributor, in the event such Contributor is an Accredited Investor, shall be distributed in whole REIT Shares in the form of a number of REIT Shares equal to the applicable portion of such Allocated Share divided by the IPO Price; *provided*, that to the extent such distribution of REIT Shares to such Contributor would result in a violation of the restrictions on ownership and transfer set forth in Section 6.3 of the REIT's charter (the "Ownership Limits"), such Contributor shall receive (x) the maximum number of whole REIT Shares that would not result in such a violation of the Ownership Limits, and (y) that number of OP Units equal to the remaining number of REIT Shares not distributed as a result of the application of the foregoing clause (x).

(c) At Closing, in the event that a Contributor receives OP Units in exchange for a Contributed Interest, it shall be admitted as a limited partner of the Operating Partnership. By executing and delivering this Agreement, each Contributor agrees and accepts all of the terms and conditions of the Operating Partnership Agreement and shall be deemed to have executed and delivered a counterpart signature page to the Operating Partnership Agreement.

Section 1.03 FRACTIONAL INTEREST. No fractional OP Units or REIT Shares shall be issued pursuant to this Agreement. All fractional OP Units that a Contributor would otherwise be entitled to receive as a result of the Contribution and the other Formation Transactions shall be aggregated, and each Contributor shall receive the number of whole OP Units resulting from such aggregation and, in lieu of any fractional OP Unit resulting from such

aggregation, an amount in cash determined by multiplying that fraction of an OP Unit to which such Contributor would otherwise have been entitled, by the IPO Price. All fractional REIT Shares that a Contributor would otherwise be entitled to receive as a result of the Contribution and the other Formation Transactions shall be aggregated, and such Contributor shall receive the number of whole REIT Shares resulting from such aggregation and, in lieu of any fractional REIT Share resulting from such aggregation, an amount in cash determined by multiplying that fraction of a REIT Shares to which such Contributor would otherwise have been entitled, by the IPO Price. No interest will be paid or will accrue on any cash paid or payable in lieu of any fractional OP Unit or REIT Share.

Section 1.04 FURTHER ACTION. If, at any time after the Closing, the Operating Partnership shall determine or be advised that any deeds, bills of sale, assignments, assurances or other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Operating Partnership the right, title or interest in or to a Contributed Interests, the Contributor of such Contributed Interest shall execute and deliver all such deeds, bills of sale, assignments and assurances and take and do all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in such Contributed Interests or otherwise to carry out this Agreement.

Section 1.05 CALCULATION OF CONTRIBUTION CONSIDERATION. As soon as practicable following the determination of the IPO Price and prior to the Closing, all calculations relating to the Contribution Consideration shall be performed in good faith by, or under the direction of, the REIT and the Operating Partnership and the parties hereby agree that, absent manifest error, such calculations shall be final and binding upon each Contributor.

ARTICLE II

CLOSING

Section 2.01 CONDITIONS PRECEDENT.

(a) Condition to Each Party's Obligations. The respective obligation of each party to effect the contributions contemplated by this Agreement and to consummate the other transactions contemplated hereby to occur on the Closing Date is subject to the satisfaction or waiver on or prior to the Closing of the following conditions:

(i) Registration Statement. The Registration Statement shall have become effective under the Securities Act and shall not be the subject of any stop order or proceedings by the Securities and Exchange Commission ("SEC") seeking a stop order. This condition may not be waived by any party.

(ii) No Injunction. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, judgment, injunction or other order (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of any of the transactions contemplated in this Agreement nor shall any of the same brought by a Governmental Authority of competent jurisdiction be pending that seeks the foregoing.

(b) Conditions to Obligations of the Operating Partnership and OP Subsidiary. The obligations of the Operating Partnership and OP Subsidiary are further subject to satisfaction of the following conditions (any of which may be waived by the Operating Partnership and OP Subsidiary in whole or in part):

(i) Representations and Warranties. Except as would not have a material adverse effect, the representations and warranties of each Contributor contained in this Agreement, as well as those of the Ernest Rady Trust U/D/T March 10, 1983, as amended (the Rady Trust") contained in the Representation, Warranty and Indemnity Agreement, shall be true and correct in all material respects at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(ii) Performance by each Contributor. Each Contributor shall have performed each of the agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date and each Contributor shall not have breached any of its covenants contained herein in any material respect.

(iii) IPO Closing. The closing of the IPO shall occur substantially concurrently with the Closing.

(iv) Consents, Etc. All necessary consents and approvals of Governmental Authorities or third parties (including lenders) for each Contributor to consummate the transactions contemplated hereby shall have been obtained.

(v) No Material Adverse Change. There shall have not occurred between the date hereof and the Closing Date any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of any American Assets Entity in which the Contributed Interests are being contributed or any other Properties held by such American Assets Entity.

(vi) Representation, Warranty and Indemnity Agreement. The Rady Trust and each other party thereto shall have entered into the Representation, Warranty and Indemnity Agreement.

(vii) Escrow Agreement. Each party thereto shall have entered into the Escrow Agreement.

(viii) Formation Transactions. The Formation Transactions shall have been or shall simultaneously be consummated in accordance with the timing set forth in the respective Formation Transaction Documentation.

(ix) Lock-Up Agreement. Each Contributor shall have entered into the Lock-Up Agreement substantially in the form attached as Exhibit B.

(x) Tax Protection Agreement. In the event that any Contributor (1) owns, directly or indirectly, an interest in any Property specified in the Tax Protection Agreement or (2) has been provided an opportunity to guarantee debt as set forth in the Tax Protection Agreement shall have entered into the Tax Protection Agreement substantially in the form attached as Exhibit C, if applicable.

(c) Conditions to Obligations of each Contributor. The obligations of each Contributor to effect the contribution contemplated by this Agreement and to consummate the other transactions contemplated hereby to occur on the Closing Date are further subject to satisfaction of the following conditions (any of which may be waived by such Contributor in whole or in part):

(i) Representations and Warranties. Except as would not have an OP Material Adverse Effect, the representations and warranties of the Operating Partnership and OP Subsidiary contained in this Agreement shall be true and correct at the Closing as if made again at that time (except to the extent that any representation or warranty speaks as of an earlier date, in which case it must be true and correct only as of that earlier date).

(ii) Performance by the Operating Partnership. Except as would not have an OP Material Adverse Effect, each of the Operating Partnership and OP Subsidiary shall have performed all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(iii) Registration Rights Agreement. The REIT shall have entered into the registration rights agreement, substantially in the form attached as Exhibit D hereto. This condition may not be waived by any party hereto.

(iv) Tax Protection Agreement. In the event that such Contributor (1) owns, directly or indirectly, an interest in any Property specified in the Tax Protection Agreement or (2) has been provided an opportunity to guarantee debt as set forth in the Tax Protection Agreement, the REIT and the Operating Partnership shall have entered into the Tax Protection Agreement substantially in the form attached as Exhibit C, if applicable.

Section 2.02 TIME AND PLACE. Unless this Agreement shall have been terminated pursuant to Section 2.06 hereof, and subject to satisfaction or waiver of the conditions in Section 2.01 hereof, the closing of the contributions contemplated by Section 1.01 and the other transactions contemplated hereby shall occur substantially concurrently with the receipt by the REIT of the proceeds from the IPO from the underwriters (the "Closing" or the "Closing Date") in the order set forth on Exhibit E. The Closing shall take place at the offices of Latham & Watkins LLP, 12636 High Bluff Drive, Suite 400, San Diego, California 92130 or such other place as determined by the Operating Partnership in its sole discretion.

Section 2.03 DELIVERY OF CONTRIBUTION CONSIDERATION. As soon as reasonably practicable after the Closing, the Operating Partnership shall deliver to each Contributor the Contribution Consideration payable to such Contributor in the amounts and form provided in Section 1.02(b) hereof. The issuance of OP Units pursuant to Section 1.02(b)(ii)

shall be evidenced by an amendment to the Operating Partnership Agreement, and the Operating Partnership shall deliver, or cause to be delivered, an executed copy of such amendment to each Contributor. Any certificate representing REIT Shares issuable as Contribution Consideration shall bear the following legend:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS THE TRANSFEROR DELIVERS TO THE CORPORATION AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION, TO THE EFFECT THAT THE PROPOSED SALE, TRANSFER OR OTHER DISPOSITION MAY BE EFFECTED WITHOUT REGISTRATION UNDER THE ACT AND UNDER APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON BENEFICIAL AND CONSTRUCTIVE OWNERSHIP AND TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). SUBJECT TO CERTAIN FURTHER RESTRICTIONS AND EXCEPT AS EXPRESSLY PROVIDED IN THE CORPORATION'S CHARTER, (I) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF THE CORPORATION'S COMMON STOCK IN EXCESS OF [__]% (IN VALUE OR NUMBER OF SHARES) OF THE OUTSTANDING SHARES OF COMMON STOCK OF THE CORPORATION UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (II) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK OF THE CORPORATION IN EXCESS OF [__]% OF THE VALUE OF THE TOTAL OUTSTANDING SHARES OF CAPITAL STOCK OF THE CORPORATION, UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER LIMIT SHALL BE APPLICABLE); (III) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN CAPITAL STOCK THAT WOULD RESULT IN THE CORPORATION BEING "CLOSELY HELD" UNDER SECTION 856(h) OF THE CODE OR OTHERWISE CAUSE THE CORPORATION TO FAIL TO QUALIFY AS A REIT; AND (IV) NO PERSON MAY TRANSFER SHARES OF CAPITAL STOCK IF SUCH TRANSFER WOULD RESULT IN THE CAPITAL STOCK OF THE CORPORATION BEING OWNED BY FEWER THAN 100 PERSONS. ANY PERSON WHO BENEFICIALLY OR CONSTRUCTIVELY OWNS OR ATTEMPTS TO

BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK WHICH CAUSES OR WILL CAUSE A PERSON TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK IN EXCESS OR IN VIOLATION OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE CORPORATION. IF ANY OF THE RESTRICTIONS ON TRANSFER OR OWNERSHIP SET FORTH IN (I) THROUGH (III) ABOVE ARE VIOLATED, THE SHARES OF CAPITAL STOCK REPRESENTED HEREBY WILL BE AUTOMATICALLY TRANSFERRED TO A TRUSTEE OF A TRUST FOR THE BENEFIT OF ONE OR MORE CHARITABLE BENEFICIARIES. IN ADDITION, THE CORPORATION MAY TAKE OTHER ACTIONS, INCLUDING REDEEMING SHARES UPON THE TERMS AND CONDITIONS SPECIFIED BY THE BOARD OF DIRECTORS IN ITS SOLE AND ABSOLUTE DISCRETION IF THE BOARD OF DIRECTORS DETERMINES THAT OWNERSHIP OR A TRANSFER OR OTHER EVENT MAY VIOLATE THE RESTRICTIONS DESCRIBED ABOVE. FURTHERMORE, UPON THE OCCURRENCE OF CERTAIN EVENTS, ATTEMPTED TRANSFERS IN VIOLATION OF THE RESTRICTIONS DESCRIBED ABOVE MAY BE VOID *AB INITIO*. ALL UNDERLINED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN THE CHARTER OF THE CORPORATION, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER AND OWNERSHIP, WILL BE FURNISHED TO EACH HOLDER OF CAPITAL STOCK OF THE CORPORATION ON REQUEST AND WITHOUT CHARGE. REQUESTS FOR SUCH A COPY MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL OFFICE.

Section 2.04 CLOSING DELIVERIES. At the Closing, the parties shall make, execute, acknowledge and deliver, or cause to be made, executed, acknowledged and delivered, any other documents reasonably requested by the Operating Partnership or OP Subsidiary or reasonably necessary or desirable to assign, transfer, convey, contribute and deliver the Contributed Interests, free and clear of all Liens and to effectuate the transactions contemplated hereby.

Section 2.05 CLOSING COSTS. If the Closing occurs, the REIT and the Operating Partnership shall be solely responsible for all transaction costs and expenses of the REIT, the Operating Partnership and the American Assets Entities in connection with the Formation Transactions and the IPO, which include, but are not limited to, the underwriting discounts and commissions. In the event the Closing does not occur, such costs and expenses shall be paid in accordance with the terms of that certain letter agreement entered into by the Property Entities (as defined therein) and American Assets, Inc., a California corporation, dated as of May 17, 2010.

Section 2.06 TERM OF THE AGREEMENT. This Agreement shall terminate automatically if (i) the initial registration statement of the REIT for the IPO (the "Registration

Statement") has not been filed with the SEC by March 31, 2011, or (ii) the contributions contemplated herein shall not have been consummated on or prior to December 31, 2011 (such date is hereinafter referred to as the "Outside Date").

Section 2.07 EFFECT OF TERMINATION. In the event of termination of this Agreement for any reason, all obligations on the part of the Operating Partnership the OP Subsidiary and each Contributor under this Agreement shall terminate, except that the obligations set forth in Article VI shall survive, it being understood and agreed, however, for the avoidance of doubt, that if this Agreement is terminated because one or more of the conditions to the non-breaching party's obligations under this Agreement are not satisfied by the Outside Date as a result of the other party's material breach of a covenant, representation, warranty or other obligation under this Agreement or any other Formation Transaction Documentation, the non-breaching party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

Section 2.08 TAX WITHHOLDING. The Operating Partnership and OP Subsidiary shall be entitled to deduct and withhold from the consideration payable pursuant to this Agreement to any holder of Contributed Interest such amounts required to be deducted and withheld with respect to the making of such payment under the Code or any provision of state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the former holder of Contributed Interest in respect of which such deduction and withholding was made.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE OPERATING PARTNERSHIP AND OP SUBSIDIARY

Each of the Operating Partnership and OP Subsidiary hereby represents and warrants to each Contributor as follows:

Section 3.01 ORGANIZATION; AUTHORITY.

(a) Each of the Operating Partnership and OP Subsidiary has been duly incorporated or formed and is validly existing and in good standing under the Laws of its jurisdiction of formation or incorporation, as applicable, and, upon the effectiveness of the Operating Partnership Agreement, will have all requisite power and authority to enter into this Agreement and the other Formation Transaction Documentation and to carry out the transactions contemplated hereby and thereby, and to own, lease and/or operate its property and to carry on its business as presently conducted and each of the Operating Partnership and OP Subsidiary, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

(b) Schedule 3.01(b) sets forth as of the date hereof, (i) each Subsidiary of the Operating Partnership (each an "Operating Partnership Subsidiary"), (ii) the ownership interest

therein of the Operating Partnership, and (iii) if not wholly owned by the Operating Partnership, the identity and ownership interest of each of the other owners of such Operating Partnership Subsidiary. Each Operating Partnership Subsidiary has been duly organized or formed and is validly existing and is in good standing under the Laws of its jurisdiction of organization or formation, as applicable, has all requisite power and authority to own, lease and/or operate its property and to carry on its business as presently conducted and, to the extent required under applicable Laws, is qualified to do business and is in good standing in each jurisdiction in which the nature of its business or the character of its property make such qualification necessary, other than such failures to be so qualified as would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.02 DUE AUTHORIZATION. The execution, delivery and performance of this Agreement and the other Formation Transaction Documentation (including each agreement, document and instrument executed and delivered by or on behalf of the Operating Partnership and OP Subsidiary pursuant to this Agreement or the other Formation Transaction Documentation) by the Operating Partnership and OP Subsidiary has been duly and validly authorized by all necessary actions required of each of the Operating Partnership and OP Subsidiary, respectively. This Agreement, the other Formation Transaction Documentation and each agreement, document and instrument executed and delivered by or on behalf of each of the Operating Partnership and OP Subsidiary pursuant to this Agreement or the other Formation Transaction Documentation constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of each of the Operating Partnership and OP Subsidiary, enforceable against each of the Operating Partnership and OP Subsidiary in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.03 CONSENTS AND APPROVALS. Except in connection with the IPO and the consummation of the other Formation Transactions or as shall have been obtained on or prior to the Closing Date, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration or filing with, any Person or Governmental Authority or under any applicable Laws is required to be obtained by the Operating Partnership or OP Subsidiary in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby, except for (i) those consents, waivers, approvals, authorizations, orders, licenses, permits, registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect, or (ii) those consents of the Pre-Formation Participants under the organizational documents of the applicable American Assets Entity, the failure of which to obtain would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.04 NO VIOLATION. None of the execution, delivery or performance of this Agreement, the other Formation Transaction Documentation, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the organizational documents of the Operating Partnership or OP Subsidiary, (B) any agreement, document or

instrument to which the Operating Partnership or OP Subsidiary or any of their respective assets are bound or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on the Operating Partnership or OP Subsidiary, except for, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have an OP Material Adverse Effect.

Section 3.05 VALIDITY OF OP UNITS. Any OP Units to be issued pursuant to this Agreement will have been duly authorized and, when issued against the consideration therefor, will be validly issued by the Operating Partnership, free and clear of all Liens created by the Operating Partnership (other than any Liens created by the Agreement of Limited Partnership of the Operating Partnership (the "Operating Partnership Agreement")).

Section 3.06 LITIGATION. Except for actions, suits or proceedings covered by policies of insurance, there is no action, suit or proceeding pending or, to the knowledge of the Operating Partnership or OP Subsidiary, threatened against the Operating Partnership or any Operating Partnership Subsidiary, other than actions, suits, proceedings that individually or in the aggregate, would not reasonably be expected, (a) if adversely determined, to have an OP Material Adverse Effect, or (b) to impair the ability of the Operating Partnership or OP Subsidiary to execute or deliver, or materially perform its obligations under, this Agreement and the documents executed by it pursuant to this Agreement or to consummate the transactions contemplated hereby or thereby, to such an extent as would result in an OP Material Adverse Effect.

Section 3.07 OPERATING PARTNERSHIP AGREEMENT. Attached as Exhibit F hereto is a true and correct copy of the Operating Partnership Agreement in substantially final form.

Section 3.08 LIMITED ACTIVITIES. Except for activities in connection with the IPO or the Formation Transactions or in the ordinary course of business, neither the Operating Partnership, the Operating Partnership Subsidiaries nor OP Subsidiary have engaged in any material business or incurred any material obligations.

Section 3.09 NO BROKER. Neither the Operating Partnership nor OP Subsidiary has entered into, and each of the Operating Partnership and OP Subsidiary covenants that it will not enter into, any agreement, arrangement or understanding with any Person or firm which will result in the obligation of any Contributor nor any Affiliates thereof to pay any finder's fee, brokerage commission or similar payment in connection with the transaction contemplated by this Agreement (other than underwriting discounts, commissions and other fees and expenses to be paid by the REIT in connection with the IPO and any related financing transactions).

Section 3.10 NO OTHER REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article III and any other agreement entered into in connection with the Formation Transactions, the Operating Partnership and OP Subsidiary shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby. All representations, warranties and covenants of the Operating Partnership and OP Subsidiary contained in this Agreement shall expire at Closing.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE CONTRIBUTORS

Except as disclosed in the Prospectus or the schedules hereto, each Contributor hereby represents, warrants and agrees that as of the Closing Date:

Section 4.01 ORGANIZATION; AUTHORITY. If such Contributor is a natural person, such Contributor has the legal capacity and authority to execute, deliver and perform its obligations under this Agreement, and no Person has any community property rights, by virtue of marriage or otherwise, with respect to the Contributed Interest. If such Contributor is a Person other than a natural person, such Contributor has been duly formed, is validly existing and (to the extent such concept is applicable to such Person) in good standing under the Laws of its jurisdiction of formation, and has all requisite power and authority to enter into this Agreement, each agreement contemplated hereby and the other Formation Transaction Documentation to which it is a party (including any agreement, document and instrument executed and delivered by or on behalf of such Contributor pursuant to this Agreement or the other Formation Transaction Documentation) and to carry out the transactions contemplated hereby and thereby.

Section 4.02 DUE AUTHORIZATION. If such Contributor is a Person other than a natural person, the execution, delivery and performance of this Agreement (including any agreement, document and instrument executed and delivered pursuant to this Agreement) by such Contributor have been duly and validly authorized by all necessary actions required of such Contributor. This Agreement and each agreement, document and instrument executed and delivered by or on behalf of such Contributor pursuant to this Agreement constitutes, or when executed and delivered will constitute, the legal, valid and binding obligation of such Contributor, each enforceable against such Contributor in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.03 OWNERSHIP OF CONTRIBUTED INTERESTS. Such Contributor is the sole record owner of all of its Contributed Interests and has the power and authority to transfer, sell, assign and convey to the Operating Partnership its Contributed Interests free and clear of any Liens and, upon delivery of the consideration for such Contributed Interests as provided herein, the Operating Partnership will acquire good and valid title thereto, free and clear of any Liens (other than those Liens created by the Organizational Documents governing such Contributed Interest). Except as provided for or contemplated by this Agreement or the other applicable Formation Transaction Documentation, there are no rights to purchase, veto rights with respect to transfers, subscriptions, warrants, options, conversion rights, preemptive rights, agreements, instruments or understandings of any kind outstanding (i) relating to its Contributed Interests or (ii) to purchase, transfer or to otherwise acquire, or to in any way encumber, any of the interests which comprise its Contributed Interests or any securities or obligations of any kind convertible into any of the interests which comprise its Contributed Interests. Such Contributor has no equity interest, either direct or indirect, in the Properties, except for such Contributor's Contributed Interests.

Section 4.04 CONSENTS AND APPROVALS. Except as shall have been obtained or satisfied on or prior to the Closing Date, no consent, waiver, approval, authorization, order, license, permit or registration of, qualification, designation, declaration, or filing with, any Person or Governmental Authority or under any applicable Laws is required to be obtained by such Contributor in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby, except for those consents, waivers, approvals, authorizations or registrations, qualifications, designations, declarations or filings, the failure of which to obtain or to file would not, individually or in the aggregate, reasonably be expected to have a material adverse effect.

Section 4.05 NO VIOLATION. None of the execution, delivery or performance of this Agreement, any agreement contemplated hereby between the parties to this Agreement and the transactions contemplated hereby between the parties to this Agreement does or will, with or without the giving of notice, lapse of time, or both, violate, conflict with, result in a breach of, or constitute a default under or give to others any right of termination, acceleration, cancellation or other right under, (A) the organizational documents of such Contributor, if such Contributor is a person other than a natural Person, (B) any agreement, document or instrument to which such Contributor is a party or by which such Contributor or its Contributed Interests are bound or (C) any term or provision of any judgment, order, writ, injunction, or decree binding on such Contributor (or its assets or properties), except, in the case of clause (B) or (C), any such breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a material adverse effect.

Section 4.06 TAXES. Except as set forth in Schedule 4.06, such Contributor has included all income, gain, loss, deduction or other Tax items in such Contributor's income Tax returns in a manner consistent with the Schedule K-1's received by such Contributor from each American Assets Entity, the interests of which are being contributed by such Contributor.

Section 4.07 NON-FOREIGN PERSON. Unless otherwise indicated on the Contributor's Consent Form, such Contributor is a United States person (as defined in the Code).

Section 4.08 LITIGATION. Except as set forth in Schedule 4.08, to such Contributor's knowledge, there is no action, suit or proceeding pending or threatened against such Contributor affecting all or any portion of its Contributed Interests or such Contributor's ability to consummate the transactions contemplated hereby which, if adversely determined, would adversely affect such Contributor's ability to so consummate the transactions contemplated hereby. Such Contributor knows of no outstanding order, writ, injunction or decree of any Governmental Authority against or affecting all or any portion of such Contributor's Contributed Interests, which in any such case would impair such Contributor's ability to enter into and perform all of its obligations under this Agreement.

Section 4.09 INSOLVENCY. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to such Contributor's knowledge, threatened against such Contributor, nor are any such proceedings contemplated by such Contributor.

Section 4.10 INVESTMENT. Such Contributor acknowledges that the offering and issuance of the REIT Shares and/or OP Units to be acquired pursuant to this Agreement are intended to be exempt from registration under the Securities Act and that the REIT's and Operating Partnership's reliance on such exemptions is predicated in part on the accuracy and completeness of the representations and warranties of such Contributor contained herein and in such Contributor's Consent Form. In furtherance thereof, such Contributor represents and warrants to the Operating Partnership as follows:

(a) Such Contributor is an "accredited investor" (as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act).

(b) Such Contributor is acquiring the REIT Shares and/or OP Units solely for its own account for the purpose of investment and not as a nominee or agent for any other Person and not with a view to, or for offer or sale in connection with, any distribution of any thereof in violation of the securities Laws.

(c) Such Contributor is knowledgeable, sophisticated and experienced in business and financial matters; such Contributor has previously invested in securities similar to the REIT Shares and/or OP Units and fully understands the limitations on transfer imposed by the federal securities Laws. Such Contributor is able to bear the economic risk of holding the REIT Shares and/or OP Units for an indefinite period and is able to afford the complete loss of its investment in the REIT Shares and/or OP Units; such Contributor has received and reviewed all information and documents about or pertaining to the Operating Partnership and the business and prospects of the Operating Partnership and the issuance of the REIT Shares and/or OP Units as such Contributor deems necessary or desirable, and has been given the opportunity to obtain any additional information or documents and to ask questions and receive answers about such information and documents, the REIT, the Operating Partnership and the business and prospects of the REIT and the Operating Partnership which such Contributor deems necessary or desirable to evaluate the merits and risks related to its investment in the REIT Shares and/or OP Units; and such Contributor understands and has taken cognizance of all risk factors related to the purchase of the REIT Shares and/or OP Units. Such Contributor is relying upon its own independent analysis and assessment (including with respect to taxes), and the advice of such Contributor's advisors (including tax advisors), and not upon that of the Operating Partnership or any of the Operating Partnership's Affiliates, for purposes of evaluating, entering into, and consummating the transactions contemplated hereby.

(d) Such Contributor acknowledges that (i) the OP Units are not redeemable or exchangeable for cash or REIT Shares for a minimum of 14 months after the date of issuance, and (ii) the REIT Shares and/or OP Units have not been registered under the Securities Act and, therefore, unless registered under the Securities Act or an exemption from registration is available, must be held (and the Contributor must continue to bear the economic risk of the investment in the REIT Shares and/or OP Units) indefinitely and may not be transferred or sold.

Section 4.11 NO OTHER REPRESENTATIONS OR WARRANTIES. Other than the representations and warranties expressly set forth in this Article IV and any other agreement entered into by such Contributor in connection with the Formation Transactions, such Contributor shall not be deemed to have made any other representation or warranty in connection with this Agreement or the transactions contemplated hereby.

Section 4.12 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. The parties hereto agree and acknowledge that the representations and warranties set forth in this Article IV (other than Section 4.01, Section 4.02, Section 4.03, Section 4.07 and Section 4.10) shall not survive the Closing.

ARTICLE V

COVENANTS AND OTHER AGREEMENTS

Section 5.01 COVENANTS OF THE CONTRIBUTORS. From the date hereof through the Closing, except as otherwise provided for or as contemplated by this Agreement or the other applicable Formation Transaction Documentation, each Contributor shall not without the prior written consent of the Operating Partnership, which consent may be withheld by the Operating Partnership in its sole discretion:

(a) Sell, transfer or otherwise dispose, or agree to sell, transfer or otherwise dispose of, all or any portion of the Contributed Interests, or cause the sale, transfer or disposal of all or any portion of the Contributed Interests;

(b) Mortgage, pledge, hypothecate, encumber (or agree, permit or cause to become encumbered) all or any portion of the Contributed Interests;

(c) Cause the applicable American Assets Entity or its Subsidiaries to: file an entity classification election pursuant to Treasury Regulation Section 301.7701-3(c) on Internal Revenue Service Form 8832 (Entity Classification Election) to treat such American Assets Entity or any of its Subsidiaries as an association taxable as a corporation for United States federal income tax purposes; make or change any other Tax elections; settle or compromise any claim, notice, audit report or assessment in respect of Taxes; change any annual Tax accounting period; adopt or change any method of Tax accounting; file any amended Tax return; enter into any tax allocation agreement, tax sharing agreement, tax indemnity agreement or closing agreement relating to any Tax; surrender of any right to claim a Tax refund; or consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment; or

(d) Authorize or consent to, permit or cause any American Assets Entity to take, any of the actions prohibited by the Formation Transaction Documentation.

Section 5.02 COMMERCIALLY REASONABLE EFFORTS BY THE OPERATING PARTNERSHIP AND THE CONTRIBUTORS. Each of the Operating Partnership and each Contributor shall use commercially reasonable efforts and cooperate with each other in (i) promptly determining whether any filings are required to be made or consents, approvals, waivers, permits or authorizations are required to be obtained (under any applicable Law or regulation or from any Governmental Authority or third party) in connection with the transactions contemplated by this Agreement, and (ii) promptly making any such filings, in furnishing information required in connection therewith and in timely seeking to obtain any such consents, approvals, waivers, permits or authorizations.

Section 5.03 TAX MATTERS.

(a) So long as some portion of the Contribution Consideration with respect to the Contributed Interests is in the form of OP Units, the parties hereto intend and agree that, for United States federal income tax purposes, the Contribution of such Contributed Interests shall constitute an "assets-over" partnership merger within the meaning of Treasury Regulations Section 1.708-1(c)(3)(i), and, as a result, that (i) any payment of cash or REIT Shares for the Contributed Interests shall be treated as a sale of such Contributed Interests by the holder and a purchase of such Contributed Interests by the Operating Partnership for the cash and/or REIT Shares so paid under the terms of this Agreement in accordance with Treasury Regulations Section 1.708-1(c)(4), and (ii) each such holder of the Contributed Interests who accepts cash and/or REIT Shares shall explicitly agree and consent (the "Sale Consent") to such treatment in their Consent Form as a condition to electing such consideration. To the extent the Operating Partnership acquires any Contributed Interests as described above, or previously acquired such interest, for United States federal income tax purposes the receipt by the Operating Partnership of the portion of property attributable to such Contributed Interests shall be treated as a distribution by applicable American Assets Entity in redemption of such Contributed Interests. Notwithstanding Section 1.02 and any holder's election as to the form of their Contribution Consideration, if any holder (other than a non-accredited investor), fails to execute a Sale Consent prior to the Closing, such holder's Contribution Consideration shall consist solely of OP Units. Any cash paid as the Contribution Consideration to a non-accredited investor for a Contributed Interest shall be paid only after the receipt of a Sale Consent from such holder

(b) The Operating Partnership shall prepare or cause to be prepared and file or cause to be filed all income Tax returns of each American Assets Entity the Contributed Interests of which have been contributed pursuant to this agreement and any Subsidiary of such American Assets Entity which are due after the Closing Date. All such income Tax returns (including, for the avoidance of doubt, any amended Tax returns) shall be prepared in a manner consistent with past practice, except as otherwise required by applicable law. No later than ten (10) days prior to the due date (including extensions) for filing such income Tax returns, the Operating Partnership shall deliver such income Tax returns to American Assets, Inc. for its review and approval, which shall not be unreasonably withheld.

(c) The Operating Partnership shall prepare or cause to be prepared all other Tax returns of each American Assets Entity the Contributed Interests of which have been contributed pursuant to this agreement and any Subsidiary of such American Assets Entity.

(d) The REIT, the Operating Partnership and each Contributor shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax returns related to the transactions pursuant to this Agreement and any audit, litigation or administrative, judicial or other inquiry or proceeding with respect to Taxes related to the transactions pursuant to this Agreement. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such action or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The REIT, the Operating Partnership and each Contributor further agree, upon request, to use their reasonable efforts to obtain any certificate or other document from any governmental authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed with respect to the transactions contemplated hereby.

(e) Prior to Closing, each Contributor shall deliver to the Operating Partnership a properly executed certificate prepared in accordance with Treasury regulations section 1.1445-2(b) certifying such Contributor's non-foreign status, and if requested by the Operating Partnership, and any similar withholding certificates or other forms under applicable state, local or foreign Tax laws.

(f) The REIT and the Operating Partnership make no representations or warranties to the Contributors or to the American Assets Entities regarding the Tax treatment of the contributions pursuant to this Agreement or of the other Formation Transactions, or with respect to any other Tax consequences to any Contributor or any American Assets Entity of this Agreement or the other Formation Transactions. Each Contributor acknowledges that each American Assets Entity and each Contributor are relying solely on their own Tax advisors in connection with this Agreement and the other Formation Transactions.

Section 5.04 CONSENT AND WAIVER OF RIGHTS UNDER ORGANIZATIONAL DOCUMENTS. As of the Closing, each Contributor waives and relinquishes all rights and benefits otherwise afforded to the Contributor (a) under the Organizational Documents of the applicable American Assets Entity including, without limitation, any rights of appraisal, rights of first offer or first refusal, buy/sell agreements, put, option, or similar parallel exit or dissenter rights in connection with the Formation Transactions and the IPO, and any right to consent to or approve of the sale or contribution or other transaction undertaken by the other partners or members of the applicable American Assets Entity of their Contributed Interests to the Operating Partnership, the REIT or any direct or indirect subsidiary thereof and any and all notice provisions related thereto, (b) to the extent permissible under applicable Laws, any statutory rights with respect to the Contributed Interests or the applicable American Assets Entity and (c) for claims against the REIT or the Operating Partnership for breach by any Contributor or any of their respective present or former officers, directors, managing members, general partners or Affiliates of their fiduciary duties or similar obligations (including duties of disclosure) to any of their respective present or former shareholders, members, partners, equity interest holders or Affiliates or the terms of the applicable Organizational Documents. Each Contributor acknowledges that the agreements contained herein and the transactions contemplated hereby and any actions taken in contemplation of the transactions contemplated hereby may conflict with, and may not have been contemplated by, the Organizational Documents of the applicable American Assets Entity or other agreements among one or more holders of such Contributed Interests or one or more of the partners or members of any such American Assets Entity. With respect to each American Assets Entity and each Property in which a Contributed Interest of the Contributor represents a direct or indirect interest, such Contributor expressly gives all consents (and any consents necessary to authorize the proper parties in interest to give all consents) and waivers it is entitled to give that are necessary or desirable to facilitate the contribution or other Formation Transactions relating to such American Assets Entity or property. In addition, if the transactions contemplated hereby occur, this Agreement shall be deemed to be an amendment to the Organizational Documents of the applicable American Assets Entity to the extent the terms herein conflict with the terms thereof, including without limitation, terms with respect to allocations, distributions and the like. In the event the transactions contemplated by this

Agreement do not occur, nothing in this Agreement shall be deemed to be or construed as an amendment or modification of, or commitment of any kind to amend or modify, the Organizational Documents of the applicable American Assets Entity, which shall remain in full force and effect without modification.

Section 5.05 EXCLUDED ASSETS. Prior to or, as specified on Schedule 5.05, as soon as possible following the Closing and after such amounts are reasonably determinable, each American Assets Entity and its Subsidiaries shall distribute or cause to be distributed or paid out the assets identified on Schedule 5.05 (the "Excluded Assets").

Section 5.06 OBLIGATIONS OF OP SUBSIDIARY. Subject to the terms of this Agreement, the Operating Partnership shall take all reasonable action necessary to cause OP Subsidiary (i) to be formed prior to the Closing Date and become a party to this Agreement by executing a counterpart of this Agreement where indicated on the signature page hereof (the date of such execution, the "Joinder Date") and (ii) to perform its obligations under this Agreement and to consummate the transactions contemplated hereby on the terms and conditions set forth in this Agreement. All representations, warranties, covenants, agreements, rights and obligations of OP Subsidiary herein shall become effective as to OP Subsidiary as of the Joinder Date.

Section 5.07 ALTERNATE TRANSACTION. In the event that the Operating Partnership determines that a structure change is necessary, advisable or desirable, the Operating Partnership may elect, in its sole and absolute discretion, to effect the Alternate Transaction, without the need for the Operating Partnership to seek any further consent or action from any Contributor, and each Contributor shall, and it shall cause its stockholders, members or partners, as applicable, and Subsidiaries to, enter into such agreements as shall be necessary to consummate the Alternate Transaction.

Section 5.08 EXCLUSION OF INTERESTS. The parties hereby agree that the Operating Partnership shall have the right, in its sole discretion, to exclude any Contributed Interest, or any interest held directly or indirectly through a Contributed Interest, from this contribution after the date hereof until the Effective Time, provided that the Operating Partnership shall provide prior written notice to such Contributor regarding such exclusion.

ARTICLE VI

GENERAL PROVISIONS

Section 6.01 NOTICES. All notices and other communications under this Agreement shall be in writing and shall be deemed given when (a) delivered personally, (b) five (5) Business Days after being mailed by certified mail, return receipt requested and postage prepaid, (c) one (1) Business Day after being sent by a nationally recognized overnight courier or (d) transmitted by facsimile if confirmed within twenty-four (24) hours thereafter by a signed original sent in the manner provided in clause (a), (b) or (c) to the parties at the following addresses (or at such other address for a party as shall be specified by notice from such party):

(a) if to the Operating Partnership to:

American Assets Trust, L.P.
c/o American Assets Trust, Inc.
11455 El Camino Real, Suite 200
San Diego, California 92130
Facsimile: (858) 350-2620
Attention: Chief Executive Officer

(b) If to a Contributor, to the address set forth opposite such Contributor's name on Schedule I hereto.

Section 6.02 DEFINITIONS. For purposes of this Agreement, the following terms shall have the following meanings.

(a) "Accredited Investor" has the meaning set forth under Regulation D of the Securities Act.

(b) "Affiliate" means, with respect to any Person, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

(c) "Allocated Share" means the amount that would be allocated to a Pre-Formation Participant that is the holder of an interest in an American Assets Entity in accordance with the provisions of the existing Organizational Documents of such entity relating to distributions of distributable net proceeds from sales of directly or indirectly owned properties or assets, and assuming the sale of the relevant Target Asset or Target Assets that are directly or indirectly owned by such entity for a value equal to such Target Asset's or Target Assets' respective Equity Value(s).

Notwithstanding the foregoing, the Allocated Share of any Pre-Formation Participant shall reflect the following adjustments:

1. Intercompany Debt Adjustment. In calculating Allocated Share, all Intercompany Debt shall be taken into account so that the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligor of Intercompany Debt collectively are reduced, and the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in the obligee of such Intercompany Debt collectively are increased, in each case by the amount of such Intercompany Debt (such adjustments being referred to as "Intercompany Debt Adjustments").
2. Entity Specific Debt Adjustment. To the extent that Entity Specific Debt is allocated to a Target Asset, in calculating Allocated Shares of holders of direct or indirect Pre-Formation Interests in the American Assets Entity or Entities owning such Target Asset, the amount of the decrease in Equity Value of such Target Asset attributable to the allocation of such Entity Specific Debt to such Target Asset (through the operation of the formula set forth on Schedule II) (in each case, such decrease being the "Decrease") shall be taken into account so that:
    a. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in any obligor(s) under such Entity Specific Debt collectively shall be (i) reduced by the amount equal to the excess of (w) the amount of the Entity Specific Debt owed by such obligor over (x) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset; or (ii) increased by the amount equal to the excess of (y) the amount of the Decrease allocated pro rata to such obligor as a direct or indirect owner of the Target Asset over (z) the amount of the Entity Specific Debt owed by such obligor; and

b. the Allocated Shares of the holders of direct or indirect Pre-Formation Interests in American Assets Entities owning such Target Asset that are not obligors under such Entity Specific Debt collectively shall be increased by the amount equal to the amount of the Decrease allocated pro rata to such holders as direct or indirect owner of the Target Asset;

with the net effect under the foregoing clauses (a)(i), (a)(ii) and (b) being that the adverse economic impact of the Decrease shall be borne equitably by the holders of direct or indirect Pre-Formation Interests in the actual obligor(s) under such Entity Specific Debt and not by any other holder of direct or indirect Pre-Formation Interests in the American Assets Entities owning such Target Asset.

Illustrative examples of the application of the foregoing Allocated Share adjustments using hypothetical numbers are included as Example 3 and Example 4 in ***Appendix A*** to Schedule II.

(d) "Alternate Transaction" means (i) a contribution of all or a portion of the assets of the Contributed Entity held directly or indirectly by a Contributor to the Operating Partnership in exchange for the amount of cash and the number of OP Units and/or REIT Shares that were to be issued pursuant to this Agreement (or a portion thereof equal in value to the value of the portion of such assets contributed to the Operating Partnership), (ii) a contribution by each holder of direct or indirect equity interests in a Contributor to the Operating Partnership in exchange for the amount of cash and the number of OP Units and/or REIT Shares that would have otherwise been received by such holder of direct or indirect equity interests pursuant to this Agreement, (iii) the restructuring of this transaction as either (x) a merger of the Contributed Entity with and into either the REIT or a wholly owned subsidiary of the REIT, or the Operating Partnership or a wholly owned Subsidiary of the Operating Partnership or (y) a merger of a wholly owned subsidiary of either the REIT or the Operating Partnership with and into the Contributed Entity, in each case in exchange for the amount of cash and the number of OP Units and/or REIT Shares that were to be issued pursuant to this Agreement, or (iv) any other transaction pursuant to which the REIT, the Operating Partnership or any of their Subsidiaries acquire the Contributed Entity or all or a portion of the assets held directly or indirectly by a Contributor or the Contributed Entity in a transaction pursuant to which such Contributor receives the amount of cash, the number of OP Units and/or the number of REIT Shares that were to be received by such Contributor pursuant to this Agreement (or a portion thereof equal in value to the value of the portion of such assets acquired by the REIT, the Operating Partnership or any of their Subsidiaries pursuant to such Alternate Transaction).

(e) "American Assets Entity" means a Forward OP Merger Entity, Forward REIT Merger Entity, OP Sub Reverse Merger Entity, OP Sub Forward Merger Entity, REIT Sub Forward Merger Entity, or Contributed Entity, as applicable. As used herein, "American Assets Entities" refer to each American Assets Entity, collectively.

(f) "Business Day" means any day that is not a Saturday, Sunday or legal holiday in the State of California.

(g) "Code" means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated or issued thereunder.

(h) "Consent Form" means the forms provided to each holder of Pre-Formation Interests to consent to the Formation Transactions and to make such holder's irrevocable elections with respect to consideration to be received in the Formation Transactions.

(i) "Elected OP Unit Percentage" means, with respect to the Contribution Consideration to be received by any Contributor for any Contributed Interest, the percentage of the Allocated Share represented by such Contributed Interest that the Contributor has made a Valid Election to receive in the form of OP Units.

(j) "Elected REIT Share Percentage" means, with respect to the Contribution Consideration to be received by any Contributor for any Contributed Interest, the percentage of the Allocated Share represented by such Contributed Interest that the Contributor has made a Valid Election to receive in the form of REIT Shares.

(k) "Equity Value" has the meaning set forth in Schedule II hereto.

(l) "Escrow Agreement" means the Indemnity Escrow Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the REIT, acting in the capacity of Escrow Agent.

(m) "Formation Transaction Documentation" means all of the agreements and plans of merger relating to all target entities and all contribution agreements (including this Agreement) and related documents and agreements substantially in the forms accompanying the Request for Consent dated July 31, 2010 and identified in Exhibit G hereto, pursuant to which all of the American Assets Entities and/or the equity interests in the American Assets Entities held by the Pre-Formation Participants are to be acquired by the REIT or the Operating Partnership, directly or indirectly, as part of the Formation Transactions.

(n) "Formation Transactions" means the transactions contemplated by this Agreement and the other Formation Transaction Documentation.

(o) "Governmental Authority" means any government or agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

(p) "Intercompany Debt" means loans or advances among American Assets Entities and/or their Subsidiaries or among holders of Pre-Formation Interests on the one hand and American Assets Entities and/or their Subsidiaries on the other hand, other than those promissory notes set forth on ***Appendix D*** to Schedule II for which Del Monte Center is listed as the associated Target Asset, each of which loans or advances are set forth on Schedule III hereto. Intercompany Debt shall not be discharged pursuant to the Formation Transactions except to the extent any such Intercompany Debt merges out of existence by operation of law as a result of

such transactions (e.g., if the Operating Partnership acquires both the obligor and obligee interest in a loan which reflects an Intercompany Debt). After the closing of the Formation Transactions, and except as provided below, to the extent any such loans are acquired by the REIT, Operating Partnership or their Subsidiaries (e.g., an obligor or obligee with respect to such loans is merged with or into, or acquired by, one of such entities), the REIT, Operating Partnership or their Subsidiaries (as applicable) shall be permitted to take any actions (including repayment) with respect to such Intercompany Debt as they deem appropriate. Intercompany Debt with respect to which either the obligor or the obligee (but not both such parties) under such Intercompany Debt is acquired, directly or indirectly, by the REIT, Operating Partnership or their Subsidiaries, shall be deemed to be discharged immediately after the Formation Transactions by (i) the REIT, Operating Partnership or their Subsidiaries (as applicable) as obligor, or (ii) the obligor to the REIT, Operating Partnership or their Subsidiaries (as applicable) as obligee, in each case in exchange for the consideration payable as set forth in the applicable Formation Transaction Documentation. The amounts payable and receivable with respect to each item of Intercompany Debt shall be determined by the REIT, for purposes of determining the Intercompany Debt Adjustments, within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

(q) "IPO Closing Date" means the closing date of the IPO.

(r) "IPO Price" means the initial public offering price of a REIT Share in the IPO.

(s) "Laws" means laws, statutes, rules, regulations, codes, orders, ordinances, judgments, injunctions, decrees and policies of any Governmental Authority, including, without limitation, zoning, land use or other similar rules or ordinances.

(t) "Liens" means all pledges, claims, liens, charges, restrictions, controls, easements, rights of way, exceptions, reservations, leases, licenses, grants, covenants and conditions, encumbrances and security interests of any kind or nature whatsoever.

(u) "Lock-Up Agreement" means that certain Lock-Up Agreement, by and between the underwriters and each investor of the REIT and/or the Operating Partnership.

(v) "OP Material Adverse Effect" means any material adverse change in any of the assets, business, condition (financial or otherwise), results of operation or prospects of the Operating Partnership and each Operating Partnership Subsidiary, taken as a whole.

(w) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

(x) "Pre-Formation Interests" means the interests held by the Pre-Formation Participants in the American Assets Entities.

(y) "Pre-Formation Participants" means the holders of the equity interests in the relevant American Assets Entities immediately prior to the Formation Transactions.

(z) "Properties" means the office or other property owned by the American Assets Entities or any of their Subsidiaries or leased pursuant to a ground lease.

(aa) "Prospectus" means the REIT's final prospectus as filed with the SEC.

(bb) "Representation, Warranty and Indemnity Agreement" means the Representation, Warranty and Indemnity Agreement, dated as of the date hereof, by and among the REIT, the Operating Partnership and the Rady Trust.

(cc) "Securities Act" means the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder.

(dd) "Subsidiary" of any Person means any corporation, partnership, limited liability company, joint venture, trust or other legal entity of which such Person owns (either directly or through or together with another Subsidiary of such Person) either (i) a general partner, managing member or other similar interest, or (ii)(A) ten percent (10%) or more of the voting power of the voting capital stock or other equity interests, or (B) ten percent (10%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other legal entity.

(ee) "Target Asset" has the meaning set forth in Schedule II hereto.

(ff) "Tax" means all federal, state, local and foreign income, gross receipts, license, property, withholding, sales, franchise, employment, payroll, goods and services, stamp, environmental, customs duties, capital stock, social security, transfer, alternative minimum, excise and other taxes, tariffs or governmental charges of any nature whatsoever, including estimated taxes, together with penalties, interest or additions to Tax with respect thereto, whether or not disputed.

(gg) "Tax Protection Agreement" means that certain Tax Protection Agreement, by and among the REIT, the Operating Partnership and the parties identified as a signatory on Schedule A thereto.

(hh) "Valid Election" means, with respect to any Contributed Interest, an irrevocable election to receive all or a portion of its Allocated Share in the form of OP Units or REIT Shares as indicated on the properly completed and timely received Consent Form of the Contributor or a Consent Form as to which any deficiencies have been waived by the REIT.

Section 6.03 COUNTERPARTS. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party and delivered to each other party.

Section 6.04 ENTIRE AGREEMENT; THIRD-PARTY BENEFICIARIES. This Agreement, the other Formation Transaction Documentation and the Consent Forms to which the parties hereto are a party, including, without limitation, the exhibits and schedules hereto and thereto, constitute the entire agreement and, except as set forth in Section 2.05, supersede each prior agreement and understanding, whether written or oral, among the parties regarding the subject matter of this Agreement. This Agreement is not intended to confer any rights or remedies on any Person other than the parties hereto.

Section 6.05 GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of California, regardless of any Laws that might otherwise govern under applicable principles of conflicts of laws thereof.

Section 6.06 ASSIGNMENT. This Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns; *provided*, *however*, that this Agreement may not be assigned (except by operation of law) by any party without the prior written consent of the other parties, and any attempted assignment without such consent shall be null and void and of no force and effect, except that each of the Operating Partnership and the OP Subsidiary may assign their respective rights and obligations hereunder to an Affiliate.

Section 6.07 JURISDICTION. The parties hereto hereby (a) submit to the exclusive jurisdiction of any state or federal court sitting in the County of San Diego, with respect to any dispute arising out of this Agreement or any transaction contemplated hereby to the extent such courts would have subject matter jurisdiction with respect to such dispute, and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, or that the venue of the action is improper.

Section 6.08 DISPUTE RESOLUTION. The parties intend that this Section 6.08 will be valid, binding, enforceable, exclusive and irrevocable and that it shall survive any termination of this Agreement.

(a) Upon any dispute, controversy or claim arising out of or relating to this Agreement or the enforcement, breach, termination or validity thereof ("Dispute"), the party raising the Dispute will give written notice to the other parties to the Dispute describing the nature of the Dispute following which the parties to such Dispute shall attempt for a period of ten (10) Business Days from receipt by the parties of notice of such Dispute to resolve such Dispute by negotiation between representatives of the parties hereto who have authority to settle such Dispute. All such negotiations shall be confidential and any statements or offers made therein shall be treated as compromise and settlement negotiations for purposes of any applicable rules of evidence and shall not be admissible as evidence in any subsequent proceeding for any purpose. The statute of limitations applicable to the commencement of a lawsuit shall apply to the commencement of an arbitration hereunder, except that no defense based on the running of the statute of limitations will be available based upon the passage of time during any such negotiation. Regardless of the foregoing, a party shall have the right to seek immediate injunctive relief pursuant to Section 6.08(c) below without regard to any such ten (10) Business Day negotiation period.

(b) Any Dispute (including the determination of the scope or applicability of this agreement to arbitrate) that is not resolved pursuant to Section 6.08(a) above shall be submitted to final and binding arbitration in California before one neutral and impartial

arbitrator, in accordance with the Laws of the State of California for agreements made in and to be performed in that State. The arbitration shall be administered by JAMS, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days following a demand for arbitration, the arbitrator shall be appointed by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, as in effect on the date hereof. The arbitrator shall designate the place and time of the hearing. The hearing shall be scheduled to begin as soon as practicable and no later than sixty (60) days after the appointment of the arbitrator (unless such period is extended by the arbitrator for good cause shown) and shall be conducted as expeditiously as possible. The award, which shall set forth the arbitrator's findings of fact and conclusions of law, shall be filed with JAMS and mailed to the parties no later than thirty (30) days after the close of the arbitration hearing. The arbitration award shall be final and binding on the parties and not subject to collateral attack. Judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(c) Notwithstanding the parties' agreement to submit all Disputes to final and binding arbitration before JAMS, the parties shall have the right to seek and obtain temporary or preliminary injunctive relief in any court having jurisdiction thereof. Such courts shall have authority to, among other things, grant temporary or provisional injunctive relief in order to protect any party's rights under this Agreement. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitral tribunal shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitral tribunal's orders to that effect.

(d) The prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, and the non-prevailing party shall pay all expenses and fees of JAMS, all costs of the stenographic record, all expenses of witnesses or proofs that may have been produced at the direction of the arbitrator, and the fees, costs, and expenses of the arbitrator. The arbitrator shall allocate such costs and designate the prevailing party or parties for these purposes.

Section 6.09 SEVERABILITY. Each provision of this Agreement will be interpreted so as to be effective and valid under applicable Law, but if any provision is held invalid, illegal or unenforceable under applicable Law in any jurisdiction, then such invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been included herein.

Section 6.10 RULES OF CONSTRUCTION.

(a) The parties hereto agree that they had the opportunity to be represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(b) The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any

particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." All terms defined in this Agreement shall have the defined meanings contained herein when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Unless explicitly stated otherwise herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time, amended, qualified or supplemented, including (in the case of agreements and instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 6.11 EQUITABLE REMEDIES. The parties agree that irreparable damage would occur to the Operating Partnership in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Operating Partnership shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by a Contributor and to enforce specifically the terms and provisions hereof in any federal or state court located in California, this being in addition to any other remedy to which the Operating Partnership is entitled under this Agreement or otherwise at law or in equity.

Section 6.12 TIME OF THE ESSENCE. Time is of the essence with respect to all obligations under this Agreement.

Section 6.13 DESCRIPTIVE HEADINGS. The descriptive headings herein are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Section 6.14 NO PERSONAL LIABILITY CONFERRED. This Agreement shall not create or permit any personal liability or obligation on the part of any officer, director, partner, employee or shareholder of the Operating Partnership or any of the Contributors.

Section 6.15 CONSENT OF PARTNER, MANAGER OR MEMBER. In accordance with the terms of certain of the agreements governing the Contributed Interests, the undersigned, in its capacity as a partner, manager or member of one or more of the American Assets Entity in which Contributed Interest are held, consents to the applicable transfers contemplated in Section 1.01 hereof and the admission of the Operating Partnership as a substituted partner or member in each applicable American Assets Entity and waives any right of first refusal which the undersigned has with respect of the transfer of any of the Contributed Interests to the Operating Partnership.

Section 6.16 WAIVER OF SECTION 1542 PROTECTIONS. As of the Closing Date, each of the parties hereto expressly acknowledges that it has had, or has had and waived, the

opportunity to be advised by independent legal counsel and hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the California Civil Code and does so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542 which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

Section 6.17 AMENDMENTS. This Agreement may be amended by appropriate instrument, without the consent of any Contributor, at any time prior to the Closing Date; *provided*, that no such amendment, modification or supplement shall be made that alters the amount or changes the form of the consideration to be delivered to the Contributors, without the prior written consent of any Contributor adversely affected by such proposed amendment, modification or supplement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized officers or representatives, all as of the date first written above.

AMERICAN ASSETS TRUST, L.P.,
a Maryland limited partnership

By: AMERICAN ASSETS TRUST, INC.,
a Maryland corporation
Its General Partner

By: _____
Name:
Title:

AMERICAN ASSETS TRUST, INC., a Maryland corporation

By: _____
Name:
Title:

[OP SUBSIDIARY],
a Delaware limited liability company

By: _____
Name:
Title:

EACH CONTRIBUTOR LISTED ON SCHEDULE I HERETO

By: AMERICAN ASSETS TRUST, INC.,
a Maryland corporation
Its: Attorney-in-Fact

By: _____
Name: John W. Chamberlain
Title: President

Schedule I

CONTRIBUTOR

Schedule II

Calculation of Equity Value

For purposes of all Formation Transaction Documentation, "Equity Value" of any Target Asset directly or indirectly owned by the American Assets Entity subject to such agreement shall be calculated pursuant to the formula set forth below. Capitalized terms used in this Schedule II shall have the meanings set forth below and capitalized terms used herein without definition shall have the meanings assigned to such terms in the Agreement.

$$EV = EP \times [TFTV\text{-}TPA]+AA;$$

where:

EV = Equity Value;
EP = Equity Percentage;
TFTV= Total Formation Transaction Value;
TPA = Total Portfolio Adjustment; and
AA = Asset Adjustment;

provided, however, that if the resulting Equity Value for a Target Asset is a negative amount (a "Net Deficit"), then the REIT shall exercise one of the following options, as determined by the REIT in its sole and absolute discretion: (i) select the Target Asset as an Eliminated Asset or (ii) if one or more entities that are subject to the Formation Transaction Documentation that are the direct or indirect owners of such Target Asset would otherwise possess Excluded Assets the value of which in the aggregate would equal or exceed the amount of such Net Deficit, increase the Target Net Working Capital with respect to such entity or entities by the absolute value of such Net Deficit; and *provided further* that if the REIT shall have exercised option (ii) with respect to any Target Asset, the Equity Value with respect to such Target Asset shall be deemed to be equal to zero;

provided further, that if the Equity Value for ICW Valencia/Valencia Corporate Center as calculated above would result in the holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. having an amount of Allocated Shares, prior to the application of the Intercompany Debt Adjustments, that is less than the value of the Intercompany Debt owed by ICW Valencia, L.P. to ICW Plaza, L.P. (such shortfall being referred to as the "Intercompany Debt Shortfall"), then (i) Western Insurance Holdings, Inc. shall issue a promissory note with a term of three years to ICW Valencia, L.P. which shall be treated as an Asset Adjustment with respect to ICW Valencia/Valencia Corporate Center and such promissory note (the "WIH Note") shall have such face amount as shall be necessary to increase the Equity Value of ICW Valencia/Valencia Corporate Center such that the Allocated Shares of holders of direct or indirect Pre-Formation Interests in ICW Valencia, L.P. shall increase by an amount, prior to the application of the Intercompany Debt Adjustments, equal to the Intercompany Debt Shortfall and (ii) the Equity Value for ICW Valencia/Valencia Corporate Center shall be recalculated to give effect to the Asset Adjustment attributable to the issuance of the WIH Note.

Attached as ***Appendix A*** to this Schedule II are illustrative calculations of Equity Value for a hypothetical portfolio of Target Assets.

"Actual Balance" shall mean: (i) with respect to each Existing Loan to be assumed in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such assumption and all assumption fees and any related expenses with respect to such Existing Loan; and (ii) with respect to each Existing Loan to be prepaid, repaid or refinanced in connection with the IPO, the unpaid principal amount of and past due unpaid interest on such Existing Loan as of the IPO Closing Date and immediately prior to any such prepayment, repayment or refinancing and any related prepayment penalties and any related expenses; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Actual Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed. With respect to each Existing Loan to be assumed, prepaid, repaid or refinanced in connection with the Formation Transactions, the Actual Balance as of the Closing Date shall be determined by the REIT within forty five (45) days prior to the date of the preliminary prospectus used in the IPO roadshow based on its good faith estimate of what such amounts will be as of the IPO Closing Date.

"Asset Adjustment" shall mean with respect to each Target Asset and any Existing Loan relating to such Target Asset, an amount equal to the Base Balance minus the Actual Balance (expressed as a positive or negative number, as applicable) with respect to all Existing Loans relating to such Target Asset, and in the case of ICW Valencia/Valencia Corporate Center, the face value of the WIH Note shall be deemed to reduce the Actual Balance of the Existing Loan relating to ICW Valencia/Valencia Corporate Center.

"Base Balance" shall mean with respect to each Existing Loan, the principal amount of such Existing Loan set forth on ***Appendix C*** to this Schedule II; *provided*, however, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then the Base Balance for such Target Asset shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Eliminated Asset" shall mean any Target Asset subject to the Formation Transaction Documentation that is excluded pursuant to the terms of the Formation Transaction Documentation from the Formation Transactions.

"Equity Percentage" shall mean with respect to each Target Asset, the percentage (expressed as a decimal) set forth opposite the name of such Target Asset on ***Appendix B*** to this Schedule II (which percentage is based on the Fairness Opinion of Duff & Phelps, LLC and represents such Target Asset's percentage of the net asset values of the Target Assets (other than the

Management Company) and the net equity value of the Management Company, taken as a whole); *provided, however*, that in the event a Target Asset is selected as or otherwise becomes for any reason an Eliminated Asset, then: (i) the Equity Percentage for each remaining Target Asset shall be recalculated as a fraction, the numerator of which is the original Equity Percentage for such remaining Target Asset and the denominator of which is (A) 100 minus (B) the original Equity Percentage of the Eliminated Asset; and (ii) the Equity Percentage of the Eliminated Asset shall be zero; and *provided, further*, that in the event a Target Asset is not included in the Formation Transactions pursuant to a merger (or contribution of all direct or indirect Pre-Formation Interests in such Target Asset) but a portion of the direct or indirect Pre-Formation Interests in such Target Asset is otherwise contributed to the Operating Partnership or a subsidiary of the Operating Partnership, then, after giving effect to any Eliminated Assets pursuant to the preceding proviso, the Equity Percentage for such Target Asset and for each other remaining Target Asset subject directly or indirectly to the Formation Transaction Documentation shall be proportionately adjusted to take into account the portion of the direct or indirect Pre-Formation Interests in such Target Asset that will not be so contributed.

"Excluded Assets" has the meaning set forth in Section 5.03 to the Agreement.

"Existing Loan" shall mean (i) each mortgage or mezzanine loan secured by a Target Asset listed on ***Appendix C*** to this Schedule II and (ii) all unsecured indebtedness of an American Assets Entity or of an entity in which an American Assets Entity has a direct or indirect interest that will be assumed, prepaid, repaid or refinanced in connection with the IPO and that is set forth on ***Appendix D*** to this Schedule II (all indebtedness falling within the scope of this clause (ii) shall be referred to as "Entity Specific Debt"); for the avoidance of doubt, no Intercompany Debt shall constitute an Existing Loan (in order to avoid double counting, as Intercompany Debt is adjusted for through the definition of "Allocated Share"). Existing Entity Specific Debt will be deemed to relate to the Target Asset(s) and, if to multiple Target Assets, in the proportions set forth opposite the name of such Entity Specific Debt on ***Appendix D*** to this Schedule II, and all such Entity Specific Debt will be deemed to have a Base Balance of zero (because "Equity Percentage" as determined by Duff & Phelps, LLC was determined at the property level and did not take into account Entity Specific Debt, Entity Specific Debt is deemed to be zero in order to cause a readjustment of "Equity Value" of all Target Assets after taking into account such Entity Specific Debt).

"Target Asset" shall mean each property set forth on Appendix B to this Schedule II and the property management business of American Assets, Inc. (the "Management Company").

"Target Net Working Capital" has the meaning set forth in Schedule 5.03 to the Agreement.

"Total Portfolio Adjustment" shall mean the sum (which may be a positive or negative number) of all Asset Adjustments for every Target Asset, excluding Eliminated Assets.

"Total Formation Transaction Value" shall mean the aggregate dollar value of (i) the cash, (ii) the REIT Shares and (iii) the OP Units that are issued or issuable to all Pre-Formation Participants in the Formation Transactions as set forth in the Prospectus. Total Formation Transaction Value will be determined valuing REIT Shares and OP Units at a value per REIT Share or OP Unit equal to the IPO Price.

Schedule III

Intercompany Indebtedness

See attached.

EXHIBITS

Exhibit A:	**List of American Assets Entities**
Exhibit B:	**Form of Lock-Up Agreement**
Exhibit C:	**Form of Tax Protection Agreement**
Exhibit D:	**Form of Registration Rights Agreement**
Exhibit E:	**Order of Mergers**
Exhibit F:	**Operating Partnership Agreement**
Exhibit G:	**Formation Transaction Documentation**

Exhibit A

List of American Assets Entities

List of Forward OP Merger Entities:

1. Solana Beach Towne Centres Investments, L.P.
2. Pacific San Jose Holdings, L.P.
3. Pacific Sorrento Mesa Holdings, L.P.
4. Hillside 104, a California limited partnership
5. Hillside 276, a California limited partnership
6. Desert Hillside Holdings, LLC
7. BWH Holdings, LLC
8. Waikele Center Holdings, LP

List of Forward REIT Merger Entities:

1. Pacific Stonecrest Assets, Inc.
2. Pacific National City Assets, Inc.
3. Western Assets, Inc.
4. Pacific Towne Centre Assets, Inc.
5. Pacific Oceanside Assets, Inc.
6. Pacific San Jose Assets, Inc.
7. KMBC Assets, Inc.
8. Hero Retail, Inc.
9. Pacific Sorrento Valley Assets I, Inc.
10. Pacific Sorrento Mesa Assets, Inc.
11. Beach Walk Assets, Inc.
12. ICW Plaza, Inc. [d/b/a Delaware ICW Plaza, Inc.]
13. ICW Valencia, Inc.
14. Pacific Torrey Reserve Assets, Inc.
15. Landmark Assets, Inc.
16. Landmark One Market, Inc.
17. Pacific Novato Assets, Inc.
18. Waikele Center Assets, Inc.

List of OP Sub Forward Merger Entities:

1. Pacific Stonecrest Holdings, L.P.
2. Rancho Carmel Plaza, a California limited partnership
3. Pacific Oceanside Holdings, L.P.
4. Kearny Mesa Business Center, a California limited partnership

5. Del Monte Center Holdings, LP
6. Beach Walk Holdings, LP
7. ICW Plaza, L.P., a California limited partnership
8. ICW Valencia, L.P.
9. Desert Oceanside Holdings, LLC
10. San Diego Loma Palisades, L.P.

List of OP Sub Reverse Merger Entities:

1. Pacific Waikiki Holdings, L.P.
2. ABW Lewers LLC
3. King Street Holdings, LP
4. Loma Palisades, a California general partnership

List of REIT Sub Forward Merger Entities:

1. Pacific Del Mar Assets, Inc.
2. Pacific Carmel Mountain Assets, Inc.
3. Pacific Solana Beach Assets, Inc.
4. Pacific Waikiki Assets, Inc.
5. King Street Assets, Inc.
6. Pacific Sorrento Valley Assets II, Inc.
7. Pacific Santa Fe Assets, Inc.

List of Contributed Entities:

1. American Assets Trust Management, LLC
2. Winrad Vista Hacienda, a California general partnership
3. Vista Hacienda, a California limited partnership
4. Pacific American Assets Holdings, L.P., a California limited partnership
5. Carmel Country Plaza, L.P.
6. Pacific Carmel Mountain Holdings, L.P.
7. Pacific National City Holdings, L.P.
8. Pacific Solana Beach Holdings, L.P.
9. Pacific San Jose Holdings, L.P.
10. Winrad Kearny Mesa Business Center, a California general partnership
11. Pacific Sorrento Valley Holdings I, L.P.
12. Pacific Sorrento Mesa Holdings, L.P.
13. Beach Walk Holdings, LP
14. ICW Plaza, L.P., a California limited partnership
15. ICW Valencia, L.P.
16. Pacific Sorrento Valley Holdings II, L.P.
17. EBW Hotel LLC
18. Imperial Strand, a California limited partnership
19. Winrad Imperial Strand, a California general partnership
20. San Diego Loma Palisades, L.P.
21. Mariner’s Point, LLC
22. Pacific Santa Fe Holdings, L.P.

Exhibit B

Form of Lock-Up Agreement

See Attached.

Exhibit C

Form of Tax Protection Agreement

See Attached.

Exhibit D

Form of Registration Rights Agreement

See Attached.

Exhibit E

Order of Mergers

Each step within each "Transaction Step" below must be completed before the transactions in the following "Transaction Step" may be completed. All transactions within each "Transaction Step" may be completed simultaneously or in any order.

Transaction Step 1

All Forward REIT Mergers
All REIT Sub Forward Mergers

Transaction Step 2

All Contributions to the OP (including the REIT's contribution to the OP of the assets acquired in Step 1)

Transaction Step 3

All Contributions to subsidiaries of the OP (including, where applicable, the OP's contribution to the applicable subsidiary of assets acquired in Step 2)

Transaction Step 4

All OP Forward Mergers ***except*** the OP Forward Merger set forth in Transaction Step 5 and Transaction Step 7 below

Transaction Step 5

Forward Merger of Desert Hillside Holdings LLC with and into the Operating Partnership

Transaction Step 6

All OP Sub Forward Mergers ***except*** the OP Sub Forward Merger set forth in Transaction Step 7 below

Transaction Step 7

Forward Merger of BWH Holdings LLC with and into the Operating Partnership

Forward Merger of Desert Oceanside Holdings LLC with and into Pacific Oceanside Holdings LLC.

Transaction Step 8

All OP Sub Reverse Mergers

Exhibit F

Operating Partnership Agreement

See Attached.

Exhibit G

Formation Transaction Documentation

Form of Forward REIT Merger Agreement

Form of REIT Sub Forward Merger Agreement

Form of Forward OP Merger Agreement

Form of OP Sub Forward Merger Agreement

Form of OP Sub Reverse Merger Agreement

Form of OP Contribution Agreement

Form of OP Sub Contribution Agreement

Form of Alternate Contribution Agreement

Form of Tax Protection Agreement

Amended and Restated Agreement of Limited Partnership of American Assets Trust, L.P.

Registration Rights Agreement

Representation, Warranty and Indemnity Agreement

Indemnity Escrow Agreement

Lock-Up Agreement

Articles of Amendment and Restatement of American Assets Trust, Inc.

Bylaws of American Assets Trust, Inc.

Management Business Contribution Agreement

Exhibit 10.16

MANAGEMENT BUSINESS CONTRIBUTION AGREEMENT

This CONTRIBUTION AGREEMENT is made and entered into as of September 13, 2010 by and between AMERICAN ASSETS, INC., a California corporation ("Assignor"), and AMERICAN ASSETS TRUST MANAGEMENT, LLC, a Delaware limited liability company, ("Assignee").

RECITALS

WHEREAS, Assignee is a wholly owned subsidiary of Assignor; and

WHEREAS, Assignor wishes to contribute and assign to Assignee and Assignee wishes to assume all right, title and interest in and to the assets set forth on Schedule A (the "Contributed Assets") and the liabilities set forth on Schedule B (the "Assumed Liabilities"), in each case related to Assignor's management business (the "Business").

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties and other terms contained in this Agreement, the parties hereto, intending to be legally bound hereby, agree as follows:

AGREEMENT

1. Contribution of Contributed Assets. At the Closing, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor shall contribute, transfer, assign, convey and deliver to Assignee all of the Assignor's right, title and interest in and to the Contributed Assets. Assignee hereby absolutely and unconditionally accepts the foregoing contribution and agrees to assume any and all obligations of Assignor pursuant to the Contributed Assets.

2. Assignment and Assumption of Assumed Liabilities. At the Closing, Assignor shall assign and Assignee shall assume from Assignor (or acquire the Contributed Assets subject to) and thereafter pay, perform or discharge in accordance with their terms, all of the Assumed Liabilities.

3. The Closing. Unless this Agreement shall have been terminated pursuant to Section 4 hereof, the closing of the transactions contemplated hereby (the "Closing") shall occur immediately prior to the closing of the transactions contemplated by that certain Contribution Agreement, dated as of the date hereof, between Assignor and American Assets Trust, L.P., a Maryland limited partnership (the "Operating Partnership"), whereby all of the outstanding membership interests of Assignee are to be contributed the Operating Partnership pursuant to the terms thereof. The Closing shall take place at the offices of Latham & Watkins LLP, 12636 High Bluff Drive, Suite 400, San Diego, California 92130 or such other place as determined by the Operating Partnership in its sole discretion.

4. Employee Matters.

(a) Transferred Employees. Assignee shall, or shall cause one of its Affiliates (as defined in Section 4(j) below) to, make offers of employment to each of the employees of Assignor identified on Schedule C (the "Affected Employees") effective as of the Closing on substantially the same terms and conditions of employment as are in effect for the Affected Employees as of the date of this Agreement. Any such offer of employment shall be made in writing by Assignee on or before the Closing. Each Affected Employee shall commence employment with Assignee or an Affiliate of Assignee and shall be deemed to have accepted Assignee's or Assignee's Affiliate's offer of employment by reporting for work at his or her normal work location (i) for Affected Employees who are actively employed as of the Closing, immediately following the Closing, and (ii) for Affected Employees who, as of the Closing, are absent due to a leave of absence, upon such Affected Employees return to active employment. Affected Employees who accept employment with Assignee or an Affiliate of Assignee in accordance with the preceding sentence are referred to as "Transferred Employees." Assignor and its Affiliates shall terminate for all purposes the employment of all Affected Employees effective immediately prior to the Closing and, except as otherwise set forth in this Section 4, Assignor shall, or shall cause its Affiliates to, pay out to the Transferred Employees at Closing all amounts payable with respect to earned but unpaid wages and unpaid expense reimbursement amounts accrued by Transferred Employees prior to the Closing in accordance with applicable policies of Assignor and/or its Affiliates.

(b) Service Credit; Pre-Existing Conditions. Assignee shall, or shall cause an Affiliate to, give each Transferred Employee full credit for such Transferred Employee's service with Assignor and/or its Affiliates prior to Closing, in any case, for purposes of eligibility, vesting and benefit accrual under employee benefit plans and programs of Assignee and its Affiliates in which Transferred Employees become eligible to participate following the Closing ("Assignee Plans"), to the extent such credit was recognized under comparable employee benefit plans or programs of Assignor and/or their Affiliates ("Assignor Plans") immediately prior to Closing, except to the extent such service credit results in duplication of benefits. With respect to any Assignee Plans that are welfare benefit plans in which Transferred Employees become eligible to participate on or after the Closing, Assignee shall, or shall cause an Affiliate to, (i) cause there to be waived any eligibility requirements or pre-existing condition limitations, and (ii) give effect, in determining any deductible and maximum out-of-pocket limitations, to amounts paid by such Transferred Employees under comparable Assignor Plans, in each case, to the extent waived and given effect (as applicable) under comparable Assignor Plans immediately prior to Closing.

(c) Accrued PTO. Prior to Closing, Assignor shall, to the extent required by applicable law in order to transfer vacation days, sick time, personal days and other paid-time-off accrued by Transferred Employees prior to the Closing in accordance with applicable policies of Assignor and/or its Affiliates ("Accrued PTO") to Assignee, solicit in writing the consent of each Affected Employee to rollover to Assignor or its designated Affiliate each such Affected Employee's Accrued PTO (if any) upon Closing (the "Accrued PTO Rollover Consents"). For each Affected Employee who becomes a Transferred Employee and either (i) provides such Accrued PTO Rollover Consent on or prior to Closing or (ii) with respect to whom an Accrued PTO Rollover Consent is not required by applicable law to transfer Accrued PTO to Assignee or

its Affiliate, Assignee shall assume and honor or cause an Affiliate to assume and honor such Transferred Employees Accrued PTO. Transferred Employees shall be permitted to use any such assumed Accrued PTO in a manner consistent with Assignee's policies applicable to similarly-situated employees of Assignee and to accrue additional vacation and other paid-time-off in accordance with Assignee's policies and procedures, as in effect from time to time. At the Closing, Assignor shall, or shall cause its Affiliates to, transfer to Assignee an amount equal to the total Accrued PTO subject to the Accrued PTO Rollover Consents. To the extent that any Transferred Employees have not provided an Accrued PTO Rollover Consent upon Closing and such consent is required by law to effect a rollover to Assignee or its Affiliates of Accrued PTO, Assignor shall, or shall cause its Affiliates to, pay out to such Transferred Employees their Accrued PTO at Closing.

(d) WARN Act. Assignee shall be solely responsible for providing notice under of the Worker Adjustment and Retraining Notification Act ("WARN Act") or California Labor Code Section 1400 *et. seq.*("Cal-WARN Act"), if Assignee takes any action that would require notice be provided under the WARN ACT or the Cal-WARN Act.

(e) Qualified Plan. As soon as practicable following the Closing, the Assignor shall spin-off and transfer the account balances of each Transferred Employee who is a participant in Assignor's tax-qualified defined contribution plan that is a 401(k) plan (the "Assignor 401(k) Plan") to a tax-qualified defined contribution 401(k) plan established by or maintained by Assignee or one of its Affiliates (the "Assignee 401(k) Plan") in a trustee to trustee transfer in accordance with Section 414(l) of the Internal Revenue Code of 1986, as amended (the "Code"). Assignee shall cause the Assignee 401(k) Plan to have such terms as are necessary so that the transfers described in this Section do not adversely affect the qualified status of the Assignor 401(k) Plan. The transfer of the account balance liability and related assets shall include a trustee to trustee transfer of all participant loan accounts and liabilities under the Assignor 401(k) Plan.

(f) Flexible Spending Plan. With respect to the year in which the Closing occurs, Assignee shall, or shall cause its Affiliates to, establish flexible spending accounts for medical and dependent care expenses under a new or existing plan established or maintained under Section 125 or Section 129 of the Code ("Assignee's FSA"), effective as of the Closing, for each Transferred Employee who is, as of the Closing, a participant in a flexible spending account of Assignor for medical or dependent care expenses under a plan pursuant to Sections 125 or 129 of the Code (the "Assignor's FSA"). Assignee shall, or shall cause its Affiliates to, credit or debit, as applicable, effective on the day after the Closing, the applicable account of each such Transferred Employee under Assignee's FSA with an amount equal to the balance of such Transferred Employee's account under the Assignor's FSA as of the Closing. At the Closing, Assignor shall, or shall cause its Affiliates to, transfer to Assignee an amount equal to the total contributions made to Assignor's FSA by Transferred Employees, reduced by an amount equal to the total claims already paid to such Transferred Employees in respect of the plan year in which the Closing occurs.

(g) Payroll. To the extent permitted by applicable law, the parties hereto shall adopt the "alternate procedure" for preparing and filing all IRS Forms W-2, IRS Forms W-3, IRS Forms W-4, IRS Forms W-5 and IRS Forms 941, as described in Section 5 of Revenue

Procedure 2004-53 and such other applicable guidance. In addition, the parties intend that, to the extent permissible under the Code, Assignee qualify as a "successor employer" for purposes of receiving credit for the payment of taxes under the Federal Insurance Contribution Act and Federal Unemployment Tax Act by Assignor with respect to the Transferred Employees within the meaning of Sections 3121 and 3306 of the Code. The parties shall cooperate to effectuate the foregoing.

(h) Deferred Compensation Plan. To the extent permitted by law, Assignee shall, or shall cause its Affiliates to, establish deferred compensation accounts under a plan established or maintained by Assignee or one of its Affiliates ("Assignee's DCP"), effective as of the Closing, for each Transferred Employee who is, as of the Closing, a participant in the American Assets, Inc. Executive Deferral Plan VI ("Assignor's DCP"). Assignee shall, or shall cause its Affiliates to credit, effective on the day after the Closing, the applicable account of each such Transferred Employee under Assignee's DCP with an amount equal to the balance of such Transferred Employee's account under Assignor's DCP as of the Closing. At the Closing, Assignor shall, or shall cause its Affiliates to, transfer to Assignee an amount equal to the total contributions made to Assignor's DCP by or on behalf of Transferred Employees. The parties shall cooperate to effectuate the foregoing. Notwithstanding the foregoing, the provisions of this Section 4(h) shall not apply to the extent that such transactions would cause in all or any portion of a Transferred Employee's benefits under Assignor's DCP to become taxable to such Transferred Employee prior to receipt as a result of a failure to comply with the requirements of Section 409A of the Code.

(i) Excluded Liabilities. Except as otherwise specifically set forth in Section 2 above or this Section 4, Assignor shall retain and be responsible for any and all liabilities and obligations that relate to or arise from the employment by Assignor or any of its Affiliates of the Transferred Employees arising prior to the Closing and any liabilities and obligations relating to any present or former employee of Assignor or any of its Affiliates who does not become a Transferred Employee.

(j) Limitations. Assignee shall have no obligation to continue any employment or other service relationship with any Transferred Employee or other service provider. Any employment opportunity offered by Assignor hereunder shall be "at will" and may be terminated by Assignee or any of its Affiliates at any time for any reason. Nothing in this Agreement shall (i) create any third-party rights in any Transferred Employees or any current or former employees or other service providers of Assignor or its Affiliates (or any beneficiaries or dependents of the foregoing); or (ii) obligate Assignor or its Affiliates to adopt, maintain or continue any Assignor Plan or other employee benefit plan or compensatory arrangement at any time.

(k) Definition of Affiliate. For purposes of this Agreement, "Affiliate" shall mean, as to any individual, corporation, partnership, limited liability company, association, trust, unincorporated entity or other legal entity (each a "Person"), any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or under common control with such Person. As used in this definition, "control" (including, with correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management and policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

5. Termination. This Agreement may be terminated at any time upon the written agreement of Assignee and Assignor.

6. Capital Contribution. The assignment of the Contributed Assets and the Assumed Liabilities shall be deemed a capital contribution of Assignor.

7. Representations of Assignor. Assignor hereby represents and warrants to Assignee that Assignor is the owner of all right, title and interest in the Contributed Assets, free and clear of all liens and encumbrances (except for the Assumed Liabilities) and that Assignor has the power and authority rightfully to transfer the Contributed Assets and the Assumed Liabilities. The Contributed Assets and the Assumed Liabilities are all of the assets and liabilities materially necessary for the operation of the Business.

8. Consents. The parties shall use commercially reasonable efforts to obtain all materially necessary consents and approvals of governmental authorities and third parties (including lenders) for Assignor to consummate the transactions contemplated hereby.

9. Further Actions. If, at any time prior to or after the Closing, the Assignee shall determine or be advised that any deeds, bills of sale, assignments, assurances or other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Operating Partnership the right, title or interest in or to a Contributed Interests, the Contributor of such Contributed Interest shall execute and deliver all such deeds, bills of sale, assignments and assurances and take and do all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in such Contributed Interests or otherwise to carry out this Agreement.

10. Counterparts. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party and delivered to each other party.

11. Entire Agreement. This Agreement, including, without limitation, the schedules attached hereto, constitute the entire agreement and supersede each prior agreement and understanding, whether written or oral, among the parties regarding the subject matter of this Agreement. This Agreement is not intended to confer any rights or remedies on any person other than the parties hereto.

12. Assignment. This Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns.

13. Severability. Each provision of this Agreement will be interpreted so as to be effective and valid under applicable law, but if any provision is held invalid, illegal or unenforceable under applicable law in any jurisdiction, then such invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been included herein.

14. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, regardless of any laws that might otherwise govern under applicable principles of conflicts of laws thereof.

15. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of both parties hereto; provided that the Assignor may at any time prior to the Closing amend the schedules hereto to reflect changes in the composition of its assets, liabilities and/or employees.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have duly executed this Contribution Agreement as of the date first above written.

ASSIGNOR

AMERICAN ASSETS, INC.,
a California corporation

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: Chief Executive Officer

ASSIGNEE

AMERICAN ASSET TRUST MANAGEMENT, LLC, a Delaware limited liability company

By: AMERICAN ASSETS, INC.,
a California corporation
Its: Sole Member

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: Chief Executive Officer

[Signature Page to Management Business Contribution Agreement]

SCHEDULE A

CONTRIBUTED ASSETS

See attached.

SCHEDULE B

ASSUMED LIABILITIES

See attached.

SCHEDULE C

AFFECTED EMPLOYEES

See attached.

Exhibit 10.17

ATTENTION: COUNTY CLERK - THIS INSTRUMENT COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE MORTGAGES AND DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS INSTRUMENT SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A MORTGAGE OR DEED OF TRUST, BUT ALSO AS A FINANCING STATEMENT COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF BORROWER (DEBTOR) AND LENDER (SECURED PARTY) ARE SET FORTH IN THIS INSTRUMENT.

RECORDING REQUESTED BY AND UPON
RECORDATION RETURN TO:
Dechert LLP
30 Rockefeller Plaza
New York, New York 10112-2200
Attention: Ellen M. Goodwin, Esq.

MSMCI Loan No. 03-15228

ALAMO STONECREST HOLDINGS, LLC,

and

ALAMO VISTA HOLDINGS, LLC, collectively, as trustor

(Borrower)

to

HERITAGE TITLE COMPANY OF AUSTIN, INC., as trustee

(Trustee)

for the benefit of

MORGAN STANLEY MORTGAGE CAPITAL INC., as beneficiary

(Lender)

DEED OF TRUST AND SECURITY AGREEMENT

Dated: December 31, 2003

THIS DEED OF TRUST AND SECURITY AGREEMENT (this "**Security Instrument**") is made as of the 31st day of December, 2003, by **ALAMO STONECREST HOLDINGS, LLC,** a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 and an organizational identification number of 030746621 ("**Stonecrest**") and **ALAMO VISTA HOLDINGS, LLC,** a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 and an organizational identification number of 030738109 ("**Vista**"**;** Stonecrest and Vista are individually or collectively (as the context requires) referred to herein as **"Borrower"**), as trustor, in favor of **HERITAGE TITLE COMPANY OF AUSTIN, INC**., having an office at 98 San Jacinto, Suite 400, Austin, Texas 78701 ("**Trustee**"), as trustee, for the benefit of **MORGAN STANLEY MORTGAGE CAPITAL INC.**, a New York corporation, having an address at 1221 Avenue of the Americas, New York, New York 10020 (together with its successors and assigns, **"Lender"**), as beneficiary.

RECITALS:

Borrower by (i) that certain Promissory Note A-1 given to Lender dated as of the date hereof (the **"A-1 Note**"), (ii) that certain Promissory Note A-2 given to Lender dated as of the date hereof (the **"A-2 Note**"**),** (iii) that certain Promissory Note A-3 given to Lender dated as of the date hereof (the **"A-3 Note**") of even date herewith and (iv) that certain Promissory Note A-4 given to Lender dated as of the date hereof (the **"A-4 Note";** each of the A-1 Note, the A-2 Note, the A-3 Note and the A-4 Note, together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively or individually (as the context requires) be referred to as the "**Note**" or the **"Notes";** provided, that, any reference in any Loan Document (other than in this Security Instrument or in any of the individual Notes) to the "Note" as defined in this Security Instrument shall be deemed to collectively refer to all of the Notes) is indebted to Lender in the aggregate principal sum of $109,000,000 (the "**Loan**") in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note.

Borrower desires to secure the payment of the Debt (as defined in Article 2) and the performance of all of the Other Obligations (as defined in Article 2).

Article 1. GRANTS OF SECURITY

Section 1.1. PROPERTY GRANTED. For the purpose of securing payment and performance of the Obligations (as defined in Article 2), Borrower, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration in hand paid, the receipt of which hereby is acknowledged, and the further consideration, uses, purposes and trusts herein set forth and declared, has granted, sold, bargained, transferred, assigned, set-over and conveyed and by these presents does grant, bargain, sell, transfer, assign, set-over and convey unto Trustee, and unto his or its successors in the trust hereby created and his or its assigns, forever, and grant a security interest in (each for the benefit of Lender and its successors and assigns) all of Borrower's right, title and interest in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**"):

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

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

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

(d) Easements. All easements, rights of way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

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

(f) Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, including, without limitation, a guaranty of any such lease (a "**Lease**" or "**Leases**") and that certain Lease Agreement by and among Borrower, as landlord, and Alamo Retail, Inc., a Delaware corporation, as tenant (the **"Master Lessee"**) entered into on or about the date hereof (the **"Master Lease"**) and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses)

from the Land and the Improvements (the "**Rents**"), subject to the license to collect and use such Rents pursuant to the provisions of Section 3.7 below, and all proceeds from the sale or other disposition of the Leases or the Master Lease;

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

(h) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property (whether or not Borrower is required to carry such insurance by Lender hereunder), including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property, subject to the provisions hereof;

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

(j) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

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

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

(m) Letter of Credit Rights. All letter of credit rights (whether or not the letter of credit is evidenced by a writing) Borrower now has or hereafter acquires relating to the properties, rights, titles and interest referred to in this Section 1.1;

(n) Tort Claims. All commercial tort claims Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(o) Borrower Accounts. All payments for goods or property sold or leased or for services rendered arising from the operation of the Land and the Improvements, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper;

(p) Reserve Accounts. All reserves, escrows and deposit accounts required under the Loan Documents and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(q) TIC Agreement. That certain Tenancy-in-Common Agreement executed by and among Vista and Stonecrest and dated as of December 3, 2003 (such agreements, together with all amendments, restatements, memoranda or other modifications thereof, collectively, the **"TIC Agreement**");

(r) Assignments/Modifications of TIC Agreement. All assignments, modifications, extensions and renewals of the TIC Agreement and all credits, deposits, options, privileges and rights of Vista and/or Stonecrest under the TIC Agreement, including, but not limited to, any rights of first refusal relating thereto arising under Section 363(i) of the Bankruptcy Code;

(s) Proceeds. All proceeds of any of the foregoing items set forth in subsections (a) through (r); and

(t) Other Rights. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (s) above.

Section 1.2. ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of Section 3.7, Lender grants to Borrower a revocable license (revocable only as provided in Section 3.7) to collect and receive the Rents. All Rents shall be deposited, held and applied pursuant to (i) that certain Restricted Account Agreement by and among Borrower and Lender (among others) and (ii) that certain Cash Management Agreement dated as of the date hereof between Borrower and Lender (the "**Cash Management Agreement**").

Section 1.3. SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations, a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code. To the extent permitted by law, Borrower and Lender agree that with respect to all items of Personal Property, which are or will become fixtures on the Land, this Security Instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the applicable provisions of the Uniform Commercial Code of the State of Texas. Borrower is the record owner of the Land.

Section 1.4. PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies belonging to Borrower which are now or hereafter held by Lender, and which are (i) deposited in the Escrow Fund (as defined in Section 3.5), (ii) Net Proceeds (as defined in

Section 4.4), and/or (iii) condemnation awards or payments described in Section 3.6, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto Trustee, as trustee for the benefit of Lender, to its successor in the trust created by this Security Instrument, and to its or their respective assigns forever, in trust, however, upon the terms and conditions set forth herein;

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

PROVIDED, HOWEVER, these presents are upon the express condition that, when all of the Obligations have been paid in full, Beneficiary shall request Trustee in writing to reconvey the Property, and shall surrender this Security Instrument and all notes and instruments evidencing the Obligations to Trustee.

Article 2. PAYMENTS

Section 2.1. DEBT AND OBLIGATIONS SECURED. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the "**Debt**"): (a) the payment of the indebtedness evidenced by the Notes in lawful money of the United States of America; (b) the payment of interest, prepayment premiums, default interest, late charges and other sums, as provided in the Notes, this Security Instrument or the Other Security Documents (defined below); (c) the payment of all other moneys agreed or provided to be paid by Borrower in the Notes, this Security Instrument or the Other Security Documents (collectively sometimes referred to herein as the "**Loan Documents**"); (d) the payment of all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; (e) the payment of all sums reasonably advanced and costs and expenses reasonably incurred (including unpaid or unreimbursed servicing and special servicing fees) by Lender in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of all other obligations of Borrower contained herein and the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of this Security Instrument, the Notes, or the Other Security Documents (collectively, the "**Other Obligations**"). Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations**."

Section 2.2. PAYMENTS. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute

payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall not cure any then-existing Event of Default (defined below).

Article 3. BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1. PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

Section 3.2. INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Note (the "**Other Security Documents**"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3. INSURANCE.

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall obtain and maintain, or cause to be maintained, during the entire term of this Security Instrument policies of insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk insurance ("**Special Form**") including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Loan; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of Twenty-Five Thousand and No/100 Dollars ($25,000.00) for all such insurance coverage and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the Full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster

Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such lesser amount as Lender shall require; and (z) earthquake insurance in amounts and in form and substance reasonably satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance required to be maintained pursuant to clauses (y) and (z) above shall be on terms consistent with the Special Form policy required pursuant to this subsection (i). Notwithstanding anything to the contrary in this Security Instrument, the insurance coverage described in the foregoing subparagraphs (y) and (z) shall be required (1) as of the date hereof only if determined to be necessary by Lender based upon its reasonable evaluation of third party reports, and (2) at any time hereafter in the event subsequent third party reports indicate a change in the condition of or circumstances surrounding the Property;

(ii) rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an annual aggregate amount equal to 100% of all rents or estimated gross revenues from the operation of the Properties (as reduced to reflect actual vacancies and expenses not incurred during a period of Restoration) and covering rental losses or business interruption, as may be applicable, for a period of at least twelve (12) months, after the date of the casualty, and notwithstanding that the Policy may expire prior to the end of such period; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the Personal Property has been repaired, the continued loss of income will be insured until such income returns to the same level it was prior to the loss, or the expiration of six (6) months from the date of the completion of the Restoration, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Property for the succeeding twelve (12) month period and a reasonable vacancy factor acceptable to Lender. All proceeds payable to Lender pursuant to this subsection shall be disbursed by Lender to Borrower immediately following Lender's receipt thereof, provided no Event of Default is then in existence; provided, however, (i) if a Cash Management Period (as defined in the Cash Management Agreement) then exists, such proceeds shall be deposited into the Cash Management Account (as defined in the Cash Management Agreement) and disbursed in accordance with the applicable terms and conditions of the Cash Management Agreement, and (ii) that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form referenced in subsection (i), above, does not otherwise apply, (A) owner's contingent or protective liability insurance, otherwise known as Owner Contractor's Protective Liability, covering claims not covered by or under the terms or provisions of the commercial general liability insurance policy in (v) below; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(iv) comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(v) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars ($2,000,000.00) in the aggregate and One Million and No/100 Dollars ($1,000,000.00) per occurrence; (B) to continue at not less than the aforesaid limit until reasonably required to be changed by Lender as provided in subsection 3.3(b) below; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability and (5) contractual liability covering the indemnities contained in Section 13.1 to the extent the same is available;

(vi) automobile liability coverage for all owned and non-owned vehicles, if any, used by Borrower in the operation of the Property, including rented and leased vehicles containing minimum limits per occurrence of One Million and No/100 Dollars ($1,000,000.00);

(vii) umbrella liability insurance in an amount not less than Ten Million and No/100 Dollars ($10,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above, including, but not limited to, supplemental coverage for workers' compensation and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (vi) above;

(viii) so-called "dramshop" insurance or other liability insurance required in connection with the sale of alcoholic beverages; and

(ix) upon sixty (60) days' written notice, such other reasonable insurance such as sinkhole or land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 3.3(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and (i) shall be issued by financially sound and responsible insurance companies reasonably approved by Lender, and authorized or licensed to do business in the state where the Property is located, with claims paying ability/financial strength ratings of "AA" or better by S&P (as defined in the Cash Management Agreement) and Fitch (as defined in the Cash Management Agreement) and "Aa2" or better by Moody's (as defined in the Cash Management Agreement) and general policy ratings of A or better and financial classes of X or better by A.M. Best Company, Inc.; (ii) shall name Borrower as the insured and Lender as an additional insured, as its interests may appear; (iii) in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so called New York Non Contributory Standard Mortgagee Clause and (other than those strictly limited to liability protection) a Lender's Loss Payable Endorsement (Form 438 BFU NS),

or their equivalents, naming Lender as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Lender; (v) shall be maintained throughout the term of this Security Instrument without cost to Lender; (vi) shall be assigned and, if requested in writing by Lender, the originals (or duplicate originals certified to be true and correct by the applicable insurer or its agent) delivered to Lender; and (vii) shall contain such provisions, consistent with the provisions hereof, as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements or clauses providing that (I) neither Borrower, Lender nor any other party shall be a co insurer under said Policies, (II) that Lender shall receive at least ten (10) days prior written notice of any modification, reduction or cancellation of any Policy, (III) no act or negligence of Borrower, or anyone acting for Borrower, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned, (IV) Lender shall not be liable for any Insurance Premiums (defined below) thereon or subject to any assessments thereunder, and (V) such Policies do not exclude coverage for acts of terror or similar acts of sabotage. Any blanket Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 3.3(a). Borrower shall pay the premiums for such Policies (the "**Insurance Premiums**") as the same become due and payable and shall furnish to Lender evidence of the renewal of each of the new Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided that such Insurance Premiums have not been paid to Lender or Lender's servicing agent pursuant to Section 3.5 hereof). If Borrower does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any apparently expiring Policy, then Lender may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Borrower agrees to reimburse Lender for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like; provided, however, such increased coverages shall not be requested more frequently than once every three years, and shall only be requested if such coverage is commercially available at commercially reasonable rates and such rates are consistent with those paid in respect of comparable properties in comparable locations, and Lender also reasonably determines that either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including without limitation, investment banks) to such owners are generally requiring that such owners maintain such insurance.

(c) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be approved by Lender (the "**Restoration**") and otherwise in accordance with Section 4.4 of this Security Instrument. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. In case of loss covered by Policies, Lender may either (1) settle and adjust any claim, or (2) allow Borrower to agree with

the insurance company or companies on the amount to be paid upon the loss; provided, that (A) provided no Event of Default shall have occurred and be continuing, Borrower may adjust losses aggregating not in excess of the Threshold Amount (defined below) if such adjustment is carried out in a competent and timely manner and (B) if no Event of Default shall have occurred and be continuing, Lender shall not settle or adjust any such claim under clause (1), above, without the consent of Borrower, which consent shall not be unreasonably withheld or delayed. In any case Lender shall and is hereby authorized to collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Borrower to Lender upon demand.

Section 3.4. PAYMENT OF TAXES, ETC. (a) Subject to the provisions of Sections 3.4(b) and 3.5 hereof, Borrower shall pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "**Taxes**"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "**Other Charges**"), and all charges for utility services provided to the Property prior to the same becoming delinquent. Borrower will deliver to Lender, promptly upon Lender's written request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge against the Property arising out of such Taxes, Other Charges and utility service charges. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish to Lender, promptly upon Lender's written request, paid receipts for the payment of the Taxes and Other Charges.

(b) Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the Other Security Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, and (vii) Borrower shall have furnished the security as may be required in the proceeding to insure the payment of any contested Taxes, together with all interest and penalties thereon.

Section 3.5. ESCROW FUND. Except as provided below, Borrower shall pay to Lender on the first day of each calendar month (a) one twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, during the next

ensuing twelve (12) months and (b) one twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the amounts in (a) and (b) above shall be called the "**Escrow Fund**"). Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has obtained knowledge and authorizes Lender or its agent to obtain the bills for Taxes and Other Charges directly from the appropriate taxing authority. The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Lender will timely apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3.3 and 3.4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 3.3 and 3.4 hereof, Lender shall promptly return any excess to Borrower. In disbursing such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Escrow Fund shall be payable to Borrower. Notwithstanding the foregoing, Borrower shall not be required to make deposits to the Escrow Fund for Taxes or Insurance Premiums pursuant to this Section 3.5 so long as (i) no Event of Default occurs and is continuing hereunder, (ii) Borrower pays all Taxes and Insurance Premiums by no later than ten (10) Business Days prior to the delinquency thereof, and (iii) Borrower provides Lender paid receipts for the payment of the Taxes and Insurance Premiums by no later than one (1) Business Day prior to the delinquency thereof. Upon the occurrence of a failure of any of the conditions specified in clauses (i) through (iii) above, Borrower shall, upon Lender's demand therefor, commence making the deposits to the Escrow Fund required pursuant to this Section 3.5 commencing with the next Monthly Payment Date (as defined in the Note), which payments shall continue until Borrower corrects each such failure.

Section 3.6. CONDEMNATION. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting the Land and/or the Improvements and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender is hereby irrevocably appointed as Borrower's attorney in fact coupled with an interest, with exclusive powers to collect, receive and apply to the Debt (or provide to Borrower to pay for Restoration) any award or payment for any taking accomplished through a condemnation or eminent domain proceeding and, at any time during which an Event of Default has occurred and is continuing, to make any compromise or settlement in connection therewith. All condemnation awards or proceeds shall be either (a) paid to Lender for application against the Debt or (b) applied to Restoration of the Property in accordance with Section 4.4 hereof. Notwithstanding any taking by any public or quasi public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the

rate or rates provided herein or in the Note. Any award or payment to be applied to the reduction or discharge of the Debt or any portion thereof may be so applied whether or not the Debt or such portion thereof is then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been or may be sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the unpaid portion of the Debt.

Notwithstanding anything contained in this Section 3.6 or this Security Instrument to the contrary, but subject to the provisions of Section 4.4, below, Lender may elect to (y) apply the net proceeds of any condemnation award (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) in reduction of the Debt in such order and manner as Lender may elect, whether due or not, or (z) make the proceeds available to Borrower for the restoration or repair of the Property. Any implied covenant in this Security Instrument restricting the right of Lender to make such an election is waived by Borrower. In addition, Borrower hereby waives the provisions of any law prohibiting Lender from making such an election.

Section 3.7. LEASES AND RENTS. (a) Borrower does hereby absolutely and unconditionally assign to Lender, Borrower's right, title and interest in the Master Lease and in all current and future Leases and Rents, it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Lender shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Lender. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereafter be requested by Lender to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section 3.7, Lender grants to Borrower a revocable license (revocable only as provided herein) to operate and manage the Property and to collect, retain, and enjoy the Rents. Upon the occurrence of an Event of Default with respect to which Lender has given Borrower a notice of Lender's exercise of its rights to accelerate the Debt pursuant to the terms and conditions hereof, and during the continuance thereof, without the need for further notice or demand, the license granted to Borrower herein shall automatically be revoked (subject to automatic reinstatement upon Borrower's cure of such Event of Default), and Lender shall, subject to the provisions of the Other Security Documents, immediately be entitled to possession of all Rents, whether or not Lender enters upon or takes control of the Property. Subject to the provisions of the Other Security Documents, Lender is hereby granted by Borrower the right, at its option, during any period of revocation of the license granted herein, to enter upon the Property in person, by agent or by court appointed receiver to collect the Rents. Any Rents collected during the revocation of the license shall, subject to any contrary provision of the Other Security Documents, be applied by Lender against the Debt, in such order and priority as it may determine.

(b) All Leases entered into after the date hereof shall be written on the applicable standard form of lease which has been approved by Lender. Commercially reasonable changes may be made to the Lender-approved standard lease without the prior written consent of Lender in the ordinary course of Borrower's business. All Leases shall provide that they are subordinate to this Security Instrument (subject to Lender's agreement not to disturb such tenant's tenancies while they are in compliance with the terms of their Lease) and that the tenant thereunder agrees to attorn to Lender.

(c) Borrower (i) shall observe and perform all material obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall receive thereunder; (iii) shall not collect any of the Rents more than one (1) month in advance (other than security deposits and prepaid first and last month's rent collected in the ordinary course of Borrower's business); and (iv) shall not execute any other assignment of the lessor's interest in the Leases or the Rents (provided, however, that the assignment of rights and the delegation of duties contained in the Master Lease shall not be deemed a violation of the foregoing proscription on assignments). Borrower (A) shall enforce all material terms, covenants and conditions contained in the Leases upon the part of the lessees thereunder to be observed or performed, short of termination thereof; (B) may alter, modify or change the terms of the Leases in any material respect without the prior written consent of Lender, provided that such alterations, modifications or changes are commercially reasonable alterations, modifications or changes agreed to in the ordinary course of Borrower's business; (C) shall not, without Lender's consent, convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights, or a termination or diminution of the obligations of, tenants under the Leases; and (D) may approve or consent to any assignment of or subletting under the Leases in accordance with the terms of such Leases, without the prior written consent of Lender.

(d) Borrower, as the lessor thereunder, may enter into proposed lease renewals and new leases without the prior written consent of Lender, provided each such proposed lease: (i) shall provide for rental rates and terms agreed to in an arm's length transaction; (ii) shall be to a tenant which Borrower reasonably determines to be capable and reputable; and (iii) shall comply with the provisions of subsection (b) above. Borrower may enter into a proposed lease which does not satisfy all of the conditions set forth in clauses (i) through (iii) immediately above, provided Lender consents in writing to such proposed lease, such consent not to be unreasonably withheld or delayed. Borrower expressly understands that any and all proposed leases are included in the definition of "Lease" or "Leases" as such terms may be used throughout this Security Instrument, the Note and the Other Security Documents. Borrower shall furnish Lender with executed copies of all Leases and any amendments or other agreements pertaining thereto.

(e) Notwithstanding anything to the contrary contained herein or in any other Loan Document, Borrower shall not, without the prior written consent of Lender, enter into, renew, extend, terminate (for reasons other than non-payment of rent), reduce rents under, permit an assignment or subleasing of (other than in accordance with its express terms) or otherwise amend, modify or waive any material or economic provisions of, accept a surrender of space under, or shorten the term of, any Major Lease or any instrument guaranteeing or providing credit support for any Major Lease. As used herein, the term **"Major Lease"** shall mean (i) the Master Lease, (ii) any Lease which, individually or when aggregated with all other Leases at the Property with the same tenant or any Affiliate (defined below) of such tenant, demises 20,000 square feet or more of the Property's gross leasable area, (iii) any Lease which contains any option, offer, right of first refusal or other similar entitlement to acquire all or any portion of the

Property (which such rights shall be deemed to be exclusive of any rights under any Lease to extend the term thereof or to lease additional space at the Property), or (iv) any instrument guaranteeing or providing credit support for the Master Lease or any Lease meeting the requirements of (ii) or (iii) above. As used above, the term **"Affiliate"** shall mean, with respect to any tenant under any Lease at the Property, any affiliate of such tenant, unless such affiliate (i) operates under a separate trade name and under a separate corporate or other similar division from such tenant, and (ii) is otherwise treated as a separate tenant under a separate Lease by Borrower.

(f) Notwithstanding anything to the contrary contained herein, to the extent Lender's prior approval is required for any leasing matters set forth in this Section, Lender shall have ten (10) Business Days from receipt of written request and all required information and documentation relating thereto in which to approve or disapprove such matter, provided that such request to Lender is marked in bold lettering with the following language: "LENDER'S RESPONSE IS REQUIRED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF A DEED OF TRUST BETWEEN THE UNDERSIGNED AND LENDER". In the event that Lender fails to respond to the leasing matter in question within such time, Lender's approval shall be deemed given for all purposes. Borrower shall provide Lender with such information and documentation as may be reasonably required by Lender, including, without limitation, lease comparables and other market information as reasonably required by Lender.

(g) Notwithstanding the foregoing, (I) any Lease executed on or after the date hereof and prior to the Master Lease Termination (defined below) shall expressly provide that in the event the Master Lease is terminated, the Tenant under such Lease shall automatically attorn to Borrower as Landlord thereunder, and (II) Borrower shall, within five (5) days of the consummation of the 1031 Exchange Transfer (hereafter defined), (i) cause the landlord's interest in each of the Leases at the Property (excluding the Master Lease) to be transferred to each of Vista and Stonecrest (in their capacity as tenants-in-common and fee owners of the Property)), to the extent not already held by them, in a manner which is enforceable under Applicable Law, (ii) cause the portion of the name of each of the Accounts (as defined in the Cash Management Agreement) relating to the Master Lessee to be changed to the name of Borrower, (iii) cause the Master Lessee's interest in the Management Agreement to be transferred to Borrower, (iv) after the transfer in clause (i) above is consummated, terminate the Master Lease, and (v) concurrently with the termination of the Master Lease, provide written notice of such termination to Lender together with all documents or other instruments evidencing such termination and the consummation of the conditions contained in (i) through (iv) above (satisfaction of (i) through (v) above is collectively herein referred to as the **"Master Lease Termination"**).

(h) Notwithstanding anything to the contrary contained herein or in any other Loan Document, prior to the Master Lease Termination, any warranties, covenants or obligations of Borrower herein or in any Loan Document relating to the use or operation of the Property or any other provisions relating to items which, by virtue of the Master Lease, are wholly or partially within the Master Lessee's control, then each such warranty, covenant or obligation shall be deemed to impose an obligation upon Borrower to cause Master Lessee to comply with the applicable term or provision hereof or of the other Loan Documents and Borrower shall not be deemed to be relieved of any such warranty, covenant or obligation by virtue of the Master Lease.

(i) Notwithstanding anything to the contrary contained herein or in any other Loan Document, all Leases and renewals of Leases executed after the Anticipated Maturity Date shall be subject to Lender's prior approval, which approval may be granted or withheld in Lender's reasonable discretion.

Section 3.8. MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof which may have a material adverse affect on the use, operation or value of the Property. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or abandoned without the express written consent of Lender.

Section 3.9. WASTE. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.10. COMPLIANCE WITH LAWS. Borrower shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted to affect the Property, or the use thereof ("**Applicable Laws**"). Borrower shall from time to time, upon Lender's request, based on Lender's belief, in the exercise of Lender's reasonable judgment, that the Property is in violation of any Applicable Law, provide Lender with evidence satisfactory to Lender that the Property complies with the Applicable Laws which Lender believes the Property is in violation of or is exempt from compliance with such Applicable Laws. Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

Section 3.11. BOOKS AND RECORDS. (a) Borrower shall keep adequate books and records of account in accordance with Borrower's current methods (which such methods are tax

basis accounting) or such other method as may be acceptable to Lender in its reasonable discretion, in each case consistently applied (each or any of the foregoing, the **"Approved Accounting Method"**) and furnish to Lender:

(i) quarterly rent rolls signed, dated and certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) to be true and complete to the best knowledge of such person, detailing the names of all tenants of the Improvements, the portion of Improvements occupied by each tenant, the base rent and any other charges payable under each Lease and the term of each Lease, including the expiration date, and any other information as is reasonably required by Lender, within thirty (30) days after the end of each calendar quarter;

(ii) a quarterly operating statement of the Property certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) to be true and complete to the best knowledge of such person, detailing the total revenues received, total expenses incurred, total capital expenditures (including, but not limited to, all capital improvements (including, but not limited to, tenant improvements)), leasing commissions and other leasing costs, total debt service and total cash flow, and if available, any quarterly operating statement prepared by an independent certified public accountant, within thirty (30) days after the close of each calendar quarter; and

(iii) an annual balance sheet and profit and loss statement of Borrower, prepared and certified by Borrower, and, if available, any financial statements prepared by an independent certified public accountant within ninety (90) days after the close of each fiscal year of Borrower.

(b)

(i) Upon request from Lender, Borrower and its affiliates shall furnish to Lender: (1) an accounting of all security deposits held in connection with any Lease of any part of the Property; and (2) an annual operating budget presented on a monthly basis consistent with the annual operating statement described above for the Property and all proposed capital replacements and improvements.

(ii) Beginning with the Fiscal Year (defined below) in which the Anticipated Maturity Date occurs, Lender shall have the right to approve each annual operating budget for the Property, which such budget shall set forth in reasonable detail budgeted monthly operating income and monthly budgeted operating capital and other expenses for the Property. Borrower shall submit to Lender (a) a draft operating budget in form and substance reasonably acceptable to Lender (i) for the Fiscal Year (defined below) in which the Anticipated Maturity Date occurs, no later than ten (10) days prior to the Anticipated Maturity Date, and (ii) for each Fiscal Year thereafter, no later than thirty (30) days prior to the commencement of such Fiscal Year; and (b) a final operating budget in form and substance reasonably acceptable to Lender (i) for the Fiscal Year in which the Anticipated Repayment Date occurs, by no later than the Anticipated Maturity Date, and (ii) for each Fiscal Year thereafter, no later than fifteen (15) days prior to the commencement of such Fiscal Year. In no event shall Lender be required to make any disbursements from the Borrower Expense Account (defined below) until Lender has received

the Approved Annual Budget (defined below) for the applicable Fiscal Year. Prior to Lender's approval of a draft operating budget, the most recent Approved Annual Budget shall apply. Any annual operating budget approved by Lender in accordance with the terms hereof shall be referred to as an **"Approved Annual Budget"**.

(c) Borrower and its affiliates shall furnish Lender with such other additional financial or management information as may, from time to time, be reasonably required by Lender.

(d) If requested by Lender, Borrower shall provide Lender with the following financial statements (it being understood that Lender shall request (i) full financial statements only if it anticipates that the principal amount of the Loan at the time of Securitization may, or if the principal amount of the Loan at any time during which the Loan is included in a Securitization does, equals or exceeds 20% of the aggregate principal amount of all mortgage loans included in the Securitization and (ii) summaries of such financial statements only if the principal amount of the Loan at any such time equals or exceeds 10% of such aggregate principal amount):

(i) As of the date of the closing of the Loan (the "**Closing Date**"), a balance sheet with respect to the Property for the two most recent fiscal years of Borrower or Sponsor (each such year, a **"Fiscal Year"**), meeting the requirements of Section 210.3-01 of Regulation S-X of the Securities Act (defined below) and statements of income and statements of cash flows with respect to the Property for the three most recent Fiscal Years, meeting the requirements of Section 210.3-02 of Regulation S-X, and, to the extent that such balance sheet is more than 135 days old as of the Closing Date, interim financial statements of the Property meeting the requirements of Section 210.3-01 and 210.3-02 of Regulation S-X (all of such financial statements, collectively, the "**Standard Statements**"); provided, however, to the extent the Property that has been acquired by Borrower from an unaffiliated third party (an "**Acquired Property**") and as to which the other conditions set forth in Section 210.3-14 of Regulation S-X for the provision of financial statements in accordance with such Section have been met (other than any Property that is a hotel, nursing home or other property that would be deemed to constitute a business and not real estate under Regulation S-X and as to which the other conditions set forth in Section 210.3-05 of Regulation S-X for provision of financial statements in accordance with such Section have been met (a "**Business Property**")), in lieu of the Standard Statements otherwise required by this Section, Borrower shall instead provide the financial statements required by such Section 210.3-14 of Regulation S-X ; provided, further, however, with respect to any Business Property which is an Acquired Property, Borrower shall instead provide the financial statements required by Section 210.3-05 (such Section 210.3-14 or Section 210.3-05 financial statements referred to herein as ("**Acquired Property Statements**")).

(ii) Not later than 30 days after the end of each fiscal quarter following the Closing Date, a balance sheet of the Property as of the end of such fiscal quarter, meeting the requirements of Section 210.3-01 of Regulation S-X, and statements of income and statements of cash flows of the Property for the period commencing on the day following the last day of the most recent Fiscal Year and ending on the date of such balance sheet and for the corresponding period of the most recent Fiscal Year, meeting the requirements of Section 210.3-02 of Regulation S-X (provided, that if for such corresponding period of the most recent Fiscal Year

Acquired Property Statements were permitted to be provided hereunder pursuant to paragraph (i) above, Borrower shall instead provide Acquired Property Statements for such corresponding period). If requested by Lender, Borrower shall also provide "summarized financial information," as defined in Section 210.1-02(bb) of Regulation S-X, with respect to such quarterly financial statements.

(iii) Not later than 60 days after the end of each Fiscal Year following the Closing Date, a balance sheet of the Property as of the end of such Fiscal Year, meeting the requirements of Section 210.3-01 of Regulation S-X, and statements of income and statements of cash flows of the Property for such Fiscal Year, meeting the requirements of Section 210.3-02 of Regulation S-X. If requested by Lender, Borrower shall provide summarized financial information with respect to such annual financial statements.

(iv) Within ten (10) Business Days after notice from Lender in connection with the Securitization of this Loan, such additional financial statements, such that, as of the date (each a "**Disclosure Document Date**") of each Disclosure Document (defined below), Borrower shall have provided Lender with all financial statements as described in paragraph (i) above; provided that the Fiscal Year and interim periods for which such financial statements shall be provided shall be determined as of such Disclosure Document Date.

(v) In the event Lender determines, in connection with a Securitization, that the financial statements required in order to comply with Regulation S-X or Applicable Laws are other than as provided herein, then notwithstanding the provisions of this Section, Lender may request, and Borrower shall promptly provide, such combination of Acquired Property Statements and/or Standard Statements as may be necessary for such compliance.

(vi) Any other or additional financial statements, or financial, statistical or operating information, as shall be required pursuant to Regulation S-X or other Applicable Laws in connection with any Disclosure Document or any filing under or pursuant to the Exchange Act in connection with or relating to a Securitization (hereinafter an "**Exchange Act Filing**") or as shall otherwise be reasonably requested by Lender to meet disclosure, Rating Agency or marketing requirements.

(vii) All financial statements provided by Borrower pursuant to this Section shall be prepared in accordance with GAAP, and shall meet the requirements of Regulation S-X and other Applicable Laws. All financial statements relating to a Fiscal Year shall be audited by the independent accountants in accordance with generally accepted auditing standards, Regulation S-X and all other Applicable Laws, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation S-X and all other Applicable Laws, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as "experts" in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided. All other financial statements shall be certified by the chief financial officer of Borrower, which certification shall state that such financial statements meet the requirements set forth in the first sentence of this paragraph.

Section 3.12. PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist (subject to Borrower's right to contest any such matter as described below) beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof. Nothing contained herein shall, however, affect or impair Borrower's ability to diligently and in good faith contest any lien or bill for labor or materials, provided that any lien placed upon the Property must be fully and irrevocably discharged (by bond or otherwise) at least 30 days prior to the date such lien could otherwise be foreclosed upon pursuant to Applicable Law.

Section 3.13. PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing an obligation secured hereby and any amendments, modifications or changes thereto.

Section 3.14. PROPERTY MANAGEMENT.

(a) Borrower shall (i) promptly perform and observe all of the covenants required to be performed and observed by it under the agreement between Manager and Borrower pursuant to which the manager of the Property (the **"Manager"**) is employed to perform management services for the Property (the "**Management Agreement**") and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of any notice of default or other material notice received by Borrower under the Management Agreement; (iv) promptly give notice to Lender of any notice or information that Borrower receives which indicates that Manager is terminating the Management Agreement or that Manager is otherwise discontinuing its management of the Property; and (v) promptly enforce the performance and observance of all of the material covenants required to be performed and observed by Manager under the Management Agreement. Borrower shall not, without the prior written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed): (i) surrender, terminate or cancel the Management Agreement or otherwise replace Manager or enter into any other management agreement with respect to the Property; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. In the event that Borrower replaces Manager at any time during the term of Loan, such Manager shall be a Qualified Manager (defined below).

(b) In the event that (i) an Event of Default occurs and is not cured within the applicable cure period (if any) or waived, (ii) Manager shall become insolvent or a debtor in a proceeding under any applicable Insolvency Laws (as defined in the Note), (iii) a material

default by Manager has occurred and is continuing under the Management Agreement beyond any applicable grace, notice or cure periods thereunder or (iv) the Anticipated Maturity Date occurs and the Debt is not repaid in full, then, upon the occurrence of any of the events described in clauses (i) through (iv) above, Borrower shall, at Lender's direction, immediately terminate the Management Agreement and enter into a new property management agreement reasonably acceptable to Lender with a management company reasonably acceptable to Lender, which such new property management company must (i) be a Qualified Manager, (ii) not be an affiliate of, or controlled by, Lender, and (iii) have not provided (nor agreed to provide) Lender (or its affiliates) with any compensation for being so named. In the event Lender directs Borrower to engage a professional third party property manager, then Borrower shall engage such a property manager pursuant to an agreement reasonably acceptable to Lender, and Borrower and such manager shall execute an agreement acceptable to Lender conditionally assigning Borrower's interest in such management agreement to Lender and subordinating manager's right to receive fees and expenses under such agreement while the Debt remains outstanding. In no event shall Lender or Borrower be liable for any termination, severance or other fees to Manager or others resulting from any termination of any property management agreement (including, without limitation the Management Agreement).

(c) As used herein, the term "**Qualified Manager"** shall mean (I) American Assets, Inc. (unless such entity is the entity being replaced as property manager), or (II) a reputable and experienced professional management organization (a) which manages, together with its affiliates, at least 2,000,000 square feet of gross leasable area (including all anchor space), exclusive of the Property and (b) approved by Lender, which approval shall not have been unreasonably withheld and for which Lender shall have received (i) written confirmation from the Rating Agencies that the employment of such manager will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization, and (ii) with respect to any Affiliated Manager (defined below), a New Non-Consolidation Opinion (defined below).

Article 4. SPECIAL COVENANTS

Borrower covenants and agrees that:

Section 4.1. PROPERTY USE. The Property shall be used only as two retail shopping centers (and, upon the prior written consent of Lender, which consent shall not be unreasonably withheld, related uses typical of a property such as the Property, and allowed by the Property's zoning classification and all agreements pertaining to the Property) and for no other use without the prior written consent of Lender, which consent may be withheld in Lender's discretion.

Section 4.2. ERISA. (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Security Instrument and the Other Security Documents) to be a non exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**").

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Security Instrument, as requested by Lender in its reasonable discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended (the "**Code**"), or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

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

(B) Less than 25 percent of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R.§ 2510.3 101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R § 2510.3 101(c) or (e) or an investment company registered under The Investment Company Act of 1940.

Section 4.3. SINGLE PURPOSE ENTITY.

(a) Borrower has not and shall not:

(i) Own any asset or property other than (A) the Property, and (B) incidental personal property necessary for the ownership or operation of the Property.

(ii) Engage in any business other than the ownership, management and operation of the Property or fail to conduct and operate its business as presently conducted and operated.

(iii) Enter into any contract or agreement with any affiliate of Borrower, any constituent party of Borrower or any affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(iv) Incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Refinanced Loan (defined below) and the Debt, (B) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than sixty (60) days past the date incurred and paid on or prior to such date, and/or (C) financing leases and purchase money indebtedness incurred in the ordinary course of business relating to personal property on commercially reasonable terms and conditions; provided however, the aggregate amount of the indebtedness described in (B) and (C) shall not exceed at any time three percent (3%) of the outstanding principal amount of the Debt. No Indebtedness other than the Debt may be secured (subordinate or pari passu) by the Property. As used above, the **"Refinanced Loan"** shall mean

that certain loan made by Wells Fargo Bank, N.A. to Vista and Stonecrest. With respect to the Refinanced Loan, Borrower hereby represents and warrants that (i) the Refinanced Loan was repaid in full with the proceeds of the Loan, and (ii) neither Borrower nor American Assets, Inc. (**"Guarantor")** has any remaining liabilities or obligations in connection with the Refinanced Loan (other than environmental and other limited and customary indemnity obligations).

(v) Make any loans or advances to any third party (including any affiliate or constituent party) or acquire obligations or securities of its affiliates.

(vi) Fail to remain solvent or fail to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(vii) Fail to do or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, or permit any constituent party to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of Borrower or such constituent party without the prior consent of Lender in any manner that (i) violates the single purpose covenants set forth in this Section, or (ii) amends, modifies or otherwise changes any provision thereof that by its terms cannot be modified at any time when the Loan is outstanding or by its terms cannot be modified without Lender's consent.

(viii) Fail to maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party. Borrower's assets have not been and will not be listed as assets on the financial statement of any other person or entity, provided, however, that Borrower's assets may be included in a consolidated financial statement of its affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such affiliates or any other person or entity and (ii) such assets shall be listed on Borrower's own separate balance sheet. Borrower will file its own tax returns (to the extent Borrower is required to file any such tax returns) and will not file a consolidated federal income tax return with any other person or entity. Borrower shall maintain its books, records, resolutions and agreements as official records.

(ix) Fail to be, or fail to hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Borrower or any constituent party of Borrower), fail to correct any known misunderstanding regarding its status as a separate entity, fail to conduct business in its own name, identify itself or any of its affiliates as a division or part of the other, fail to allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an affiliate) among the persons or entities sharing such expenses or fail to maintain and utilize separate stationery, invoices and checks bearing its own name.

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

(xi) Seek or effect the liquidation, dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of Borrower.

(xii) Commingle the funds and other assets of Borrower with those of any affiliate or constituent party or any other person or entity or fail to hold all of its assets in its own name. Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party or any other person or entity.

(xiii) Guarantee or become obligated for the debts of any other person or entity or hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other person or entity.

(xiv) Fail to conduct its business so that the assumptions made with respect to Borrower in that certain non-consolidation opinion delivered by Solomon Ward Seidenwurm & Smith, LLP in connection with the closing of the Loan (together with any subsequently delivered confirmations or amendments thereto or any subsequent substantive non-consolidation opinions, collectively, the **"Non-Consolidation Opinion"**) shall fail to be true and correct in all respects.

(xv) Permit any affiliate or constituent party independent access to its bank accounts.

(xvi) Fail to pay the salaries of its own employees (if any) from its own funds or fail to maintain a sufficient number of employees (if any) in light of its contemplated business operations.

(xvii) Fail to compensate each of its consultants and agents from its funds for services provided to it or fail to pay from its own assets all obligations of any kind incurred.

(xviii) If Borrower is a single member limited liability company, fail to observe all Delaware limited liability company required formalities.

(xix) own any subsidiary, or make any investment in, any person or entity.

(xx) if Borrower is a partnership or limited liability company, without the unanimous written consent of all of its partners or members, as applicable, and the written consent of 100% of the board of directors or managers of Borrower (if Borrower is a Delaware single member limited liability company or a corporation) or each SPE Component Entity (defined below) (if Borrower is an entity other than a Delaware single member limited liability company or a corporation), including, without limitation, the Independent Director (defined below), (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable Insolvency Laws, (b) seek or consent to the appointment of a receiver, liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, or (d) make an assignment for the benefit of creditors.

(b) If Borrower is a partnership or limited liability company (other than a Delaware single member limited liability company), each general partner in the case of a general partnership, each general partner in the case of a limited partnership, or the managing member in

the case of a limited liability company (each an "**SPE Component Entity**") of Borrower, as applicable, shall be a corporation or a Delaware single member limited liability company whose sole asset is its interest in Borrower. Each SPE Component Entity (i) will own at least a 0.5% direct equity interest in Borrower, (ii) will at all times comply with each of the covenants, terms and provisions contained in Section 4.3(a) above, to the extent applicable, as if such representation, warranty or covenant was made directly by such SPE Component Entity; (iii) will not engage in any business or activity other than owning an interest in Borrower; (iv) will not acquire or own any assets other than its partnership, membership, or other equity interest in Borrower; (v) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (vi) will cause Borrower to comply with the provisions of Section 4.3. Prior to the withdrawal or the disassociation of any SPE Component Entity from Borrower, Borrower shall immediately appoint a new general partner or managing member whose articles of incorporation are substantially similar to those of such SPE Component Entity and deliver a New Non-Consolidation Opinion to Lender and the Rating Agencies with respect to the new SPE Component Entity and its equity owners. Notwithstanding the foregoing, to the extent Borrower is a single member Delaware limited liability company, so long as Borrower maintains such formation status, no SPE Component Entity shall be required.

(c) (i) The organizational documents of each SPE Component Entity (if any) or Borrower (to the extent Borrower is a Delaware single member limited liability company or a corporation) shall provide that at all times there shall be, and Borrower shall cause there to be, at least one duly appointed member of the board of directors or managers (an "**Independent Director**") of such SPE Component Entity or Borrower (as applicable) reasonably satisfactory to Lender each of whom are not at the time of such individual's initial appointment, and shall not have been at any time during the preceding five (5) years, and shall not be at any time while serving as a director of such SPE Component Entity or Borrower (as applicable), either (i) a shareholder (or other equity owner) of, or an officer, director (other than serving as the Independent Director of any of Vista, Stonecrest, Master Lessee or any SPE Component Entity), partner, manager, member (other than as a Special Member in the case of single member Delaware limited liability companies), employee (other than serving as the Independent Director of any of Vista, Stonecrest, Master Lessee or any SPE Component Entity), attorney or counsel of, Borrower, such SPE Component Entity or any of their respective shareholders, partners, members, subsidiaries or affiliates; (ii) a customer or creditor of, or supplier to, Borrower or any of its respective shareholders, partners, members, subsidiaries or affiliates who derives any of its purchases or revenue from its activities with Borrower or such SPE Component Entity or any affiliate of any of them (other than in such person's employment as the Independent Director of any of Vista, Stonecrest, Master Lessee or any SPE Component Entity); (iii) a Person who Controls (defined below) or is under common Control with any such shareholder, officer, director, partner, manager, member, employee, supplier, creditor or customer; or (iv) a member of the immediate family of any such shareholder, officer, director, partner, manager, member, employee, supplier, creditor or customer.

(ii) The organizational documents of each SPE Component Entity (if any) or Borrower (as applicable) shall provide that the board of directors or board of managers of such SPE Component Entity or Borrower (as applicable) shall not take any action which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to any common stock, requires an unanimous vote of the board of directors or managers of such

SPE Component Entity or Borrower (as applicable) unless at the time of such action there shall be at least one member of the board of directors or managers who is an Independent Director. Such SPE Component Entity or Borrower (as applicable) will not, without the unanimous written consent of its board of directors or managers including each Independent Director, on behalf of itself or Borrower, (i) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable Insolvency Laws; (ii) seek or consent to the appointment of a receiver, liquidator or any similar official; (iii) take any action that might cause such entity to become insolvent; or (iv) make an assignment for the benefit of creditors.

(d) (i) In the event Borrower or any SPE Component Entity is a single member Delaware limited liability company, the limited liability company agreement of Borrower or such SPE Component Entity (as applicable) (the "**LLC Agreement**") shall provide that (i) upon the occurrence of any event that causes the sole member of Borrower or such SPE Component Entity (as applicable) ("**Member**") to cease to be the member of Borrower or such SPE Component Entity (as applicable) (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower or such SPE Component Entity (as applicable) and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower or such SPE Component Entity (as applicable) in accordance with the terms of the Loan Documents and the LLC Agreement), any person acting as Independent Director of Borrower or such SPE Component Entity (as applicable) shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower or such SPE Component Entity (as applicable), automatically be admitted to Borrower or such SPE Component Entity (as applicable) ("**Special Member**") and shall continue Borrower or such SPE Component Entity (as applicable) without dissolution and (ii) Special Member may not resign from Borrower or such SPE Component Entity (as applicable) or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower or such SPE Component Entity (as applicable) as Special Member in accordance with requirements of Delaware law and (B) such successor Special Member has also accepted its appointment as an Independent Director. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower or such SPE Component Entity (as applicable) upon the admission to Borrower or such SPE Component Entity (as applicable) of a substitute Member, (ii) Special Member shall be a member of Borrower or such SPE Component Entity (as applicable) that has no interest in the profits, losses and capital of Borrower or such SPE Component Entity (as applicable) and has no right to receive any distributions of Borrower or such SPE Component Entity (as applicable) assets, (iii) pursuant to Section 18-301 of the Delaware Limited Liability Company Act (the "**Act**"), Special Member shall not be required to make any capital contributions to Borrower or such SPE Component Entity (as applicable) and shall not receive a limited liability company interest in Borrower or such SPE Component Entity (as applicable), (iv) Special Member, in its capacity as Special Member, may not bind Borrower or such SPE Component Entity (as applicable) and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower or such SPE Component Entity (as applicable), including, without limitation, the merger, consolidation or conversion of Borrower or such SPE Component Entity (as applicable); provided, however, such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Director, to vote

on such matters required by the Loan Documents or the LLC Agreement. In order to implement the admission to Borrower or such SPE Component Entity (as applicable) of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower or such SPE Component Entity (as applicable) as Special Member, Special Member shall not be a member of Borrower or such SPE Component Entity (as applicable).

(ii) Upon the occurrence of any event that causes the Member to cease to be a member of Borrower or such SPE Component Entity (as applicable), to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower or such SPE Component Entity (as applicable), agree in writing (i) to continue Borrower or such SPE Component Entity (as applicable) and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower or such SPE Component Entity (as applicable), effective as of the occurrence of the event that terminated the continued membership of Member of Borrower or such SPE Component Entity (as applicable) in Borrower or such SPE Component Entity (as applicable). Any action initiated by or brought against Member or Special Member under any applicable Insolvency Laws shall not cause Member or Special Member to cease to be a member of Borrower or such SPE Component Entity (as applicable) and upon the occurrence of such an event, the business of Borrower or such SPE Component Entity (as applicable) shall continue without dissolution. The LLC Agreement shall provide that each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower or such SPE Component Entity (as applicable) upon the occurrence of any action initiated by or brought against Member or Special Member under any applicable Insolvency Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower or such SPE Component Entity (as applicable).

(e) Borrower shall not change or permit to be changed (a) Borrower's name, (b) Borrower's identity (including its trade name or names), (c) Borrower's principal place of business set forth on the first page of this Security Instrument, (d) the corporate, partnership or other organizational structure of Borrower, each SPE Component Entity (if any), or Guarantor, (e) Borrower's state of organization, or (f) Borrower's organizational identification number, without in each case notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender. In addition, Borrower shall not change or permit to be changed any organizational documents of Borrower or any SPE Component Entity (if any) if such change would adversely impact the covenants set forth in this Section 4.3. Borrower authorizes Lender to file any financing statement or financing statement amendment required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property. If Borrower does not now have an organizational identification number and later obtains one, or if the organizational identification number assigned to Borrower subsequently changes, Borrower shall promptly notify Lender of such organizational identification number or change.

(f) Notwithstanding the foregoing, nothing contained in this Section 4.3 shall be deemed to limit Borrower's ability to own, manage and operate the Property in conjunction with the other entities comprising Borrower or in accordance with the Master Lease (prior to the Master Lease Termination), including, without limitation, the right to operate the Property under a fictitious business name co-owned by Borrowers (or some of them) and, prior to the Master Lease Termination, Master Lessee, to maintain all books and records relating to the Property on a consolidated basis with the other entities comprising Borrower and, prior to the Master Lease Termination, Master Lessee and to commingle the Rents and profits generated by the Property with the other entities comprising Borrower and, prior to the Master Lease Termination, Master Lessee. Furthermore, any act with respect to the Property which is permitted to be taken by "Borrower" may be taken by any of the entities comprising Borrower or, prior to the Master Lease Termination, Master Lessee in conjunction with the other entities comprising Borrower or, prior to the Master Lease Termination, Master Lessee.

(g) The representations, warranties and covenants contained in Section 4.3(a) through (e) above are hereby restated and remade as if all references to "Borrower" therein were instead deemed to be references to Master Lessee; provided, that, (i) any reference therein to the "Property" shall be deemed to refer to Master Lessee's leasehold interest in the Property under the Master Lease, and (ii) notwithstanding anything to the contrary contained therein, Master Lessee has not and shall not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation). Notwithstanding the foregoing, this Section 4.3 shall cease to apply to Master Lessee after the Master Lease Termination.

Section 4.4. RESTORATION AFTER CASUALTY/CONDEMNATION. In the event of a casualty or a taking by eminent domain, the following provisions shall apply in connection with the Restoration of the Property:

(a) If the Net Proceeds (defined below) shall be less than the amount equal to seven percent (7%) of the original principal amount of the Note (the "**Threshold Amount**") and the costs of completing the Restoration shall be less than the Threshold Amount, the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Subsection 4.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Security Instrument.

(b) If the Net Proceeds are equal to or greater than the Threshold Amount or the costs of completing the Restoration is equal to or greater than the Threshold Amount, Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Subsection 4.4(b). The term "**Net Proceeds**" for purposes of this Section 4.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Subsection 3.3(a)(i), (iii), (iv) and (x) of this Security Instrument as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same or (ii) the net amount of all awards and payments received by Lender with respect to a taking referenced in Section 3.6 of this Security Instrument, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same, whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for the Restoration provided that each of the following conditions are met: (A) no Event of Default shall have occurred and be continuing under the Note, this Security Instrument or any of the Other Security Documents or an event which after the passage of time or the giving of notice would constitute an Event of Default; (B) Borrower shall deliver or cause to be delivered to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, reasonably satisfactory to Lender; (C) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's reasonable discretion to cover the cost of the Restoration; (D) Borrower shall deliver to Lender, at its expense, the insurance set forth in Subsection 3.3(a)(iii) hereof; (E) Borrower shall commence the Restoration as soon as reasonably practicable and shall diligently pursue the same to satisfactory completion; (F) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note at the Applicable Interest Rate (as defined in the Note), which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Subsection 3.3(a)(ii), if applicable, or (3) by other funds of Borrower which are deposited with Lender prior to the commencement of the Restoration; (G) Lender shall be satisfied that, upon the completion of the Restoration, the (1) fair market value of the Property, as reasonably determined by Lender, is equal to or greater than the fair market value of the Property immediately prior to the casualty or condemnation, and (2) gross cash flow and the net cash flow of the Property will be restored to a level sufficient to cover all carrying costs and operating expenses of the Property, including, without limitation, a Debt Service Coverage Ratio of at least 1.00 to 1.00; (H) Lender shall be reasonably satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Anticipated Maturity Date (as defined in the Note), (2) one (1) year after the occurrence of such fire or other casualty or taking, whichever the case may be, or (3) such time as may be required under applicable zoning law, ordinance, rule or regulation in order to repair and restore the Property to the condition it was in immediately prior to such fire or other casualty or to as nearly as possible the condition it was in immediately prior to such taking, as applicable; (I) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable zoning laws, ordinances, rules and regulations; (J) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with the REA and all applicable governmental laws, rules and regulations (including, without limitation, all applicable Environmental Laws (defined below)); (K) such fire or other casualty or taking, as applicable, does not result in the loss of access to the Property or the Improvements; (L) (1) in the event the Net Proceeds are insurance proceeds, less than thirty-five percent (35%) of each of (i) fair market value of the Property as reasonably determined by Lender, and (ii) rentable area of the Property has been damaged, destroyed or rendered unusable as a result of a casualty or (2) in the event the Net Proceeds are condemnation proceeds, less than fifteen percent (15%) of each of (i) the fair market value of the Property as reasonably determined by Lender and (ii) rentable area of the Property is taken and such land is located along the perimeter or periphery of the Property; and (M) the Required Leases (defined below) shall remain in full force and effect during and after the completion of the Restoration. Lender agrees to use due diligence and good faith efforts to process its determination of Borrower's compliance with the requirements of this Paragraph 4.4(b)(i) as promptly as possible, recognizing the need for a quick determination in order to avoid delay in Restoration of the Property. As used above, the term **"Required Leases"** shall mean Leases encumbering, in the aggregate, 65% of the rentable square footage at the Property.

(ii) The Net Proceeds shall be held by Lender, and until disbursed in accordance with the provisions of this Subsection 4.4(b), shall constitute additional security for the Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialmen's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the reasonable satisfaction of Lender and discharged of record or in the alternative fully insured to the reasonable satisfaction of Lender by the title company insuring the lien of this Security Instrument.

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior reasonable review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "**Casualty Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior reasonable review and acceptance by Lender and the Casualty Consultant. All reasonable costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "**Casualty Retainage**" as used in this Subsection 4.4(b) shall mean an amount equal to 10% of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until such time as the Casualty Consultant certifies to Lender that 50% of the required Restoration has been completed. There shall be no Casualty Retainage with respect to costs actually incurred by Borrower for work in place in completing the last 50% of the required Restoration. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Subsection 4.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b) and that all approvals necessary for the re occupancy and use of the Property have been obtained from all appropriate governmental and quasi governmental authorities, and Lender receives evidence reasonably satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage, provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or

materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, and the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company insuring the lien of this Security Instrument. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Subsection 4.4(b) shall constitute additional security for the Obligations.

(vii) With respect to Restorations related to casualties, the excess, if any, of the Net Proceeds, and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b), and the receipt by Lender of evidence reasonably satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Security Instrument or any of the Other Security Documents.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection 4.4(b)(vii) may, at Lender's election, be retained and applied by Lender toward the payment of the principal balance of the Debt whether or not then due and payable, either in whole or in part, or disbursed to Borrower. If Lender shall receive and retain Net Proceeds, as permitted above, the lien of this Security Instrument shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt. Notwithstanding the foregoing, if more than 35% of the Debt is repaid through Lender's application of Net Proceeds to the Debt as permitted above, Lender shall allow Borrower to prepay the balance of the Debt without penalty, provided, that, such prepayment is made by Borrower within one-hundred eighty (180) days of such application by Lender of the Net Proceeds to the Debt.

Section 4.5. COVENANTS RELATING TO 1031 EXCHANGE TRANSFER.

Within one-hundred eighty (180) days of the date hereof, Borrower shall cause the following events to occur (the consummation of each of the following, the **"1031 Exchange Transfer"**):

(a) 100% of the direct equity interest in Vista shall have been transferred to (i) Vista Hacienda, L.P., a California limited Partnership (**"Vista Hacienda"**) (provided that, at the time of such transfer, Sponsor Controls Vista Hacienda and owns at least a 51% direct or indirect interest in Vista Hacienda) or (ii) an entity which is Controlled by Sponsor and in which Sponsor owns at least a 51% direct or indirect equity interest, each of which such transfers shall have been made in accordance with the applicable terms and conditions of Section 8.3 hereof (the transfers in (i) or (ii) above, the **"1031 Equity Transfer"**);

(b) the Junior Loan (as defined in that certain Subordination and Standstill Agreement executed by and among Lender and Guarantor in connection with the Loan (the **"Standstill Agreement"**) shall have been forgiven or indefeasibly satisfied in full from a source other than the assets of Borrower or Master Lessee or the other income generated by the Property and the Junior Loan Documents (as defined in the Standstill Agreement) shall have been terminated and released of record (if applicable); and

(c) Lender shall have received (i) copies of all documentation relating to the 1031 Exchange Transfer evidencing the consummation thereof, and (ii) a written certification (executed by a responsible officer of Borrower and Guarantor) attesting that (1) the requirements of this Section 4.5 and the applicable requirements of Section 8.3 hereof have each been satisfied, and (2) that there exists no litigation (pending or threatened) or other controversy relating to the 1031 Exchange Transfer between Borrower and Junior Borrower (as defined in the Standstill Agreement (defined below)) or any other person or entity involved therewith.

Section 4.6. TIC AGREEMENT COVENANTS. Until such time as this Security Instrument is released or reconveyed in connection with the repayment of the Debt or such time as the Loan is defeased in full in accordance with the applicable terms and conditions of the Note or such time as Borrowers cease to be tenants-in-common pursuant to a transfer permitted by this Security Instrument, each of Stonecrest and Vista hereby covenant and agree that:

(a) they shall each pay all sums required to be paid under the TIC Agreement pursuant to the provisions thereof;

(b) they shall each diligently perform and observe all of the terms, covenants and conditions of the TIC Agreement;

(c) they shall not, without the prior consent of Lender, surrender the interest in the Property created by the TIC Agreement or terminate or cancel the TIC Agreement or modify, change, supplement, alter or amend the TIC Agreement (either orally or in writing) in any material respect;

(d) neither Vista nor Stonecrest shall institute or prosecute (nor shall Vista or Stonecrest permit any other person or entity to institute or prosecute) an Action for Partition;

(e) each of Vista and Stonecrest hereby waive each of their respective rights to an Action for Partition under the TIC Agreement and under Applicable Law;

(f) notwithstanding (but in no way abrogating or otherwise waiving) the foregoing, if any Action for Partition is brought by either Stonecrest or Vista, the other party shall purchase Stonecrest's or Vista's (as applicable) tenancy in common interest in the Property at fair market value;

(g) in the event that the purchase described in subclause (f) shall fail to occur within fifteen (15) Business Days of the occurrence of the aforesaid Action for Partition (or such shorter time period as may be required for this subsection (g) to become effective immediately prior to the consummation of such Action for Partition), Sponsor (through an entity which Sponsor Controls, owns at least a 51% direct or indirect equity interest and which satisfies the criteria set forth in Section 4.3 hereof for single purpose, bankruptcy remote entities) shall purchase such interest at fair market value;

(h) in the event that the purchase described in subclauses (f) or (g) shall occur, the purchasing entity shall execute any documents or instruments reasonably requested by Lender (and shall provide such opinions, title endorsements or other documents or instruments reasonably requested by Lender) to affirm and/or assume the Loan and such entity's respective obligations thereunder;

(i) (1) any lien rights, indemnity rights, rights of subrogation or rights of first offer, first refusal or other rights to purchase or other similar rights inuring to Vista, Stonecrest, Manager or any other person or entity under the TIC Agreement or Applicable Law are subject and subordinate to the Loan and the Loan Documents and Lender's rights thereunder and (2) with respect to the aforesaid rights (other than rights to payment from the cash flow of the Property), each applicable person or entity (including, without limitation, Vista and/or Stonecrest) agrees to waive the same or "standstill" with respect to the enforcement of the same until such time as this Security Instrument is released or reconveyed in connection with the repayment of the Debt or such time as the Loan is defeased in full in accordance with the applicable terms and conditions of the Note; and

(j) the sale or issuance of any tenancy in common interests pursuant to the TIC Agreement will not violate any applicable provisions of the Securities Act or the Exchange Act or any other Applicable Law.

With respect to the foregoing covenants, Lender hereby acknowledges and agrees that the same are (i) restrictions customarily imposed by Lender in connection with commercial loans similar to the Loan and (ii) are intended to be restrictions which are "consistent with customary commercial lending practices" within the meaning of the applicable provisions of Revenue Procedure 2002-22. The foregoing covenants shall only be deemed to apply to Stonecrest and Vista so long as they are parties to the TIC Agreement and such covenants shall cease to bind Stonecrest and/or Vista (as applicable) at such time as Stonecrest or Vista ceases to be a party to the TIC Agreement as a result of a transfer permitted under Section 8.4 below.

Section 4.7. REA COVENANTS.

(a) Borrower shall not enter into, terminate or modify any construction, operation and reciprocal easement agreement or similar agreement (including any separate agreement or other agreement between Borrower and one or more other parties to an REA with respect to such REA) affecting the Property or portion thereof (whether one or more, collectively, the "**REA"**) without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Borrower shall enforce, comply with, and cause each of the parties to the REA to comply with all of the material economic terms and conditions contained in the REA.

(b) Notwithstanding anything to the contrary contained herein, to the extent Lender's prior approval is required under Section 4.7(a) above, Lender shall have ten (10) Business Days from receipt of written request and all required information and documentation relating thereto in which to approve or disapprove such matter, provided that such request to Lender is marked in bold lettering with the following language: "LENDER'S RESPONSE IS REQUIRED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF AN AGREEMENT BETWEEN THE UNDERSIGNED AND LENDER". In the event that Lender fails to respond to the matter in question within such time, Lender's approval shall be deemed given for all purposes. Borrower shall provide Lender with such information and documentation as may be reasonably required by Lender.

Article 5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1. WARRANTY OF TITLE. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same, and that Borrower possesses an unencumbered fee simple absolute in the Land and the Improvements, and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions (other than standard printed exceptions) shown in the title insurance policy insuring the lien of this Security Instrument (the "**Permitted Exceptions**"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever. Borrower hereby represents and warrants that none of the Permitted Exceptions will materially and adversely affect the ability of the Borrower to pay in full the Loan, the use of the Property for the use currently being made thereof, the operation of the Property or the value thereof.

Section 5.2. AUTHORITY. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

Section 5.3. LEGAL STATUS AND AUTHORITY. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the State where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted and proposed to be

conducted. Borrower now has and shall continue to have the full right, power and authority to operate and lease the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Note, this Security Instrument and the Other Security Documents. Borrower's exact legal name and Borrower's organization identification number assigned by its state of formation, if any, is correctly set forth on the first page of this Security Instrument.

Section 5.4. VALIDITY OF DOCUMENTS. The execution, delivery and performance of the Note, this Security Instrument and the Other Security Documents and the borrowing evidenced by the Note (i) are within the corporate/partnership/limited liability company (as the case may be) power of Borrower; (ii) have been authorized by all requisite corporate/partnership/limited liability company (as the case may be) action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by laws, partnership, trust or operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby).

Section 5.5. LITIGATION. There is no action, suit or proceeding (including any condemnation or similar proceeding), or any governmental investigation or any arbitration, in each case pending or, to the knowledge of Borrower, threatened against Borrower or the Property before any governmental or administrative body, agency or official which (i) challenges the validity of this Security Instrument, the Note or any of the Other Security Documents or the authority of Borrower to enter into this Security Instrument, the Note or any of the Other Security Documents or to perform the transactions contemplated hereby or thereby or (ii) if adversely determined would have a material adverse effect on the occupancy of the Property or the business, financial condition or results of operations of Borrower or the Property.

Section 5.6. STATUS OF PROPERTY. (a) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.3 hereof, if required under the terms of that section.

(b) Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(c) The Property and the present and contemplated use and occupancy thereof are in compliance in all material respects with all applicable zoning ordinances, building codes, land use and environmental laws and other similar laws.

(d) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all weather and are physically and legally open for use by the public.

(f) The Property is served by public water and sewer systems.

(g) The Property is free from damage caused by fire or other casualty.

(h) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.

(i) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(j) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.

Section 5.7. NO FOREIGN PERSON. Borrower is not a "foreign person" within the meaning of Sections 1445(f)(3) of the Code and the related Treasury Department regulations, including temporary regulations.

Section 5.8. SEPARATE TAX LOT. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 5.9. ERISA COMPLIANCE. (a) As of the date hereof and throughout the term of this Security Instrument, (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the Code, and (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA or Section 4975 of the Code; and

(b) As of the date hereof and throughout the term of this Security Instrument (i) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA and (ii) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

Section 5.10. LEASES. (a) Borrower is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable; (c) the terms of all alterations, modifications and amendments to the Leases are reflected in the certified rent roll delivered to and approved by Lender; (d) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (e) none of the Rents have been collected for more than one (1) month in advance; (f) the premises demised under the Leases have been completed for the tenants who have accepted and have taken possession of the same on a rent paying basis; and (g) to the best of Borrower's knowledge (which for purposes hereof will mean the actual knowledge of Harry Rady), there exist no offsets or defenses to the payment of any portion of the Rents.

Section 5.11. FINANCIAL CONDITION. (a) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated, and (b) Borrower has received reasonably equivalent value for the granting of this Security Instrument. Borrower has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditors.

Section 5.12. BUSINESS PURPOSES. The loan evidenced by the Note is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 5.13. TAXES. Borrower has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Borrower does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.14. MAILING ADDRESSES. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

Section 5.15. NO CHANGE IN FACTS OR CIRCUMSTANCES. All information submitted to Lender in connection with any request by Borrower for the loan evidenced by the Note and/or any letter of application, preliminary commitment letter, final commitment letter or other application or letter of intent (including, but not limited to, all financial statements, rent rolls, reports and certificates) were accurate, complete and correct in all respects when delivered. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading.

Section 5.16. DISCLOSURE. To the best of Borrower's knowledge (which for purposes hereof will mean the actual knowledge of Harry Rady) Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 5.17. LETTER-OF-CREDIT RIGHTS. If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 of this Security Instrument now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall,

pursuant to an agreement in form and substance satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing in each case that upon an Event of Default, the proceeds of any drawing under the letter of credit are to be applied as provided in Section 11.2 of this Security Agreement.

Section 5.18. AUTHORIZATION TO FILE FINANCING STATEMENTS, POWER OF ATTORNEY. Borrower hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of Borrower as authorized by Applicable Law, as applicable to all or part of the fixtures or Personal Property. For purposes of such filings, Borrower agrees to furnish any information requested by Lender promptly upon request by Lender. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Borrower or in Borrower's own name to execute in Borrower's name any documents and otherwise to carry out the purposes of this Section 5.18, to the extent that Borrower authorization above is not sufficient. To the extent permitted by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

Section 5.19. MASTER LEASE REPRESENTATIONS. (a) The Master Lease is in full force and effect and has not been modified or amended in any manner whatsoever, (b) there are no material defaults under the Master Lease by Master Lessee or Vista and/or Stonecrest, and, to the best of Borrower's knowledge, no event has occurred which but for the passage of time, or notice, or both would constitute a material default under the Master Lease, (c) all rents, additional rents and other sums due and payable under the Master Lease as of the date hereof have been paid in full, and (d) neither Master Lessee nor Vista and/or Stonecrest has commenced any action or given or received any notice for the purpose of terminating the Master Lease.

Section 5.20. TIC AGREEMENT REPRESENTATIONS. (a) The TIC Agreement is in full force and effect and has not been modified or amended in any manner whatsoever; (b) there are no material defaults under the TIC Agreement and no event has occurred which but for the passage of time, or notice, or both would constitute a material default under the TIC Agreement, (c) all sums due and payable (if any) under the TIC Agreement as of the date hereof have been paid in full; and (d) neither Vista nor Stonecrest (nor, to the knowledge of Vista and/or Stonecrest, any other person or entity) has (i) commenced any action or given or received any notice for the purpose of terminating the TIC Agreement, or (ii) instituted or prosecuted any action for partition of the Property (or any portion thereof or interest therein) or any similar action pursuant to the TIC Agreement or any other contractual agreement or instrument or under Applicable Law (including, without limitation, common law) (any such action, the **"Action for Partition"**).

Section 5.21. REA REPRESENTATIONS. With regard to the REA, to the best of Borrower's knowledge:

(a) neither Borrower, nor any other party is currently in default (nor has any notice been given or received with respect to an alleged or current default) under any of the terms and conditions of the REA, and the REA remains unmodified and in full force and effect;

(b) all easements granted pursuant to the REA which were to have survived the site preparation and completion of construction (to the extent that the same has been completed), remain in full force and effect and have not been released, terminated, extinguished or discharged by agreement or otherwise;

(c) all sums due and owing by Borrower to the other parties to the REA (or by the other parties to the REA to the Borrower) pursuant to the terms of the REA, including without limitation, all sums, charges, fees, assessments, costs, and expenses in connection with any taxes, site preparation and construction, non-shareholder contributions, and common area and other property management activities have been paid, are current, and no lien has attached on the Property (or threat thereof been made) for failure to pay any of the foregoing;

(d) the terms, conditions, covenants, uses and restrictions contained in the REA do not conflict in any manner with any terms, conditions, covenants, uses and restrictions contained in any Lease or in any agreement between Borrower and occupant of any peripheral parcel, including without limitation, conditions and restrictions with respect to kiosk placement, tenant restrictions (type, location or exclusivity), sale of certain goods or services, and/or other use restrictions; and

(e) the terms, conditions, covenants, uses and restrictions contained in each Lease do not conflict in any manner with any terms, conditions, covenants, uses and restrictions contained in the REA, any other Lease or in any agreement between Borrower and occupant of any peripheral parcel, including without limitation, conditions and restrictions with respect to kiosk placement, tenant restrictions (type, location or exclusivity), sale of certain goods or services, and/or other use restrictions.

Article 6. OBLIGATIONS AND RELIANCES

Section 6.1. RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, this Security Instrument and the Other Security Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 6.2. NO RELIANCE ON LENDER. The general partners, shareholders, members, principals or other beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 6.3. NO LENDER OBLIGATIONS. (a) Notwithstanding any of the provisions of this Security Instrument (including, but not limited to, the provisions of Subsections 1.1(f) and (l), Section 1.2 or Section 3.7), Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

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

Section 6.4. RELIANCE. Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument and the Other Security Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 5 without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Note, this Security Instrument and the Other Security Documents; and that Lender would not be willing to make the loan evidenced by the Note, this Security Instrument and the Other Security Documents and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 5.

Article 7. FURTHER ASSURANCES

Section 7.1. RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses (the "**Expenses**") incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the Other Security Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law to do so.

Section 7.2. FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender pursuant to this Section 7.2.

Section 7.3. CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS. (a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

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

Section 7.4. ESTOPPEL CERTIFICATES. (a) After request by Lender, Borrower, within ten (10) Business Days, shall furnish Lender or any proposed assignee or Investor (as defined in Section 19.1) with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, Borrower has no actual knowledge of any defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under the

Note or the Security Instrument, (vii) that the Note and this Security Instrument are valid, legal and binding obligations (except as may be limited by (A) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and (B) general principles of equity) and have not been modified or if modified, giving particulars of such modification, (viii) whether, to Borrower's actual knowledge, any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect, (x) the date to which the Rents thereunder have been paid pursuant to the Leases, (xi) whether or not, to the actual knowledge of Borrower, any of the lessees under the Leases are in default under the Leases, and, if any of the lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other factual matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or this Security Instrument.

(b) Borrower shall use its commercially reasonable best efforts to deliver to Lender, promptly upon request (provided such request is not made more than once in any calendar year other than any request by Lender made in connection with the securitization of the Loan or following an Event of Default), duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding the Lease as Lender may require, including but not limited to attestations that each Lease covered thereby is in full force and effect (and to the best of lessee's knowledge) with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) Lender, by its acceptance of this Security Instrument, agrees to deliver to Borrower promptly upon Borrower's request therefor (provided such request is not made more than twice in any calendar year) a written statement setting forth the unpaid principal amount of the Note, the accrued and unpaid interest thereon, the date on which an installment of interest and/or principal were last paid thereunder and whether there are any Events of Default which currently exist and are actually known to Lender.

Section 7.5. FLOOD INSURANCE. After Lender's request, Borrower shall deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally designated "special flood hazard area." or, if any of the Improvements are located within any such area Borrower will obtain and maintain the insurance required prescribed in Section 3.3 hereof, if required under the terms of that section.

Section 7.6. SPLITTING OF SECURITY INSTRUMENT. This Security Instrument and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender and at Lender's sole cost and expense, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of this Security Instrument, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as

may be required by Lender. Borrower's obligations hereunder are conditioned upon Lender's agreement, as evidenced by its acceptance hereof, that such splitting or division shall not result in any additional cost or potential liability to Borrower or any Indemnitor (as defined in the Indemnity Agreement (defined below)) that exceeds that which exists hereunder prior to such splitting or division.

Section 7.7. REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record: (i) with respect to any Loan Document other than the Note, Borrower will issue, in lieu thereof, a replacement of such other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Loan Document in the same principal amount thereof and otherwise of like tenor and (ii) with respect to the Note, (a) Borrower will execute a reaffirmation of the Debt as evidenced by such Note acknowledging that Lender has informed Borrower that the Note was lost, stolen destroyed or mutilated and that such Debt continues to be an obligation and liability of the Borrower as set forth in the Note, a copy of which shall be attached to such reaffirmation or (b) if requested by Lender, Borrower will execute a replacement note, provided, that Lender or Lender's custodian (at Lender's option) shall provide to Borrower Lender's (or Lender's custodian's) then standard form of lost note affidavit and indemnity, which such form shall be reasonably acceptable to Borrower.

Article 8. DUE ON SALE/ENCUMBRANCE

Section 8.1. LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the loan secured hereby, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 8.2. NO SALE/ENCUMBRANCE.

(a) Borrower shall not cause or permit a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein nor permit a Sale or Pledge of an interest in any Restricted Party (in each case, a "**Prohibited Transfer**"), other than pursuant to Leases of space at the Property to tenants in accordance with the applicable provisions hereof, without the prior written consent of Lender.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of

transactions; (iv) any action for partition of the Property (or any portion thereof or interest therein) or any similar action instituted or prosecuted by any Borrower, as a tenant-in-common, or by any other person or entity, pursuant to any contractual agreement or other instrument or under Applicable Law (including, without limitation, common law); (v) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new partnership interests; (vi) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of any member or any profits or proceeds relating to such membership interest; (vii) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (viii) the removal or the resignation of Manager (including, without limitation, an Affiliated Manager) other than in accordance with the applicable terms and conditions hereof.

Section 8.3. PERMITTED TRANSFERS. Notwithstanding anything to the contrary contained in this Article 8, the following transfers shall not be Prohibited Transfers and shall be permitted without Lender's consent: (a) a transfer (but not a pledge) by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party, (b) the transfer (but not the pledge), in one or a series of transactions, of the stock, partnership interests or membership interests (as the case may be) in a Restricted Party, (c) the sale, transfer or issuance of shares of common stock in any Restricted Party that is a publicly traded entity, provided such shares of common stock are listed on the New York Stock Exchange or another nationally recognized stock exchange and (d) the 1031 Equity Transfer; provided, however, with respect to the transfers listed in clauses (a), (b) or (d) above, (A) Lender shall receive not less than five (5) days prior written notice thereof, (B) no such transfers shall result in a change in Control of Sponsor or Affiliated Manager (provided, however, a "change in Control" of Sponsor or Affiliated Manager shall not be deemed to have occurred for the purposes of this subsection (B) if any of the persons or entities comprising the definition of "Sponsor" contained herein succeed to the interest of the then current Sponsor and such successor Sponsor Controls the Affiliated Manager), (C) after giving effect to such transfers, Sponsor shall (I) own at least a 51% direct or indirect equity interest in each of Borrower, Master Lessee (if the Master Lease Termination has not occurred) and any SPE Component Entity, (II) Control Borrower, Master Lessee (if the Master Lease Termination has not occurred) and any SPE Component Entity and (III) control the day-to-day operation of the Property, (D) the Property shall continue to be managed by Affiliated Manager or a Qualified Manager, (E) in the case of the transfer of any direct equity ownership interests in Borrower, Master Lessee (if the Master Lease Termination has not occurred) or in any SPE Component Entity, such transfers shall be conditioned upon continued compliance with the relevant provisions of Sections 4.2 and 4.3 hereof, and (F) in the case of (1) the transfer of the management of the Property to a new Affiliated Manager in accordance with the applicable terms and conditions hereof, or (2) the transfer (in one or in a series of transactions) in excess of 49% (in the aggregate) of any equity ownership interests (I) directly in Borrower, Master Lessee (if the Master Lease Termination has not occurred) or in any SPE Component Entity, or (II) in any Restricted Party whose sole asset is a direct or indirect equity ownership interest in Borrower, Master Lessee (if the Master Lease Termination has not

occurred) or in any SPE Component Entity, such transfers shall be conditioned upon delivery to Lender of a substantive non-consolidation opinion, which such opinion shall be provided by outside counsel acceptable to Lender and the Rating Agencies and shall otherwise be in form, scope and substance reasonably acceptable to Lender and acceptable to the Rating Agencies (such opinion, the **"New Non-Consolidation Opinion"**). For the purposes of the 1031 Equity Transfer, subsection (F) above shall be deemed satisfied to the extent that (i) the substantive non-consolidation opinion delivered in connection with the Loan by Solomon Ward Seidenwurm & Smith, LLP (the **"Closing Date Non-Consolidation Opinion"**) contains a "pairing" between Vista and (1) the holder of the 100% direct equity interest in Vista following the consummation of the 1031 Equity Transfer, and (2) to the extent that any of the constituent parties of Vista following the consummation of the 1031 Equity Transfer have, as their sole asset, a direct or indirect equity interest in Vista aggregating, together with their affiliates, in excess of 49%, each such constituent party (the parties listed in sub-clauses (1) and (2) above, each a "**Required Constituent Party"** and, collectively, the **"Required Constituent Parties"**) or (ii) to the extent that, as of the date of the consummation of the 1031 Equity Transfer, any Required Constituent Party has changed from the parties identified in the Closing Date Non-Consolidation Opinion, Lender is delivered an updated version of Closing Date Non-Consolidation Opinion revised to reflect a new "paring" between Vista and any such new Required Constituent Party.

Section 8.4. ASSUMPTION. Notwithstanding anything to the contrary contained in this Article 8 and in addition to the transfers permitted under Section 8.3, the following transfers shall not be Prohibited Transfers and Lender's consent to the TIC Assumption (defined below) shall not be required and Lender's consent to the first four (4) other transfers of the Property (at any time after the first (1st) anniversary of the closing of the Loan or at any time prior to such date if Lender determines that such assignment or transfer will not hinder, delay or prevent Lender from completing a Secondary Market Transaction (as defined in Section 19.3)) shall not be withheld provided that Lender receives sixty (60) days prior written notice of each such transfer hereunder and no Event of Default has occurred and is continuing, and further provided that, the following additional requirements are satisfied:

(a) With respect to (i) the TIC Assumption or the first such transfer, no transfer fee shall be due, (ii) with respect to the second transfer, Borrower shall pay Lender a transfer fee equal to 0.5% of the outstanding principal balance of the Loan at the time of such transfer, and (iii) with respect to the third and fourth such transfer, Borrower shall pay Lender a transfer fee equal to 1.0% of the outstanding principal balance of the Loan at the time of such transfer;

(b) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with, as applicable, the TIC Assumption and the transfer of the Property (including, without limitation, Lender's reasonable counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and, other than with respect to the TIC Assumption, the fees and expenses of the Rating Agencies pursuant to clause (j) below);

(c) Other than in connection with a TIC Assumption, the proposed transferee (the "**Transferee**") or Transferee's Principals (hereinafter defined) must have demonstrated expertise in owning and operating properties similar in location, size and operation to the Property, which expertise shall be reasonably determined by Lender, or, alternatively, must agree to engage a property management company reasonably satisfactory to Lender (which such property

management company shall, in any event, be a Qualified Manager). The term "**Transferee's Principals**" shall include Transferee's (A) managing members, general partners or Controlling shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a 15% or greater interest in Transferee;

(d) Other than in connection with a TIC Assumption, Transferee's Principals shall, as of the date of such transfer, have an aggregate net worth and liquidity reasonably acceptable to Lender;

(e) Other than in connection with a TIC Assumption, Transferee, Transferee's Principals and all other entities which may be owned or controlled directly or indirectly by Transferee's Principals ("**Related Entities**") must not have been a party to any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed transfer of the Property;

(f) Transferee or the assuming Borrower under a TIC Assumption (the **"Assuming Borrower"**), as applicable, shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance reasonably satisfactory to Lender;

(g) There shall be no material litigation or regulatory action pending or threatened against, as applicable, Transferee, Transferee's Principals or Related Entities or Assuming Borrower or Sponsor which is not reasonably acceptable to Lender;

(h) Other than in connection with a TIC Assumption, Transferee's Principals and Related Entities shall not have defaulted under its or their obligations with respect to any other indebtedness in a manner which is not reasonably acceptable to Lender;

(i) Transferee or Assuming Borrower, as applicable, must be able to satisfy all the covenants set forth in Sections 4.3, and both Transferee and Transferee's Principals or both Assuming Borrower and Sponsor (as applicable) must be able to satisfy all the covenants set forth in Sections 4.3 and 5.9 hereof, no Event of Default or event which, with the giving of notice, passage of time or both, shall constitute an Event of Default, shall otherwise occur as a result of such transfer, and Transferee and Transferee's Principals or Assuming Borrower and Sponsor (as applicable) shall deliver (A) all organization documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender, and (B) all certificates, agreements and covenants reasonably required by Lender (including, without limitation, hazard insurance endorsements or certificates or other similar evidence that the Policies required hereunder have been obtained or maintained, as applicable);

(j) Other than in connection with a TIC Assumption, Transferee shall be approved by the Rating Agencies selected by Lender;

(k) Transferee or Assuming Borrower, as applicable, shall furnish (I) a New Non-Consolidation Opinion, and (II) an opinion of counsel reasonably satisfactory to Lender and its counsel (A) that the assumption of the Debt has been duly authorized, executed and delivered, and that the Note, this Security Instrument, the assumption agreement and the other Loan

Documents are valid, binding and enforceable against Transferee or Assuming Borrower, as applicable, in accordance with their terms, and (B) that Transferee or Assuming Borrower, as applicable, and any entity which is a controlling stockholder, member or general partner of Transferee or Assuming Borrower, as applicable, have been duly organized, and are in existence and good standing;

(l) Borrower shall deliver, at its sole costs and expense, an endorsement to the existing title policy insuring the Security Instrument, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee or Assuming Borrower, as applicable, as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the title policy issued on the date hereof. Immediately upon a transfer of the Property to such Transferee or Assuming Borrower, as applicable, and the satisfaction of all of the above requirements, the named Borrower herein or, in the case of a TIC Assumption, any entity constituting the defined term "Borrower" hereunder other than the Assuming Borrower shall be released from all liability under this Security Instrument, the Note and the Other Security Documents accruing after such transfer, and, in the case of a transfer hereunder other than a TIC Assumption, the Indemnitor under that certain Indemnity Agreement in favor of Lender relating hereto (the "**Indemnity Agreement**"), dated of even date herewith, shall be released from its obligations and liabilities thereunder accruing after such transfer provided that a new indemnitor approved by Lender, which approval shall be granted or withheld pursuant to Lender's customary underwriting procedures, enters into and delivers to Lender a new indemnity agreement in the form and content of the Indemnity Agreement. The foregoing release shall be effective upon the date of such transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower; and

(m) Other than in connection with a TIC Assumption, Borrower's obligations under the contract of sale pursuant to which the transfer is proposed to occur shall expressly be subject to the satisfaction of the terms and conditions of this Section.

Any transfer made pursuant to and in accordance with the terms and provisions of this Section 8.4 shall not be deemed to be a Prohibited Transfer. A consent by Lender with respect to a transfer of the Property in its entirety to, and the related assumption of the Loan by, a Transferee pursuant to this Section shall not be construed to be a waiver of the right of Lender to consent to any subsequent transfer of the Property.

Section 8.5. LENDER'S RIGHTS. Lender reserves the right to condition the consent to a Prohibited Transfer requested hereunder upon (a) a modification of the terms hereof and an assumption of the Note and the other Loan Documents as so modified by the proposed Prohibited Transfer, (b) receipt of payment of a transfer fee equal to one percent (1%) of the outstanding principal balance of the Loan and all of Lender's expenses incurred in connection with such Prohibited Transfer, (c) receipt of written confirmation from the Rating Agencies that the Prohibited Transfer will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization, (d) the proposed transferee's continued compliance with the covenants set forth in this Security Instrument (including, without limitation, the covenants in Sections 4.2 and 4.3) and the other Loan

Documents, (e) a new manager for the Property and a new management agreement satisfactory to Lender, and (f) the satisfaction of such other conditions and/or legal opinions as Lender shall determine in its sole discretion to be in the interest of Lender. All expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Prohibited Transfer made without Lender's consent. This provision shall apply to each and every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer.

Section 8.6. DEFINITIONS. As used in this Article 8, the following terms shall have the following meanings:

(a) **"Affiliated Manager"** shall mean any managing agent of the Property in which Borrower, Master Lessee, Guarantor, Sponsor, any SPE Component Entity or any affiliate of such entities has, directly or indirectly, any legal, beneficial or economic interest.

(b) **"Control"** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of an entity, whether through ownership of voting securities, by contract or otherwise.

(c) **"Restricted Party"** shall mean Borrower, Master Lessee (if the Master Lease Termination has not yet occurred), Guarantor, Sponsor, any SPE Component Entity, any Affiliated Manager, or any shareholder, partner, member, non-member manager or any direct or indirect legal or beneficial owner of any of the foregoing.

(d) **"Sale or Pledge"** shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

(e) **"Sponsor"** shall mean (i) Guarantor, (ii) a Rady Family Entity or (iii) a Qualified Equityholder; provided, that, as a condition precedent to any transfer of Guarantor's or the Rady Family Entity's interest as "Sponsor" to a Qualified Equityholder, Borrower shall pay Lender a transfer fee in an amount equal to (1) with respect to the first such transfer, $0.00, (2) with respect to the second such transfer, 0.5% of the outstanding principal balance of the Loan at the time of such transfer, and (3) with respect to any subsequent transfer, 1.0% of the outstanding principal balance of the Loan at the time of such transfer

(f) **"Qualified Equityholder"** shall mean

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

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

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

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

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

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

Notwithstanding the foregoing, no person or entity shall be deemed to be a Qualified Equityholder if (y) such person or entity (or any other person or entity owned or Controlled by such person or entity or affiliated with such person or entity) has been, within the last ten (10) years, (I) subject to any material, uncured event of default in connection with a loan financing which resulted in litigation or an acceleration of an indebtedness held by Lender or any other secondary market or institutional lender or (II) the subject of any action or proceeding under applicable Insolvency Laws; or (z) any of the principals or entities which Control such person or entity or own a material direct or indirect equity interest in such person or entity have ever been convicted of a felony.

As used in the above definition of "Qualified Equityholder", the following terms shall have the following meanings:

(i) "**Eligibility Requirements**" shall mean, with respect to any person or entity, that such person or entity (i) has total assets (in name or under management) in excess of $750,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's equity of $500,000,000 and (ii) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties.

(ii) **"Permitted Fund Manager"** shall mean any Person or entity that on the date of determination is (i) a nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (ii) investing through a fund with committed capital of at least $500,000,000 and (iii) not subject to any action or proceeding under any bankruptcy, insolvency, rehabilitation or other similar proceeding.

(iii) **"Qualified Trustee"** shall mean (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least $300,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

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

(g) "**Rady Family Entity**" shall mean an entity (i) in which a spouse, siblings, children or grandchildren, nieces, nephews or cousins of Ernest S. Rady or trusts for the benefit of any such persons (collectively, the **"Rady Family Group"**) own at least a 51% direct or indirect equity interest, and (ii) which is Controlled by one or more members of the Rady Family Group having commercial real estate experience at least comparable to that of the current management of Guarantor.

(h) **"TIC Assumption"** shall mean the one-time transfer of the ownership interest in the Property currently held by one of the entities comprising the defined term "Borrower" hereunder to the other party comprising the defined term "Borrower" hereunder and such other party's assumption of the Debt and the other obligations of the transferring Borrower hereunder and under the other Loan Documents in accordance with the terms and conditions set forth in Section 8.4 above.

Article 9. PREPAYMENT

Section 9.1. PREPAYMENT. The Debt may be prepaid only in strict accordance with the express terms and conditions of the Note and this Security Instrument including the payment (if applicable) of any prepayment consideration or premium due under the Note (whether due prior to or after the occurrence of an Event of Default).

Article 10. DEFAULT

Section 10.1. EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "**Event of Default**":

(a) if any portion of the Debt is not paid on the date the same is due or if the entire Debt is not paid on or before the Maturity Date; provided, however, Borrower shall not be in default so long as there is sufficient money in the Cash Management Account for payment of all amounts then due and payable (including any deposits into Reserve Accounts (as such term is defined in that certain Reserve Agreement by and among Borrower and Lender executed in connection with the Loan)) and Lender's access to such money has not been constrained or constricted in any manner;

(b) if any of the Taxes or Other Charges are not paid within ten (10) days following the date the same is due and payable except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument;

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender within ten (10) days of Lender's request;

(d) if the Property is subject to actual waste;

(e) if Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) violates or does not comply with any of the provisions of Sections 3.7 (and does not cure such failure within ten days of written notice) or 4.3 or Articles 8, 12 or 13;

(f) if any representation or warranty of Borrower or any person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument (including, without limitation, Guarantor) or any general partner, managing member, principal or beneficial owner of any of the foregoing, made herein or any guaranty or indemnity, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;

(g) if (i) Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) or any general partner or managing member of Borrower, Master Lessee (if the Master Lease Termination has not yet occurred) or any SPE Component Entity shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate

it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower or Master Lessee (if the Master Lease Termination has not yet occurred), or any general partner or managing member of Borrower or Master Lessee (if the Master Lease Termination has not yet occurred), or any SPE Component Entity shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower, Master Lessee (if the Master Lease Termination has not yet occurred), or any general partner or managing member of Borrower or Master Lessee (if the Master Lease Termination has not yet occurred), or any SPE Component Entity any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of ninety (90) days; or (iii) there shall be commenced against Borrower or Master Lessee (if the Master Lease Termination has not yet occurred), or any general partner or managing member of Borrower or Master Lessee (if the Master Lease Termination has not yet occurred), or any SPE Component Entity any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; or (iv) Borrower or Master Lessee (if the Master Lease Termination has not yet occurred), or any general partner or managing member of Borrower or Master Lessee (if the Master Lease Termination has not yet occurred), or any SPE Component Entity shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower or Master Lessee (if the Master Lease Termination has not yet occurred), or any general partner of Borrower, Master Lessee (if the Master Lease Termination has not yet occurred), or any SPE Component Entity shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

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

(i) Subject to Borrower’s contest rights contained in Section 3.12 hereof, if the Property becomes subject to any mechanic’s, materialman’s or other lien (other than a lien for local real estate taxes and assessments not then due and payable) and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of ninety (90) days;

(j) if any federal tax lien is filed against Borrower, any general partner or managing member of Borrower, or the Property and same is not discharged of record within ninety (90) days after same is filed;

(k) if Borrower fails to cure any violations of Applicable Laws within ninety (90) days, of first having received notice thereof;

(l) if (i) Borrower fails to timely provide Lender with the written certification and evidence referred to in Section 4.2 hereof, or (ii) Borrower consummates a transaction which

would cause the Security Instrument or Lender's exercise of its rights under this Security Instrument, the Note or the Other Security Documents to constitute a nonexempt prohibited transaction under ERISA or result in a violation of a state statute regulating governmental plans, subjecting Lender to liability for a violation of ERISA or a state statute;

(m) if Borrower shall fail to reimburse Lender on demand, with interest calculated at the Default Rate (defined below), for all Insurance Premiums or Taxes, together with interest and penalties imposed thereon, paid by Lender pursuant to this Security Instrument;

(n) if Borrower shall fail to timely deliver to Lender an estoppel certificate pursuant to the terms of Subsection 7.4(a);

(o) if Borrower shall fail to timely deliver to Lender, after request by Lender, the statements referred to in Section 3.11 in accordance with the terms thereof;

(p) if any default occurs in the performance of any guarantor's or indemnitor's (including, without limitation, Guarantor's) obligations under any guaranty or indemnity executed in connection herewith (including, without limitation, the Indemnity Agreement) and such default continues after the expiration of applicable grace periods set forth in such guaranty or indemnity, or if any representation or warranty of any guarantor or indemnitor thereunder shall be false or misleading in any material respect when made;

(q) if the 1031 Exchange Transfer shall fail to occur within one-hundred eighty (180) days of the date hereof;

(r) if a default shall occur under the Master Lease or if the Master Lease Termination shall fail to occur within five (5) days of the consummation of the 1031 Exchange Transfer;

(s) if for more than thirty (30) days after notice from Lender, Borrower shall continue to be in default under any other term, covenant or condition of the Note, this Security Instrument or the Other Security Documents in the case of any default which can be cured by the payment of a sum of money or for sixty (60) days after notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such sixty (60) day period and Borrower shall have commenced to cure such default within such sixty (60) day period and thereafter diligently and expeditiously proceeds to cure the same, such sixty (60) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days; or

(t) a default beyond applicable notice or cure periods (if any) shall occur under any Other Security Documents.

Section 10.2. LATE PAYMENT CHARGE. If any monthly installment of principal and interest is not paid on the date on which it was due, Borrower shall pay to Lender upon demand an amount equal to the lesser of two and one-half percent (2.5%) of such unpaid portion of the outstanding monthly installment of principal and interest then due or the maximum amount permitted by Applicable Law, to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment, and such amount shall be secured by this Security Instrument and the Other Security Documents.

Section 10.3. DEFAULT INTEREST. Borrower will pay, from the date of an Event of Default through the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal balance of the Note at a per annum rate equal to the lesser of (a) four percent (4%) plus the Applicable Interest Rate (as defined in the Note), and (b) the maximum interest rate which Borrower may by law pay or Lender may charge and collect (the "**Default Rate**").

Article 11. RIGHTS AND REMEDIES

Section 11.1. REMEDIES. Upon the occurrence of any Event of Default, Borrower agrees that Trustee or Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Trustee or Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Trustee or Lender: (a) declare the entire unpaid Debt to be immediately due and payable; (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner; (c) with or without entry, to the extent permitted and pursuant to the procedures provided by Applicable Law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority; (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law; (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the Other Security Documents; (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents; (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower or of any person, firm or other entity liable for the payment of the Debt; (h) subject to Applicable Law, and following notice to Borrower, the license granted to Borrower under Section 1.2 shall be revoked (subject to reinstatement as provided herein) and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems

advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and, subject to the Cash Management Agreement, receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; (i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower; (j) apply any sums then deposited in the Escrow Fund and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any Other Security Document to the payment of the following items in any order in its discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) the unpaid principal balance of the Note; or (v) all other sums payable pursuant to the Note, this Security Instrument and the Other Security Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument; (k) surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney in fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums; (l) pursue such other remedies as Lender may have under Applicable Law; (m) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or (n) under the power of sale hereby granted, Lender shall have the discretionary right to cause some or all of the Property, including any Personal Property, to be sold or otherwise disposed of in any combination and in any manner permitted by Applicable Law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. In the event of a sale, by foreclosure, power of sale, or otherwise, Lender may bid for and acquire the Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the

Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder and any other sums which Lender is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid. Notwithstanding the provisions of this Section 11.1 to the contrary, if any Event of Default as Subsection 10.1(g) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 11.2. APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender after the occurrence of an Event of Default pursuant to the Note, this Security Instrument or the Other Security Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Upon any foreclosure sale or sales of all or any portion of the Property under the power of sale herein granted (if any), Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

Section 11.3. RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 11.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 11.4. ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 11.5. RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 11.6. EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and

other papers of Borrower and each other "Indemnitor" under the Indemnity Agreement delivered in connection herewith which reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower or such other Indemnitor or where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower and such other Indemnitor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower and such other Indemnitor where the books and records are located.

Section 11.7. OTHER RIGHTS, ETC. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the Other Security Documents.

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

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

Section 11.8. RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 11.9. VIOLATION OF LAWS. If the Property is not in compliance with Applicable Laws, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 11.10. RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 11.11. EXCULPATION. All rights and remedies of Lender under this Security Instrument and the Other Security Documents are expressly made subject to the limitations and exculpations set forth in Article 15, below.

Article 12. ENVIRONMENTAL HAZARDS

Section 12.1. ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants, based upon an environmental assessment of the Property and information that Borrower knows (which for purposes hereof will mean information within the actual knowledge of Harry Rady) that: (a) there are no Hazardous Substances (defined below) or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with, if required, Environmental Laws (defined below) and with permits issued pursuant thereto or (ii) fully disclosed to Lender by Borrower in writing or pursuant to the written reports resulting from the environmental assessments of the Property delivered to Lender (the "**Environmental Report**"); (b) there are no past, present or threatened Releases (defined below) of Hazardous Substances in, on, under or from the Property except as described in the Environmental Report; (c) there is no likely threat of any Release of Hazardous Substances migrating to the Property except as described in the Environmental Report; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Report; (e) Borrower has not received, any written or oral notice from any person or entity (including but not limited to a governmental entity) relating to any unlawful accumulations of Hazardous Substances or Remediation (defined below) thereof on the Property, or of possible liability of any person or entity pursuant to violation of any Environmental Law in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to conditions in, on, under or from the Property that is known to Borrower (which for purposes hereof will mean the actual knowledge of Harry Rady) and that is contained in Borrower's files and records, including but not limited to any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property.

"**Environmental Law**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive

Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right to Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. "Environmental Law" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law; conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property. "**Hazardous Substances**" include but are not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives provided, however, that "Hazardous Substances" shall not include cleaning materials, office supplies, cleaning supplies and other substances commonly used or sold by retail establishments similar to those on the Property in the ordinary course of their business and customarily used at properties similar to the Property, to the extent such materials are used, stored and disposed of in accordance with Environmental Laws.

"**Release**" of any Hazardous Substance means any unlawful release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

"**Remediation**" means any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in Article 12.

Section 12.2. ENVIRONMENTAL COVENANTS. Borrower covenants and agrees that so long as Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property: (a) all uses and operations on or of the Property shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances by Borrower, its agents or employees in, on, under or from the Property; (c) Borrower shall not knowingly permit any Hazardous Substances in, on, or under the Property,

except those that are in compliance with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required; (d) the Property shall be kept free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other person or entity (the "**Environmental Liens**"); (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 12.3 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any written request of Lender (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties (as defined herein) shall be entitled to rely on such reports and other results thereof provided, however, that no such request shall be made by Lender unless Lender has reasonable grounds to believe that a Release of Hazardous Substances or a violation of Environmental Law has occurred; (g) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate Remediation of any condition (including but not limited to a Release of a Hazardous Substance) in, on, under or from the Property; (ii) comply with any Environmental Law; (iii) comply with any directive from any governmental authority; and (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment; (h) Borrower shall not do or knowingly allow any tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; and (i) Borrower shall immediately notify Lender in writing of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property; (B) any non compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication which Borrower becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Substances or Remediation thereof affecting the Property, possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Article 12. Any failure of Borrower to perform its obligations pursuant to this Section 12.2 shall constitute bad faith waste with respect to the Property.

Section 12.3. LENDER'S RIGHTS. Subject to the rights of quiet enjoyment of tenants under existing Leases, Lender and any other person or entity designated by Lender, including but not limited to any receiver, any representative of a governmental entity, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity

designated by Lender. The costs and expenses of such assessments shall be borne by Lender except in instances where such report or assessment is performed due to Borrower's failure to comply with its obligations under Section 12.2(f), in which cases the costs and expenses of such assessments shall be paid for by Borrower.

Article 13. INDEMNIFICATION

Section 13.1. **GENERAL INDEMNIFICATION. BORROWER SHALL, AT ITS SOLE COST AND EXPENSE, PROTECT, DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LIABILITIES (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITIES), ACTIONS, PROCEEDINGS, OBLIGATIONS, DEBTS, DAMAGES, LOSSES, COSTS, EXPENSES, DIMINUTIONS IN VALUE, FINES, PENALTIES, CHARGES, FEES, EXPENSES, JUDGMENTS, AWARDS, AMOUNTS PAID IN SETTLEMENT, PUNITIVE DAMAGES, FORESEEABLE AND UNFORESEEABLE CONSEQUENTIAL DAMAGES, OF WHATEVER KIND OR NATURE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND OTHER COSTS OF DEFENSE) (THE "LOSSES") IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST ANY INDEMNIFIED PARTIES (DEFINED BELOW) AND DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY RELATING TO ANY ONE OR MORE OF THE FOLLOWING WHICH SHALL HAVE OCCURRED PRIOR TO THE FORECLOSURE OF THIS SECURITY INSTRUMENT (OR DELIVERY AND ACCEPTANCE OF A DEED IN LIEU OF SUCH FORECLOSURE), EXCEPT TO THE EXTENT ANY OF THE FOLLOWING ARE ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNIFIED PARTY: (A) ANY AND ALL LAWFUL ACTION THAT MAY BE TAKEN BY LENDER IN CONNECTION WITH THE ENFORCEMENT OF THE PROVISIONS OF THIS SECURITY INSTRUMENT OR THE NOTE OR ANY OF THE OTHER SECURITY DOCUMENTS, WHETHER OR NOT SUIT IS FILED IN CONNECTION WITH SAME, OR IN CONNECTION WITH BORROWER AND/OR ANY PARTNER, JOINT VENTURER OR SHAREHOLDER THEREOF BECOMING A PARTY TO A VOLUNTARY OR INVOLUNTARY FEDERAL OR STATE BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDING; (B) ANY ACCIDENT, INJURY TO OR DEATH OF PERSONS OR LOSS OF OR DAMAGE TO PROPERTY OCCURRING IN, ON OR ABOUT THE PROPERTY OR ANY PART THEREOF OR ON THE ADJOINING SIDEWALKS, CURBS, ADJACENT PROPERTY OR ADJACENT PARKING AREAS, STREETS OR WAYS; (C) ANY USE, NONUSE OR CONDITION IN, ON OR ABOUT THE PROPERTY OR ANY PART THEREOF OR ON THE ADJOINING SIDEWALKS, CURBS, ADJACENT PROPERTY OR ADJACENT PARKING AREAS, STREETS OR WAYS; (D) PERFORMANCE OF ANY LABOR OR SERVICES OR THE FURNISHING OF ANY MATERIALS OR OTHER PROPERTY IN RESPECT OF THE PROPERTY OR ANY PART THEREOF; (E) THE FAILURE OF ANY PERSON OTHER THAN AN INDEMNIFIED PARTY TO FILE TIMELY WITH THE INTERNAL REVENUE SERVICE AN ACCURATE FORM 1099 B, STATEMENT FOR RECIPIENTS OF PROCEEDS FROM REAL ESTATE, BROKER AND BARTER EXCHANGE TRANSACTIONS, WHICH MAY BE REQUIRED IN CONNECTION WITH THIS SECURITY INSTRUMENT, OR TO SUPPLY A COPY THEREOF IN A**

TIMELY FASHION TO THE RECIPIENT OF THE PROCEEDS OF THE TRANSACTION IN CONNECTION WITH WHICH THIS SECURITY INSTRUMENT IS MADE; (F) ANY FAILURE OF THE PROPERTY TO BE IN COMPLIANCE WITH ANY APPLICABLE LAWS; (G) THE ENFORCEMENT BY ANY INDEMNIFIED PARTY OF THE PROVISIONS OF THIS ARTICLE 13; (H) ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST LENDER BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY LEASE; (I) THE PAYMENT OF ANY COMMISSION, CHARGE OR BROKERAGE FEE TO ANYONE WHICH MAY BE PAYABLE IN CONNECTION WITH THE FUNDING OF THE LOAN EVIDENCED BY THE NOTE AND SECURED BY THIS SECURITY INSTRUMENT; OR (J) ANY MISREPRESENTATION MADE BY BORROWER IN THIS SECURITY INSTRUMENT OR ANY OTHER SECURITY DOCUMENT. ANY AMOUNTS PAYABLE TO LENDER BY REASON OF THE APPLICATION OF THIS SECTION 13.1 SHALL BECOME IMMEDIATELY DUE AND PAYABLE AND SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE LOSS OR DAMAGE IS SUSTAINED BY LENDER UNTIL PAID. AS USED HEREIN, THE TERM "INDEMNIFIED PARTIES" MEANS LENDER, TRUSTEE AND ANY PERSON OR ENTITY WHO IS OR WILL HAVE BEEN INVOLVED IN THE ORIGINATION OF THE LOAN EVIDENCED BY THE NOTE, ANY PERSON OR ENTITY WHO IS OR WILL HAVE BEEN INVOLVED IN THE SERVICING OF THE LOAN EVIDENCED BY THE NOTE, ANY PERSON OR ENTITY IN WHOSE NAME THE ENCUMBRANCE CREATED BY THIS SECURITY INSTRUMENT IS OR WILL HAVE BEEN RECORDED, PERSONS AND ENTITIES WHO MAY HOLD OR ACQUIRE OR WILL HAVE HELD A FULL OR PARTIAL INTEREST IN THE LOAN EVIDENCED BY THE NOTE (INCLUDING, BUT NOT LIMITED TO, INVESTORS (AS DEFINED HEREIN) OR PROSPECTIVE INVESTORS IN THE SECURITIES (AS DEFINED HEREIN), AS WELL AS CUSTODIANS, TRUSTEES AND OTHER FIDUCIARIES WHO HOLD OR HAVE HELD A FULL OR PARTIAL INTEREST IN THE LOAN EVIDENCED BY THE NOTE AS WELL AS THE RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, EMPLOYEES, AGENTS, SERVANTS, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, AFFILIATES, SUBSIDIARIES, PARTICIPANTS, SUCCESSORS AND ASSIGNS OF ANY AND ALL OF THE FOREGOING (INCLUDING BUT NOT LIMITED TO ANY OTHER PERSON OR ENTITY WHO HOLDS OR ACQUIRES OR WILL HAVE HELD A PARTICIPATION OR OTHER FULL OR PARTIAL INTEREST IN THE LOAN EVIDENCED BY THE NOTE OR THE PROPERTY, WHETHER DURING THE TERM OF THE LOAN EVIDENCED BY THE NOTE OR AS A PART OF OR FOLLOWING A FORECLOSURE OF THE LOAN EVIDENCED BY THE NOTE AND INCLUDING, BUT NOT LIMITED TO, ANY SUCCESSORS BY MERGER, CONSOLIDATION OR ACQUISITION OF ALL OR A SUBSTANTIAL PORTION OF LENDER'S ASSETS AND BUSINESS).

Section 13.2. MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on

the making and/or recording of this Security Instrument, the Note or any of the Other Security Document, except for income taxes and franchise taxes (imposed in lieu of income taxes) imposed on an Indemnified Party as a result of a present or former connection between the jurisdiction of the government or taxing authority imposing such tax and the Indemnified Party (excluding a connection arising solely from the Indemnified Party having executed, delivered, or performed its obligations or received a payment under, or enforced, this Security Instrument, the Note and the Other Security Documents) or any political subdivision or taxing authority thereof or therein.

Section 13.3. ERISA INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Sections 4.2 or 5.9.

Section 13.4. **ENVIRONMENTAL INDEMNIFICATION. BORROWER SHALL, AT ITS SOLE COST AND EXPENSE, PROTECT, DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL LOSSES AND COSTS OF REMEDIATION (WHETHER OR NOT PERFORMED VOLUNTARILY), ENGINEERS' FEES, ENVIRONMENTAL CONSULTANTS' FEES, AND COSTS OF INVESTIGATION (INCLUDING BUT NOT LIMITED TO SAMPLING, TESTING, AND ANALYSIS OF SOIL, WATER, AIR, BUILDING MATERIALS AND OTHER MATERIALS AND SUBSTANCES WHETHER SOLID, LIQUID OR GAS) IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST ANY INDEMNIFIED PARTIES, AND DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY RELATING TO ANY ONE OR MORE OF THE FOLLOWING (EXCEPT TO THE EXTENT THAT (I) ANY SUCH CLAIMS, LOSSES OR COSTS ARISE FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNIFIED PARTIES OR (II) THE SAME RELATE SOLELY TO HAZARDOUS SUBSTANCES FIRST INTRODUCED TO THE PROPERTY BY ANYONE OTHER THAN BORROWER, ITS AGENTS OR EMPLOYEES FOLLOWING THE FORECLOSURE OF THIS SECURITY INSTRUMENT (OR THE DELIVERY AND ACCEPTANCE OF A DEED IN LIEU OF SUCH FORECLOSURE), THE EXPIRATION OF ANY RIGHT OF REDEMPTION WITH RESPECT THERETO AND THE OBTAINING BY THE PURCHASER AT SUCH FORECLOSURE SALE OR GRANTEE UNDER SUCH DEED OF POSSESSION OF THE PROPERTY): (A) ANY PRESENCE OF ANY HAZARDOUS SUBSTANCES IN, ON, ABOVE, OR UNDER THE PROPERTY; (B) ANY PAST, PRESENT OR THREATENED RELEASE OF HAZARDOUS SUBSTANCES IN, ON, ABOVE, UNDER OR FROM THE PROPERTY; (C) ANY ACTIVITY BY BORROWER, ANY PERSON OR ENTITY AFFILIATED WITH BORROWER OR ANY TENANT OR OTHER USER OF THE PROPERTY IN CONNECTION WITH ANY ACTUAL, PROPOSED OR THREATENED USE, TREATMENT, STORAGE, HOLDING, EXISTENCE, DISPOSITION OR OTHER RELEASE, GENERATION, PRODUCTION, MANUFACTURING, PROCESSING, REFINING, CONTROL, MANAGEMENT, ABATEMENT, REMOVAL, HANDLING,**

TRANSFER OR TRANSPORTATION TO OR FROM THE PROPERTY OF ANY HAZARDOUS SUBSTANCES AT ANY TIME LOCATED IN, UNDER, ON OR ABOVE THE PROPERTY; (D) ANY ACTIVITY BY BORROWER, ANY PERSON OR ENTITY AFFILIATED WITH BORROWER OR ANY TENANT OR OTHER USER OF THE PROPERTY IN CONNECTION WITH ANY ACTUAL OR PROPOSED REMEDIATION OF ANY HAZARDOUS SUBSTANCES AT ANY TIME LOCATED IN, UNDER, ON OR ABOVE THE PROPERTY, WHETHER OR NOT SUCH REMEDIATION IS VOLUNTARY OR PURSUANT TO COURT OR ADMINISTRATIVE ORDER, INCLUDING BUT NOT LIMITED TO ANY REMOVAL, REMEDIAL OR CORRECTIVE ACTION; (E) ANY PAST, PRESENT OR THREATENED NON COMPLIANCE OR VIOLATIONS OF ANY ENVIRONMENTAL LAWS (OR PERMITS ISSUED PURSUANT TO ANY ENVIRONMENTAL LAW) IN CONNECTION WITH THE PROPERTY OR OPERATIONS THEREON, INCLUDING BUT NOT LIMITED TO ANY FAILURE BY BORROWER, ANY PERSON OR ENTITY AFFILIATED WITH BORROWER OR ANY TENANT OR OTHER USER OF THE PROPERTY TO COMPLY WITH ANY ORDER OF ANY GOVERNMENTAL AUTHORITY IN CONNECTION WITH ANY ENVIRONMENTAL LAWS; (F) THE IMPOSITION, RECORDING OR FILING OR THE THREATENED IMPOSITION, RECORDING OR FILING OF ANY ENVIRONMENTAL LIEN ENCUMBERING THE PROPERTY; (G) ANY ADMINISTRATIVE PROCESSES OR PROCEEDINGS OR JUDICIAL PROCEEDINGS IN ANY WAY CONNECTED WITH ANY MATTER ADDRESSED IN ARTICLE 12 AND THIS SECTION 13.4; (H) ANY PAST, PRESENT OR THREATENED INJURY TO, DESTRUCTION OF OR LOSS OF NATURAL RESOURCES IN ANY WAY CONNECTED WITH THE PROPERTY, INCLUDING BUT NOT LIMITED TO COSTS TO INVESTIGATE AND ASSESS SUCH INJURY, DESTRUCTION OR LOSS; (I) ANY ACTS OF BORROWER OR OTHER USERS OF THE PROPERTY IN ARRANGING FOR DISPOSAL OR TREATMENT, OR ARRANGING WITH A TRANSPORTER FOR TRANSPORT FOR DISPOSAL OR TREATMENT, OF HAZARDOUS SUBSTANCES OWNED OR POSSESSED BY SUCH BORROWER OR OTHER USERS, AT ANY FACILITY OR INCINERATION VESSEL OWNED OR OPERATED BY ANOTHER PERSON OR ENTITY AND CONTAINING SUCH OR SIMILAR HAZARDOUS MATERIALS; (J) ANY ACTS OF BORROWER OR OTHER USERS OF THE PROPERTY, IN ACCEPTING ANY HAZARDOUS SUBSTANCES FOR TRANSPORT TO DISPOSAL OR TREATMENT FACILITIES, INCINERATION VESSELS OR SITES SELECTED BY BORROWER OR SUCH OTHER USERS, FROM WHICH THERE IS A RELEASE, OR A THREATENED RELEASE OF ANY HAZARDOUS SUBSTANCE WHICH CAUSES THE INCURRENCE OF COSTS FOR REMEDIATION; (K) ANY PERSONAL INJURY, WRONGFUL DEATH, OR PROPERTY DAMAGE ARISING UNDER ANY STATUTORY OR COMMON LAW OR TORT LAW THEORY, INCLUDING BUT NOT LIMITED TO DAMAGES ASSESSED FOR THE MAINTENANCE OF A PRIVATE OR PUBLIC NUISANCE OR FOR THE CONDUCTING OF AN ABNORMALLY DANGEROUS ACTIVITY ON OR NEAR THE PROPERTY, AND ARISING OUT OF A RELEASE OF ANY HAZARDOUS SUBSTANCE ON, UNDER OR ABOUT THE PROPERTY; AND (L) ANY MISREPRESENTATION OR INACCURACY IN ANY REPRESENTATION OR WARRANTY OR MATERIAL BREACH OR FAILURE TO PERFORM ANY COVENANTS OR OTHER OBLIGATIONS PURSUANT TO ARTICLE 12.

Section 13.5. DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, if they reasonably believe that their interests are not properly being represented by the counsel selected by Borrower, engage their own attorneys and other professionals to defend them. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Article 14. WAIVERS

Section 14.1. WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any of the Other Security Documents, or the Obligations. The foregoing shall not be deemed a waiver of Borrower's right to assert in a separate proceeding any claim against Lender which otherwise would constitute a defense, setoff, counterclaim or crossclaim of any nature arising from and after the date hereof.

Section 14.2. MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Applicable Law.

Section 14.3. WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Trustee or Lender except with respect to matters for which this Security Instrument, the Note, or the Other Security Documents specifically and expressly provides for the giving of notice by Trustee or Lender to Borrower and except with respect to matters for which Trustee or Lender is required by Applicable Law to give notice, and Borrower hereby expressly waives the right to receive any notice from Trustee or Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Trustee or Lender to Borrower or as required by law.

Section 14.4. DETERMINATIONS BY LENDER. Except as otherwise specifically set forth in the Note, this Security Instrument, or the Other Security Documents, wherever pursuant to this Security Instrument (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all

decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be in the reasonable determination of Lender applied in good faith. All approvals of or waivers by Lender in respect of any of the terms, conditions or requirements of this Security Instrument must be in writing. No waiver with respect to any condition, breach or other matter shall extend to or be taken in any manner whatsoever to affect any other condition, breach or matter or affect Lender's rights resulting therefrom.

Section 14.5. SURVIVAL. The indemnifications made pursuant to Sections 13.3 and 13.4 and the representations and warranties, covenants, and other obligations arising under Article 12, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Note or any of the Other Security Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Note or the Other Security Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto. Notwithstanding the foregoing, upon a permitted transfer pursuant to Article 8, the transferee Borrower shall be released from any liability thereafter accruing under any such indemnification provision (other than as to matters which have already occurred).

Section 14.6. **WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

Article 15. EXCULPATION

Section 15.1. EXCULPATION. All rights and remedies of Lender under this Security Instrument and the Other Security Documents are expressly made subject to the limitations and exculpations set forth in Article 14 of the Note, the provisions of which are incorporated herein by this reference.

Article 16. NOTICES

Section 16.1. NOTICES. (a) All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (l) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three

(3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower: Alamo Stonecrest Holdings, LLC
Alamo Vista Holdings, LLC
11455 El Camino Real, Suite 200
San Diego, California 92130
Attention: John W. Chamberlain and Robert Barton
Fax No.: (619) 350-2620

If to Lender: Morgan Stanley Mortgage Capital Inc.
1221 Avenue of the Americas
27th Floor
New York, New York 10020
Attention: Stephen Holmes
Facsimile No. (212) 762-9495

or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Security Instrument, "**Business Day**" shall mean any day other than Saturday, Sunday or any other day on which banks are authorized or required to close in New York, New York.

Article 17. SERVICE OF PROCESS

Section 17.1. CONSENT TO SERVICE. (a) Borrower will maintain a place of business or an agent for service of process in San Diego County, California and give prompt notice to Lender of the address of such place of business and of the name and address of any new agent appointed by it, as appropriate. Borrower further agrees that the failure of its agent for service of process to give it notice of any service of process will not impair or affect the validity of such service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of Borrower available to be served, and if it at that time has no place of business in San Diego County, California, then Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to the first paragraph hereof.

Section 17.2. Borrower initially and irrevocably designates John W. Chamberlain with offices on the date hereof at 11455 El Camino Real, Suite 200, San Diego, California 92130, to receive for and on behalf of Borrower service of process with respect to this Security Instrument.

Article 18. APPLICABLE LAW

Section 18.1. **CHOICE OF LAW. THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF TEXAS AND SHALL IN ALL RESPECTS BE GOVERNED,**

CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT TO THE EXTENT CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE SECURITY INTERESTS GRANTED HEREUNDER IS CONTROLLED BY THE LAW OF THE STATE IN WHICH THE COLLATERAL IS LOCATED.

Section 18.2. USURY LAWS. This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by Applicable Law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

Section 18.3. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

Article 19. SECONDARY MARKET

Section 19.1. TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Note, this Security Instrument and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage passthrough certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "**Securities**"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such Securities or any Rating Agency rating such Securities (collectively, the "**Investor**") and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt, Sponsor, Indemnitor and to Borrower, and the Property, whether furnished by Borrower, or otherwise, as Lender determines necessary or desirable. Borrower agrees to reasonably cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Security Instrument, including, without limitation, the delivery of an estoppel certificate in accordance therewith, and such other documents as may be reasonably requested by Lender. Borrower shall

also furnish and Borrower consents to Lender furnishing to such Investors or such prospective Investors or Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower, Indemnitor or Sponsor as may be requested by Lender, any Investor or any prospective Investor or Rating Agency in connection with any sale, transfer or participation interest. Lender may retain or assign responsibility for servicing the Note, this Security Instrument, and the Other Security Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer. Lender may make such assignment or delegation on behalf of the Investors if the Note is sold or this Security Instrument or the Other Security Documents are assigned. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

Section 19.2. CONVERSION TO REGISTERED FORM. At the request and the expense of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the "**Registrar**") reasonably acceptable to Lender which shall maintain, subject to such reasonable regulations as it shall provide, such books and records as are necessary for the registration and transfer of the Note in a manner that shall cause the Note to be considered to be in registered form for purposes of Section 163(f) of the Code. The option to convert the Note into registered form once exercised may not be revoked. Any agreement setting out the rights and obligation of the Registrar shall be subject to the reasonable approval of Lender. Borrower may revoke the appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Borrower or Lender or any other lender in respect of transfers of the Note and Security Instrument (other than Taxes and governmental charges and fees).

Section 19.3. COOPERATION. Borrower acknowledges that Lender and its successors and assigns may (a) sell this Security Instrument, the Note and Other Security Documents to one or more third parties as a whole loan, (b) participate the Loan secured by this Security Instrument to one or more third parties, (c) deposit, through one or a series of transactions, this Security Instrument, the Note and Other Security Documents with one or more trusts, which trusts may sell certificates to third parties evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to third parties (The transaction referred to in clauses (a), (b), (c) and (d) shall hereinafter be referred to collectively as "**Secondary Market Transactions**" and the transactions referred to in clause (c) shall hereinafter be referred to as a "**Securitization**". Any certificates, notes or other securities issued in connection with a Securitization are hereinafter referred to as "**Securities**"). Borrower shall cooperate in good faith (provided such cooperation will not result in expense or additional potential liability to Borrower) with Lender in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by any Rating Agency issuing any statistical rating in any Secondary Market Transaction or the requirements of potential investors in any Secondary Market Transaction. Borrower agrees to make upon Lender's written request, and at no material cost to Borrower, without limitation, all structural or other changes to the Loan (including delivery of one or more new component notes to replace the original Note or modify the original Note to reflect multiple components of the Loan and such new notes or modified note may have different interest rates and amortization schedules), modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to the Rating Agencies or potential investors and addressing such matters as the Rating Agencies or potential investors may require; provided, however, notwithstanding anything to the contrary in

this Security Instrument, the Note, or the Other Security Documents, Borrower shall not be required to modify any documents evidencing or securing the Loan (or otherwise take any action) which would modify (i) the initial weighted average interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the aggregate amortization of principal of the Note, (iv) any other material economic term of the Loan, (v) decrease the time periods during which Borrower is permitted to perform its obligations under this Security Instrument or any of the Other Security Documents, or (vi) otherwise increase Borrower's or Indemnitor's obligations or decrease any of their rights under the Note, this Security Instrument or any of the other Security Documents except as otherwise expressly permitted herein. Borrower shall provide such information and documents relating to Borrower, Indemnitor, Sponsor, the Property and any tenants of the Improvements as Lender may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to prospective investors or Rating Agencies any information in its possession, including, without limitation, financial statements relating to Borrower, Sponsor, Indemnitor, the Property and any tenant of the Improvements. Borrower acknowledges that certain information regarding the Loan and the parties thereto, Sponsor and the Property may be included in disclosure documents in connection with the Securitization, including an offering circular, a prospectus, prospectus supplement, private placement memorandum or other offering document (each, an "**Disclosure Document**") and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), and may be made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization.

Article 20. COSTS

Section 20.1. PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Lender may impose certain reasonable administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of its loan, (b) the release or substitution of collateral therefor, and (c) if the servicer, in its reasonable determination, anticipates that there will occur an Event of Default and the Loan is transferred to a special servicer (the occurrence of any of the above shall be called an "**Event**"). Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof required by law, regulation, any governmental or quasi governmental authority. Subject to the limitations on cost and expense in Section 19.3 above, Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event of Default. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all reasonable legal fees and disbursements of Lender, whether retained firms, the reimbursement for the expenses of in house staff or otherwise.

Section 20.2. ATTORNEYS' FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with the items set forth in Section 20.1 above, and (b) Borrower shall pay to Trustee or Lender on demand any and all expenses,

including legal expenses and attorneys' fees, reasonably incurred or paid by Trustee or Lender in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Trustee or Lender until such expenses are paid by Borrower.

Article 21. DEFINITIONS

Section 21.1. GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower, each party comprising Borrower (if Borrower consists of more than one person or entity) and any subsequent owner or owners of the Property or any part thereof or any interest therein"; the word "Lender" shall mean "Lender and any subsequent holder of the Note"; the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument"; the word "person" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Article 22. MISCELLANEOUS PROVISIONS

Section 22.1. NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 22.2. LIABILITY. If there is more than one Borrower, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 22.3. INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

Section 22.4. HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 22.5. DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 22.6. NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 22.7. SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and the Other Security Documents and the performance and discharge of the Other Obligations.

Section 22.8. ENTIRE AGREEMENT. The Note, this Security Instrument and the Other Security Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, this Security Instrument and the Other Security Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, this Security Instrument and the Other Security Documents.

Section 22.9. TAX DISCLOSURE. Notwithstanding anything herein or in any other Loan Document to the contrary, except as reasonably necessary to comply with applicable securities laws, each party (and each employee, representative or other agent of each party) hereto may disclose to any and all Persons, without limitation of any kind, any information with respect to the United States federal income "tax treatment" and "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such parties (or their representatives) relating to such tax treatment and tax structure; provided, that with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transaction as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to the United States federal income tax treatment or tax structure of the transactions contemplated hereby.

Article 23. INTENTIONALLY OMITTED

Article 24. TRUSTEE PROVISIONS

Section 24.1. CONCERNING THE TRUSTEE. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Borrower and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 24.2. TRUSTEE'S FEES. Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 24.3. CERTAIN RIGHTS. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the Other Security Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the

Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 24.4. RETENTION OF MONEY. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 24.5. PERFECTION OF APPOINTMENT. Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute trustee to more fully and certainly vest in and confirm to Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

Section 24.6. SUCCESSION INSTRUMENTS. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in Trustee's place.

Article 25. SPECIAL STATE OF TEXAS PROVISIONS

Section 25.1. INCONSISTENCIES. In the event of any inconsistencies between the terms and conditions of this Article 25 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 25 shall control and be binding.

Section 25.2. PROPERTY GRANTED. The first paragraph of Section 1.1 of Article 1 of this Security Instrument entitled "PROPERTY GRANTED" is hereby deleted and the following paragraph is substituted therefor:

"PROPERTY GRANTED. That Borrower whose address for notice hereunder is 11455 El Camino Real, Suite 200, San Diego, California 92130, in consideration of TEN AND NO/100 DOLLARS ($10.00) cash in hand paid by Trustee, whose address for notice is 98 San Jacinto, Suite 400 Austin, Texas 78701, the receipt of which payment is hereby acknowledged and confessed, and of the debt and trust hereinafter mentioned, has Granted, Bargained, Sold and Conveyed, and by these presents does Grant, Bargain, Sell and Convey unto Trustee, and unto the successor or substitute Trustee hereinafter

provided, all right, title and interest now owned or hereafter acquired by Borrower in the following property, rights, interests, and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**") situated in the State of Texas, to-wit:

Section 25.3. LEASES AND RENTS. (a) The following words are hereby added after the words "other mineral royalties and bonuses" in subparagraph (h) of Section 1.1 of Article 1 of this Security Instrument entitled "LEASES AND RENTS":

"and all rents, revenues, bonus money, royalties, rights, and benefits accruing to Borrower under all present and future oil, gas and mineral leases on any parts of the Land and the Improvements"

(b) The following words are hereby added at the end of Section 11.1(h) hereof:

"Notwithstanding the provisions of this Section hereof, no credit shall be given by Lender for any sum or sums received from the rents, issues and profits of the Property until the money collected is actually received by Lender at its principal office, or at such other place as Lender shall designate in writing, and no such credit shall be given for any uncollected rents or other uncollected amounts or bills, nor shall such credit be given for any rents, issues and profits derived from the Property after foreclosure or other transfer of the Property (or part thereof from which rents, issues and/or profits are derived pursuant to the Security Instrument or by agreement) to Lender or any other third party. Receipt of rents, issues and/or profits by Lender shall not be deemed to constitute a pro-tanto payment of the indebtedness evidenced by, or arising under, this Security Instrument, the Note or any of the other Loan Documents, but shall be applied as provided above."

Section 25.4. SECURITY AGREEMENT. The following paragraph is hereby added at the end of Section 1.3 of Article 1 of this Security Instrument entitled "Security Agreement":

"This Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real property records in the Office of the County Clerk where the Property (including said fixtures) is situated. This Security Instrument shall also be effective as a financing statement covering as-extracted minerals or the like (including oil and gas) and accounts subject to Subsection (4) of Section 9.301 of the Texas Business and Commerce Code, as amended, and is to be filed for record in the real estate records of the county where the Property is situated. The mailing address of Borrower and the address of Lender from which information concerning the security interest may be obtained are set forth above."

Section 25.5. OTHER RIGHTS. The following is added as Section 11.7(d) hereof:

"(d) In the event of a foreclosure sale, whether made by the Trustee under the terms hereof, or under judgment of a court, the Personal Property and the Property may, at the option of Lender, be sold as a whole."

Section 25.6. SALE OF PROPERTY. (a) Upon the occurrence of an Event of Default, it shall thereupon be the duty of the above named Trustee, or his successor or substitute, as hereinafter provided, to enforce this trust at the request of any Lender (which request shall be presumed) and to sell the Property with or without first having taken possession of the same and in whole or in part, as the Trustee, or its successor or substitute, may elect (all rights to a marshalling of assets of Borrower being expressly waived hereby) to the highest bidder for cash at public auction at the county courthouse of any County in which the Property is situated, in the area of such courthouse designated for real property foreclosure sales in accordance with applicable law (or in the absence of any such designation, in the area set forth in the notice of sale hereinafter described) on the first Tuesday of any month between the hours of 10:00 A.M. and 4:00 P.M. (commencing at the time stated in the hereinafter described notice of sale or not later than three hours after that time), after giving notice of the time, place and terms of sale and the Property to be sold by (i) the Trustee, or its successor or substitute, or any authorized agent of the foregoing filing a copy of the notice thereof in the office of the County Clerk of each County where the Property is situated and by posting written or printed notice thereof at least twenty-one (21) days preceding the date of said sale at the County Courthouse door of each County where the Property is located, and (ii) the holder of the Debt or any authorized agent of such holder, at least twenty-one (21) days preceding the date of said sale, serving written notice of such proposed sale by certified mail on each debtor obligated to pay the Debt evidenced by the Note according to the records of Lender. Service of such notice to each debtor shall be completed upon deposit of the notice enclosed in a postpaid wrapper, properly addressed to each debtor at the most recent address as shown by the records of Lender, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. After such sale, the Trustee, or its successor or substitute, shall make due conveyance with general warranty to the purchaser or purchasers and the Borrower binds itself, its heirs, assigns, executors, administrators, successors and legal representatives to warrant and forever defend the title of such purchaser or purchasers. Any abstract of title to the Property furnished in connection with the Loan shall be delivered and become the property of the purchaser at said sale. In the event a foreclosure hereunder shall be commenced by the Trustee or his substitute or successor, Lender may at any time before the sale of the Property, direct the said Trustee, or its successor or substitute, to abandon the sale, and may then institute suit for the collection of the Note and the other secured indebtedness, and for the foreclosure of this Security Instrument. It is agreed that if Lender should institute a suit for the collection of the Note or any other secured indebtedness and for the foreclosure of this Security Instrument, Lender may at any time before the entry of a final judgment in said suit dismiss the same, and require the Trustee, his substitute or successor to sell the Property in accordance with the provisions of this Security Instrument.

(b) With respect to the Personal Property, Lender is hereby irrevocably appointed the true and lawful attorney of the Borrower (coupled with an interest), in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Personal Property, and for that purpose Lender may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons with such power, Borrower hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Notwithstanding the foregoing, Borrower, if so

requested by Lender, shall ratify and confirm any such sale or sales by executing and delivering to Lender or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Lender, for such purpose, and as may be designated in such request. To the extent permitted by law, any such sale or sales made under or by virtue of this Section shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law, and in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar at both in law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under Borrower. Upon any sale made under or by virtue of this Section, Trustee, or its successor or substitute, or Lender may, to the extent permitted by law, bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt secured hereby the net sales price after deducting therefrom the expenses of the sale and the cost of the auction and any other sums which Lender is authorized to deduct by law or under this Security Instrument. At any sale pursuant to this Section, whether made under power herein granted, the Texas Property Code, the Texas Business and Commerce Code, or any other legal enactment, or by virtue of any judicial proceeding or any other legal right, remedy or recourse, it shall not be necessary for Lender or Trustee, or its successor or substitute, to be physically present, or to have constructive possession of, the Property, and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if the same had been actually presented and delivered to the purchaser at such sale.

(c) Upon the occurrence of an Event of Default, Lender shall have the right and option to proceed with foreclosure in satisfaction of such item or items by directing the Trustee, or his successor or substitute as hereinafter provided, to proceed as if under a full foreclosure, conducting the sale as herein provided, and without declaring the whole Debt due, and provided that if sale is made because of default as hereinabove mentioned, such sale may be made subject to the unmatured part of the Note and the Debt secured hereby, and it is agreed that such sale, if so made, shall not in any manner affect any other Obligations secured hereby, but as to such other Obligations this Security Instrument and the liens created hereby shall remain in full force and effect just as though no sale had been made under the provisions of this Article. It is further agreed that several sales may be made hereunder without exhausting the right of sale for any other breach of any of the Obligations secured hereby, it being the purpose to provide for a foreclosure and sale of the Property for any matured portion of any of the Debt secured hereby or other items provided for herein without exhausting the power to foreclose and to sell the Property for any other part of the Debt secured hereby whether matured at the time or subsequently maturing.

(d) The proceeds from any such sale shall be applied by the Trustee, or its successor or substitute, as follows:

FIRST, to the payment of the costs and expenses of taking possession of the Property, and of holding, managing, operating, using, leasing, repairing, improving, and selling the same, including without limitation, any one or more of the following to the extent Lender or Trustee, or its successor or substitute, deems appropriate: (1) trustee’s and receiver’s fees; (2) court costs; (3) attorneys’, brokers’, managers’, accountants’, and appraisers’ fees and expenses; (4) cost of advertisement; and (5) the payment of any and all impositions, liens, or other rights,

titles or interests equal or superior to the liens and security interests of this Security Instrument (except those to which the Property has been or will be sold subject to and without any way implying Lender's prior consent to the creation thereof);

SECOND, to the payment of all amounts, other than the principal balance of, and accrued, unpaid interest on, the Debt, which may be due to Lender under the Note to which Borrower is a party, together with interest thereon as provided therein;

THIRD, to the payment of the Debt in the manner set forth in the Note; and

FOURTH, to any person legally entitled thereto.

(e) The Trustee, or its successor or substitute, hereunder shall have the right to sell the Property in whole or in part and in such parcels and order as he may determine, and the right of sale hereunder shall not be exhausted by one or more sales, but successive sales may be had until all of the Property have been legally sold. In the event any sale hereunder is not completed or is defective in the opinion of Lender or the holder of any part of the Debt, such sale shall not exhaust the power of sale hereunder, and Lender or such holder shall have the right to cause a subsequent sale or sales to be made by the Trustee or any successor or substitute Trustee. Likewise, Lender may become the purchaser at any such sale if it is the highest bidder, and shall have the right, after paying or accounting for all costs of said sale or sales, to credit the amount of the bid upon the amount of the Debt owing, in lieu of cash payment.

(f) It shall not be necessary for the Trustee, or its successor or substitute, to have constructively in his possession any part of the real or personal property covered by this Security Instrument, and the title and right of possession of said property shall pass to the purchaser or purchasers at any sale hereunder as fully as if the same had been actually present and delivered. Likewise, on foreclosure of this Security Instrument whether by power of sale herein contained or otherwise, Borrower or any person claiming any part of the Property by, through or under Borrower, shall not be entitled to a marshalling of assets or a sale in inverse order of alienation.

(g) The recitals and statements of fact contained in any notice or in any conveyance to the purchaser or purchasers at any sale hereunder shall be prima facie evidence of the truth of such facts, and all prerequisites and requirements necessary to the validity of any such sale shall be presumed to have been performed.

(h) Any sale under the powers granted by this Security Instrument shall be a perpetual bar against Borrower, its heirs, successors, assigns and legal representatives.

(i) In the event of a foreclosure under the powers granted by this Security Instrument, Borrower, and all other persons in possession of any part of the Property shall be deemed tenants at will of the purchaser at such foreclosure sale and shall be liable for a reasonable rental for the use of the Property; and if any such tenants refuse to surrender possession of the Property upon demand, the purchaser shall be entitled to institute and maintain the statutory action of forcible entry and detainer and procure a writ of possession thereunder, and Borrower expressly waives all damages sustained by reason thereof.

(j) To the extent Section 51.003 of the Texas Property Code, or any amendment thereto or judicial interpretation thereof, requires that the "fair market value" of the Property shall be determined as of the foreclosure date in order to enforce a deficiency against Borrower or any other party liable for the repayment of the Debt, the term "fair market value" shall include those matters required by law and shall also include the additional factors as follows:

(i) The Property is to be valued "AS IS, WHERE IS" and "WITH ALL FAULTS" and there shall be no assumption of restoration of or refurbishment of the Property after the date of foreclosure;

(ii) There shall be an assumption of a prompt resale of the Property for an all cash sales price by the purchaser at the foreclosure so that no extensive holding period should be factored into the determination of "fair market value" of the Property;

(iii) An offset to the fair market value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs relating to the sale of the Property including but not limited to brokerage commissions, title policy expenses, tax prorations, escrow fees, and other common charges which are incurred by a seller of real property similar to the Property; and

(iv) After consideration of the factors required by law and those required above (including the addition of any income to be generated by the Property), an additional discount factor shall be calculated based upon the estimated time it will take to effectuate a sale of the Property so that the "fair market value" as so determined is discounted to be as of the date of the foreclosure of the Property.

Section 25.7. APPLICATION OF PROCEEDS. Notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event that Lender or Trustee, in the exercise of its rights or remedies hereunder or under any other Loan Document, elects to apply any sums realized by Lender or Trustee as a result of such exercise of rights or remedies to any amounts due under the Notes in accordance with the applicable terms and conditions hereof and of the other Loan Documents, such sums shall be deemed to be applied to each individual Note in an amount equal to (1) the total amount of sums to be applied, *multiplied by* (2) the Proportionate Share (hereafter defined) allocated to such Note. As used herein, the term **"Proportionate Share"** shall mean the amount, expressed as a percentage, obtained by dividing (i) the original principal amount of each applicable Note *by* (ii) the original principal amount of the Loan as evidenced by all of the Notes.

Section 25.8. HOMESTEAD. The Property forms no part of any property owned, used or claimed by Borrower as a residence or business homestead and is not exempt from forced sale under the laws of the State of Texas. Borrower hereby disclaims and renounces each and every claim to the Property as a homestead.

Section 25.9. FUTURE INDEBTEDNESS. This Security Instrument shall also secure such future or additional indebtedness of Borrower to Lender or such future or additional advances for construction, improvements, preservation, maintenance and operation of the Property and the security for payment of the Debt as may be made by Lender, whether such future advances are obligatory or are to be made at Lender's option, to Borrower, for any purpose.

Section 25.10. TRADE NAMES. Other than under the trade names "Alamo Quarry", "Alamo Market" and "Alamo Texas Vista Holdings, LLC", Borrower does not do any business with respect to the Property under any trade name other than as set forth in the first paragraph hereof.

Section 25.11. ACKNOWLEDGEMENT. **EACH OF THE PARTIES HERETO SPECIFICALLY ACKNOWLEDGES AND AGREES (a) THAT IT HAS A DUTY TO READ THIS SECURITY INSTRUMENT AND THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS HEREOF, (b) THAT IT HAS IN FACT READ THIS SECURITY INSTRUMENT AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS SECURITY INSTRUMENT (c) THAT IT HAS BEEN REPRESENTED BY LEGAL COUNSEL OF ITS CHOICE THROUGHOUT THE NEGOTIATIONS PRECEDING ITS EXECUTION OF THIS SECURITY INSTRUMENT AND HAS RECEIVED THE ADVICE OF SUCH COUNSEL IN CONNECTION WITH ENTERING INTO THIS SECURITY INSTRUMENT AND (d) THAT IT RECOGNIZES THAT CERTAIN OF THE TERMS OF THIS SECURITY INSTRUMENT PROVIDE FOR (i) CERTAIN WAIVERS AND FOR (ii) THE ASSUMPTION BY ONE PARTY OF, AND/OR RELEASE OF THE OTHER PARTY FROM, CERTAIN LIABILITIES THAT SUCH PARTY MIGHT OTHERWISE BE RESPONSIBLE FOR UNDER THE LAW. EACH PARTY HERETO FURTHER AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY SUCH PROVISIONS OF THIS SECURITY INSTRUMENT ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT SUCH PROVISIONS ARE NOT "CONSPICUOUS."**

NOTICE PURSUANT TO SECTION 26.02(e) OF THE TEXAS BUSINESS AND COMMERCE CODE: THE NOTE, THIS SECURITY INSTRUMENT AND THE OTHER SECURITY DOCUMENTS CONSTITUTE A WRITTEN LOAN AGREEMENT (AS DEFINED IN SECTION 26(a)(2) OF THE TEXAS BUSINESS AND COMMERCE CODE, AS AMENDED) AND REPRESENT THE FINAL AGREEMENT AND UNDERSTANDING BETWEEN THE LENDER AND THE OTHER RESPECTIVE PARTIES HERETO AND THERETO AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS BETWEEN SUCH PARTIES RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR CONTEMPORANEOUS OR SUBSEQUENT AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Section 25.12. WRITTEN AGREEMENT. It is the intent of Lender and Borrower in the execution of the Note, this Security Instrument and all other instruments now or hereafter securing the Note or executed in connection therewith or under any other written or oral agreement by Borrower in favor of Lender to contract in strict compliance with applicable usury law. In furtherance thereof, Lender and Borrower stipulate and agree that none of the terms and provisions contained in the Note, this Security Instrument or any other instrument securing the Note or executed in connection herewith, or in any other written or oral agreement by Borrower in favor of Lender, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law; that neither Borrower nor any guarantors, endorsers or other parties now or hereafter becoming liable for payment of the Note or the other indebtedness arising under any instrument securing the Note or executed in favor therewith, or in any other written or oral agreement by Borrower in favor of Lender, at a rate in excess of the maximum interest that may be lawfully charged under applicable law; and that the provisions of this subsection shall control over all other provisions of the Note, this Security Instrument and any instruments now or hereafter securing the Note or executed in connection herewith or any other oral or written agreements which may be in apparent conflict herewith. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of the Note is accelerated. If the maturity of the Note shall be accelerated for any reason or if the principal of the Note is paid prior to the end of the term of the Note, and as a result thereof the interest received for the actual period of existence of the loan evidenced by the Note exceeds the applicable maximum lawful rate, Lender shall, at its option, either refund to Borrower the amount of such excess or credit the amount of such excess against the principal balance of the Note then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. In the event that Lender shall contract for, charge or receive any amount or amounts and/or any other thing of value which are determined to constitute interest which would increase the effective interest rate on the Note or the other indebtedness secured hereby to a rate in excess of that permitted to be charged by applicable law, an amount equal to interest in excess of the lawful rate shall, upon such determination, at the option of Lender, be either immediately returned to Borrower or credited against the principal balance of the Note then outstanding or the other indebtedness secured hereby, in which event any and all penalize of any kind under applicable law as a result of such excess interest shall be inapplicable.

NOTICE OF INDEMNIFICATION

LENDER AND BORROWER EACH HEREBY ACKNOWLEDGE AND AGREE THAT THIS SECURITY INSTRUMENT CONTAINS CERTAIN INDEMNIFICATION OBLIGATIONS AND COVENANTS INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN SECTIONS 13.1 AND 13.4 HEREOF) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY BORROWER OF LENDER FROM CLAIMS OR LOSSES ARISING AS A RESULT OF LENDER'S OWN NEGLIGENCE.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

ALAMO VISTA HOLDINGS, LLC, a Delaware limited liability company

By: First American Exchange Company, LLC, a Delaware limited liability company, successor by merger to First American Exchange Company, LLC, a Delaware limited liability company, successor by merger to First American Exchange Corporation of California, a California Corporation, its sole member

By: /s/ Laura Taylor
Name: Laura Taylor
Title: Exchange Officer

By: /s/ Karl Utzman
Name: Karl Utzman
Title: Exchange Officer

ALAMO STONECREST HOLDINGS, LLC, a Delaware limited liability company

By: Pacific Stonecrest Holdings, L.P., a California limited partnership, its sole member

By: Pacific Stonecrest Assets, Inc., a California corporation, its general partner

By: /s/ John Chamberlain
Name: John Chamberlain
Title: President

By: /s/ Robert Barton
Name: Robert Barton
Title: CFO

Schedule 1

"**Debt Service Coverage Ratio**" means the ratio of (a) Net Operating Income, to (b) Annual Debt Service, all as determined by Lender.

"**Annual Debt Service**" means an amount equal to twelve (12) times the Monthly Payment (as defined in the Note) payable under the Note.

"**Net Operating Income**" means for the 12-month period immediately preceding the date of calculation, (A) all sustainable Rents and other income received from the Property received from tenants during such 12-month period, less (B) all Operating Expenses for such 12-month period and any Extraordinary Expenses approved by Lender and applicable to such 12-month period.

"**Operating Expenses**" means the aggregate of the following items: (a) real estate taxes, general and special assessments or similar charges, other than Taxes; (b) sales, use and personal property taxes; (c) management fees of not less than 4% of the gross income derived from the operation of the Property and disbursements for management services whether such services are performed at the Property or off-site; (d) wages, salaries, pension costs and all fringe and other employee-related benefits and expenses, of all employees up to and including (but not above) the level of the on-site manager, engaged in the repair, operation and maintenance of the Property and service to tenants and on-site personnel engaged in audit and accounting functions performed by Borrower; (e) insurance premiums including, but not limited to, casualty, liability, rent and fidelity insurance premiums, other than Insurance Premiums; (f) cost of all electricity, oil, gas, water, steam, HVAC and any other energy, utility or similar item and overtime services, the cost of building and cleaning supplies, and all other administrative, management, ownership, operating, advertising, marketing and maintenance expenses incurred by Borrower (and not paid directly by any tenant) in connection with the operation of the Property; (g) costs of necessary cleaning, repair, replacement, maintenance, decoration or painting of existing improvements on the Property (including, without limitation, parking lots and roadways), of like kind or quality or such kind or quality which is necessary to maintain the Property to the same standards as competitive properties of similar size and location of the Property; (h) the cost of such other maintenance materials, HVAC repairs, parts and supplies, and all equipment to be used in the ordinary course of business, which is not capitalized in accordance with approved accounting method; (i) legal, accounting and other professional expenses incurred in connection with the Property; (j) casualty losses to the extent not reimbursed by a third party; and (k) to the extent not already included in any of (f)-(h) above, a reserve for structural repairs, normalized leasing commissions and tenant improvements equal to the greater of (i) applicable market rates therefore or (ii) the minimum requirements of any Rating Agency therefore. The Operating Expenses shall be based on the above-described items actually incurred or payable on an accrual basis in accordance with the Approved Accounting Method by Borrower during the twelve (12) month period ending one month prior to the date on which the Net Operating Income is to be calculated, with customary adjustments for items such as taxes and insurance which accrue but are paid periodically, as adjusted by Lender to reflect projected adjustments for only those items which are definitively ascertainable and of a fixed amount (for example, real estate taxes) for the subsequent twelve (12) month period beginning on the date on which the net operating income is to be calculated. Notwithstanding the foregoing, the term "Operating Expenses" shall not

include (i) depreciation or amortization or any other non-cash item of expense unless approved by Lender, (ii) interest, principal, fees, costs and expense reimbursements of Lender in administering the Loan or exercising remedies under the Note, this Security Instrument or the Other Security Documents; or (iii) any expenditure properly treated as a capital item under the Approved Accounting Method.

"**Extraordinary Expenses**" means expenses incurred in connection with necessary capital improvements or operating expenses of the Property which were not reasonably anticipated in (i) prior to the Fiscal Year in which the Anticipated Maturity Date occurs, the annual operating budget prepared for the Property (including, without limitation, any budget furnished Lender pursuant to Section 3.11(b) hereof) and (ii) beginning with the Fiscal Year in which the Anticipated Maturity Date occurs, the Approved Annual Budget, in each case as reasonably approved by Lender; provided, that, with respect to any Extraordinary Expense not contemplated in any Approved Annual Budget, Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense prior to Lender's approval thereof.

EXHIBIT A

LEGAL DESCRIPTION

TRACT 1: A 53.77 acre (2,342,100 square feet) tract of land out of Lot 1, Block 1, New City Block 8702, ALAMO CEMENT SUBDIVISION, UNIT 5, in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 9536, Page 16, Deed and Plat Records of Bexar County, Texas, said 53.77 acre tract of land being more particularly described by metes and bounds shown on Exhibit “A” attached hereto and made a part hereof.

TRACT 2: A 5.202 acre (226,600 square feet), tract of land being all of Lot 6, Block 8, in New City Block 18208, ALAMO CEMENT SUBDIVISION, UNIT-3L, in the City of San Antonio, Bexar County, Texas, according to the map or plat thereof, recorded in Volume 9538, Page 119 of the Deed and Plat Records of Bexar County, Texas, and being more particularly described by metes and bounds shown on Exhibit “B” attached hereto and made a part hereof;

SAVE AND EXCEPT a 0.0092 acre, (400 square feet), water well parcel situated within Lot 6, Block 8, in New City Block 18208, ALAMO CEMENT SUBDIVISION, UNIT-3L, in the City of San Antonio, Bexar County, Texas, according to the map or plat thereof, recorded in Volume 9538, Page 119 of the Deed and Plat Records of Bexar County, Texas and being more particularly described by metes and bounds shown on Exhibit “B” attached hereto and made a part hereof.

TRACT 3: Perpetual non-exclusive easement for ingress and egress over, across and through and for the use and enjoyment of all Common Areas and Greenbelts, as an appurtenance to Tracts 1 and 2 above, as created by and further described in Article VIII of that certain Declaration of Master Covenants, Conditions and Restrictions of Lincoln Heights recorded in Volume 3780, Page 2008 of the Real property Records of Bexar County, Texas, as amended by instrument recorded in Volume 5470, Page 1260 of the Official Public Records of Real Property of Bexar County, Texas.

FIELD NOTES
FOR

A 53.77 acre, or 2,342,100 square foot, tract of land, being out of Lot 1, Block 1, New City Block (N.C.B.) 8702, Alamo Cement Subdivision Unit 5, in the City of San Antonio, Bexar County, Texas, recorded in Volume 9536, Page 16 of the Deed and Plat Records of Bexar County, Texas and being more particularly described as follows

BEGINNING: At a found 1/2" iron rod with yellow cap marked "Pape-Dawson" in the northeasterly right-of-way line of Basse Road, an 86' right-of-way, recorded, as Alamo Cement Subdivision Unit 2A, in Volume 9524, Pages 165-168 of said Deed and Plat Records, said point being at the end of the curve return to the southwesterly right-of-way line, of Jones-Maltsberger Road, an 86' right-of-way, recorded as Alamo Cement Subdivision Unit 3B, in Volume 9525, Page 215 of said Deed and Plat Records, and also being the beginning of a curve to the left;

THENCE: Southwesterly, along said right-of-way line of Basse Road as follows:

Southwesterly with said curve to the left having a radial bearing of S 49°39'32" E, a radius of 990.00 feet, a central angle of 35°35'17", a chord bearing and distance of S 22°32'49" W, 605.08 feet and an arc length of 614.92 feet to a found 1/2" iron rod with yellow cap marked "Pape-Dawson" at a point of tangency;

S 04°45'11" W, a distance of 600.89 feet to a found 1/2" iron rod with yellow cap marked "Pape-Dawson" at the beginning of a curve to the right;

Southwesterly with said curve to the right having a radius of 645.00 feet, a central angle of 58°05'10", a chord bearing and distance of S 33'47'46" W, 626.25 feet and an arc length of 653.90 feet to a found 1/2" iron rod with yellow cap marked "Pape-Dawson" at a point of tangency; and

S 62°50'21" W, a distance of 228.10 feet to a found 1/2" iron rod with yellow cap marked "Pape-Dawson" at the cutback right-of-way line to U.S. Highway 281, a variable width right-of-way (320' minimum), the southern most corner of this tract;

THENCE: Departing said Basse Road right-of-way line and along said cutback right-of-way line as follows:

N 61°17'27" W, a distance of 79.41 feet to a found 1/2" iron rod with yellow cap marked "Pape-Dawson", a point for an angle;

N 61°14'39" W, a distance of 52.62 feet to a found 1/2" iron rod with yellow cap marked "Pape-Dawson", a point for an angle;

N 48°21’54 W, a distance of 168.17 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson”, a point for an angle; and

N 49°27’59” W, a distance of 261.13 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson” in the westerly right-of-way line of said U.S. Highway 281, a point for an angle;

Thence: Along said westerly right-of-way line of U.S. Highway 281 as follows:

N 14°53’44” W, a distance of 188.63 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson”, a point for an angle;

N 16°18’48” W, a distance of 283.85 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson”, a point for an angle; and

N 15°20’49” W, a distance of 539.02 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson” in the southeasterly right-of-way line of the Union Pacific Railroad, a 100’ right-of-way, the westernmost corner of this tract;

Thence: N 26°00’46” E, departing said U.S. Highway 281 right-of-way line and along said railroad right-of-way line, a distance of 491.97 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson”;

Thence: S 63°59’14’ E, departing said railroad right-of-way a distance of 50.00 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson”;

Thence: N 26°00’46” E, a distance of 100.00 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson”;

Thence: N 63°59’14” W, a distance of 50.00 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson” in said railroad right-of-way;

Thence: N 26°00’46” E, a distance of 113.30 feet along said railroad right-of-way to a found 1/2” iron rod with yellow cap marked “Pape-Dawson”;

Thence: S 63°59’14” E, departing said railroad right-of-way a distance of 100.00 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson”;

Thence: N 14°13’08” E, a distance of 68.50 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson”;

Thence: N 63°59’14” W, a distance of 86.00 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson” in said railroad right-of-way;

Thence: N 26°00’46” E, a distance of 679.11 feet along said railroad right-of-way to a found 1/2” iron rod with yellow cap marked “Pape-Dawson”, in the southwesterly right-of-way line of the aforementioned Jones-Maltsberger Road, the beginning of a non-tangent curve to the left, and northernmost corner of this tract;

Thence: Southeasterly along said right-of-way line of Jones-Maltsberger Road as follows:

Southeasterly with said curve to the left having a radial bearing of N 47°28’30” E, a radius of 693.00 feet, a central angle of 31°58’53” a chord bearing and distance of S 29°49’13” E, 381.82 feet and an arc length of 386.82 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson” at a point of tangency;

S 45°48’40” E, a distance of 265.27 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson” at the beginning of a curve to the left;

Southeasterly with said curve to the left having a radius of 693.00 feet, a central angle of 24°46’01”, a chord bearing and distance of S 58°11’40” E, 297.23 feet and an arc length of 299.56 feet to, a found 1/2” iron rod with yellow cap marked “Pape-Dawson” at a point of tangency; and

S 70°34’41” E, a distance of 268.46 feet to a found 1/2” iron rod with yellow cap marked “Pape-Dawson” at the beginning of the aforementioned curve return to Basse Road;

Thence: Along said curve return to the left having a radius of 50.00 feet, a central angle of 110°55’09”, a chord bearing and distance of S 15°07’06” E, 82.37 feet and an arc length of 96.80 feet to the POINT OF BEGINNING and containing 53.77 acres of land in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey prepared by Pape-Dawson Engineers, Inc.

FIELD NOTES
FOR

A 5.202 acre, 226,600 square foot, tract of land being all of Lot 6, Block 8, in New City Block 18208, Alamo Cement Subdivision Unit-3L, San Antonio, Bexar County, Texas, as recorded in Volume 9538, Page 119 of the Deed and Plat Records of Bexar County, Texas, SAVE AND EXCEPT a 0.0092 acre, 400 square foot, water well parcel situated within said Lot 6, and being more particularly described as follows:

BEGINNING: At a found 1/2" iron rod with a yellow cap marked "Pape Dawson," a point at the northeast intersection of the southeast right-of-way line of a Union Pacific Railroad, a 100-foot right-of-way recorded in Volume 15, Pages 272, 273, and 279 of the Deed Records of Bexar County, Texas, and the northeast right-of-way line of Jones-Maltsberger Road, an 86-foot right-of-way recorded in Volume 9525, Page 215 of the Deed and Plat Records of Bexar County, Texas, the northwest corner of the herein described tract;

Thence: N 26°00'46" E, (Bearings are based on the above referenced Plat of Alamo Cement Subdivision Unit-3L), departing the northeast line of Jones-Maltsberger Road, coincident with the southeast right-of-way line of the above referenced Union Pacific Railroad, a distance of 278.82 feet to a found 1/2" iron rod with a yellow cap marked "Pape Dawson," the northern corner of the herein described tract;

Thence: S 26°33'23" E, departing the southeast right-of-way line of the Union Pacific Railroad, coincident with a remaining portion of Hume's Farm Subdivision as recorded in Volume 105, Pages 118-119, Deed and Plat Records of Bexar County, Texas, a distance of 668.99 feet to a found "X" in concrete, an angle of the herein described tract;

Thence: S 69°19'15" E, coincident with a remaining portion of Hume's Farm Subdivision, a distance of 204.79 feet to a found 1/2" iron rod with a yellow cap marked "Pape Dawson," the northwest corner of Lot 4, Block 8, New City Block 18208, Los Coyotes Subdivision, recorded in Volume 9533, Page 211 of the Deed and Plat Records of Bexar County, Texas, the northeast corner of the herein described tract;

Thence: S 20°40'45" W, coincident with the west line of the above referenced Lot 4, a distance of 158.73 feet to a found lead plug with a tack, an angle in Lot 4 and in the herein described tract;

Thence: S 02°05'14" E, coincident with the west line of Lot 4, a distance of 154.48 feet to a found lead plug with a tack, on the northeast right-of-way line of Jones-Maltsberger Road, the southwest corner of Lot 4, the beginning of a non-tangent curve to the right, and the southeast corner of the herein described tract;

Thence:	231.03 feet, coincident with the northeast right-of-way line of Jones-Maltsberger Road, with the curve to the right, said curve having a radial bearing of N 22°22’56” E, a radius of 607.00 feet, a central angle of 21°48’25” and a chord bearing and distance of N 56°42’52” W, 229.63 feet, to a found 1/2” iron rod with a yellow cap marked “Pape Dawson,” the end of the curve;
Thence:	N 45°48’40” W, coincident with the northeast right-of-way line of Jones-Maltsberger Road, a distance of 265.27 feet to a found 1/2” iron rod with a yellow cap marked “Pape Dawson,” the beginning of a curve to the right;
Thence:	449.73 feet, coincident, with the northeast right-of-way line of Jones-Maltsberger Road, with the curve to the right, said curve having a radius of 607.00 feet, a central angle of 42°27’03”, and a chord bearing and distance of N 24°35’08” W, 439.51 feet, to a found 1/2” iron rod with a yellow cap marked “Pape Dawson,” the end of this curve, and the beginning of another curve to the right;
Thence:	12.82 feet coincident with the northeast right-of-way line of Jones Maltsberger Road, with the curve to the right, said curve having a radius of 25.00 feet, a central angle of 29°22’24”, and a chord bearing and distance of N 11°19’34” E, 12.68 feet, to the POINT OF BEGINNING containing 5.202 acres, said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.

SAVE AND EXCEPT

A 0.0092 acre, 400 square foot, tract of land, being out of Lot 6, Block 8, New City Block 18208, Alamo Cement Subdivision Unit-3L recorded in Volume 9538, Page 119 of the Deed and Plat Records of Bexar County, Texas, being a water well parcel situated within said Lot 6, in the city of San Antonio, Bexar County, Texas, said 0.0092 acre tract being more particularly described as follows:

COMMENCING:	At a found 1/2” iron rod with a yellow cap marked “Pape Dawson,” the Northwest corner of Lot 4, Block 8, New City Block 18208, Los Coyotes Subdivision, as recorded in Volume 9533, Page 211 of the Deed and Plat Records of Bexar County, Texas, and the Northeast corner of said Lot 6;
Thence:	S 82’10’58” W, a distance of 244.83 feet to a point, the southwest corner and the POINT OF BEGINNING of the herein described tract;

Thence:	S 68°55’50” W, a distance of 20.00 feet to a point;
Thence:	N 21°04’10” W, a distance of 20.00 feet to a point;
Thence:	N 68°55’50” E, a distance of 20.00 feet to a point, the northeast corner of the herein described tract;
Thence:	S 21°04’10” E, a distance of 20.00 feet to the POINT OF BEGINNING containing 0.0092 of an acre, said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.

Exhibit 10.18

Loan No. [__]

PROMISSORY NOTE

$[__] San Antonio, Texas
December [__], 2003

FOR VALUE RECEIVED, [_____], a [_____], having an address at **[ ]** (**"Borrower"**), as maker, hereby unconditionally promises to pay to the order of **MORGAN STANLEY MORTGAGE CAPITAL INC.**, a New York corporation (together with its successors and assigns, **"Lender"**), having an address at 1221 Avenue of the Americas, New York, New York 10020, or at such other place as the holder hereof may from time to time designate in writing, the aggregate principal sum of [__] ($[__]), in lawful money of the United States of America, with interest thereon to be computed from the date of this Note at the Applicable Interest Rate (defined below), and to be paid in installments as follows:

ARTICLE 1: PAYMENT TERMS

(a) A payment on the date hereof on account of all interest that will accrue on the principal amount of the Loan from and after the date hereof through and including the seventh ([__]) day of [__];

(b) A constant payment of [__] (the "**Monthly Payment**") on the [__] ([__]) day of [__] and on the [__] ([__])day of each calendar month thereafter up to and including the [__] ([__]) day of [__] (each such date to be hereinafter referred to as a "**Monthly Payment Date**");

each Monthly Payment to be applied as follows:

(i) first, to the payment of interest which has accrued during the preceding Interest Accrual Period (defined below) computed at the Initial Rate (defined below); and

(ii) the balance toward the reduction of the principal sum of this Note;

(c) A payment equal to the Excess Cash Flow (as defined in that certain Cash Management Agreement executed in connection herewith (the **"Cash Management Agreement"**)) on the [__] ([__]) day of [_____] and on each Monthly Payment Date thereafter up to and including the [__] ([__]) day of [_____] (the **"Maturity Date"**), to be applied in accordance with the applicable terms and conditions of the Cash Management Agreement; and

(d) The balance of the principal sum and all interest thereon (including, without limitation, all Accrued Interest (defined below)) shall be due and payable on the Maturity Date.

(e) From and after [__], 2014 (the **"Anticipated Maturity Date"**), all interest accruing at the Revised Rate in excess of interest calculated at the Initial Rate (the **"Accrued Interest"**) shall accrue and be deferred, and, to the extent permitted by Applicable Law, shall earn interest at the Revised Rate and shall be payable in accordance with the terms hereof.

(f) Interest on the principal sum of this Note shall be calculated by multiplying the actual number of days elapsed in the period for which interest is being calculated by a daily rate based on a 360-day year

(g) As used herein, the term **"Interest Accrual Period"** shall mean (i) for the first such period, the period beginning on the date hereof and ending on (but including) the [__] ([__]) day of [_____], and (ii) with respect subsequent period beginning with the period immediately following the period described in subsection (i) above, the period beginning on the [__] ([__]) day of each calendar month during the term hereof and ending on (but including) the [__] ([__]) day of the following calendar month.

(h) Lender shall have the right, at any time prior to a Securitization (as defined in the Security Instrument), to change the Maturity Date from the Maturity Date stated herein to the date of the Anticipated Maturity Date stated herein upon notice to Borrower (in which event such change shall then be deemed effective and all provisions of the Loan Documents with respect to periods after Anticipated Maturity Date shall no longer apply). If requested by Lender, Borrower shall promptly execute an amendment to this Note and any other Loan Documents to evidence such change.

ARTICLE 2: INTEREST

The term "**Applicable Interest Rate**" for the purposes hereof and each other Loan Document shall mean (a) from the date hereof through and including the day immediately prior to the Anticipated Maturity Date, an interest rate (the **"Initial Rate"**) equal to 5.67% % per annum, and (b) from the Anticipated Maturity Date through and including the date on which the Debt is paid in full, an interest rate per annum (the **"Revised Rate"**) equal to the greater of (i) the Initial Interest Rate plus five percentage points (5%) or (ii) the Treasury Rate (hereafter defined) plus five percentage points (5%). Lender's determination of the Revised Rate and the Treasury Rate shall be final absent manifest error.

As used herein, the term "**Treasury Rate**" shall mean, as of the Anticipated Maturity Date, the yield, calculated by Lender by linear interpolation (rounded to the nearest one-thousandth of one percent (i.e., 0.001%) of the yields of non-inflation adjusted noncallable United States Treasury obligations with terms (one longer and one shorter) most nearly approximating the period from such date of determination to the Maturity Date, as determined by Lender on the basis of Federal Reserve Statistical Release H.15-Selected Interest Rates under the heading U.S. Governmental Security/Treasury Constant Maturities, or another recognized source of financial market information selected by Lender.

ARTICLE 3: DEFAULT AND ACCELERATION

(a) The whole of the principal sum of this Note and the Other Note (defined below), (b) interest, default interest, late charges and other sums, as provided in this Note, the Other Note, the Security Instrument or the Other Security Documents (defined below), (c) all other monies agreed or provided to be paid by Borrower in this Note, the Other Note, the Security Instrument or the Other Security Documents, (d) all sums advanced pursuant to the provisions of the Security Instrument to protect and preserve the Property (defined below) and the lien and the security interest created thereby, and (e) all reasonable sums advanced and costs and expenses incurred by Lender pursuant to the provisions of this Note, the Other Note, the Security

Instrument or the Other Security Documents in connection with the Debt (defined below) or any part thereof, any renewal, extension or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender (all the sums referred to in (a) through (e) above shall collectively be referred to as the "**Debt**") shall without notice become immediately due and payable at the option of Lender if (i) any payment required in this Note or the Other Note is not paid on or before the date the same is due, or (ii) Borrower commits any other default, and fails to cure same prior to the expiration of any applicable notice and grace periods, herein or under the terms of the Security Instrument or any of the Other Security Documents (collectively, an "**Event of Default**").

ARTICLE 4: DEFAULT INTEREST

Borrower does hereby agree that upon the occurrence of an Event of Default, Lender shall be entitled to receive and Borrower shall pay interest on the entire unpaid principal sum at a rate equal to the lesser of (a) four percent (4%) plus the Applicable Interest Rate and (b) the maximum interest rate which Borrower may by law pay (the "**Default Rate**"). The Default Rate shall be computed from the occurrence of the Event of Default until the earlier of the date upon which the Event of Default is cured or waived or the date upon which the Debt is paid in full. Interest calculated at the Default Rate shall be added to the Debt, and shall be deemed secured by the Security Instrument. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default.

ARTICLE 5: PREPAYMENT; DEFEASANCE

Except as otherwise expressly permitted by this Article 5, no voluntary prepayments, whether in whole or in part, of the Loan or any other amount at any time due and owing under this Note or the Other Note can be made by Borrower or any other Person without the express written consent of Lender.

(a) Lockout Period. Borrower has no right to make, and Lender shall have no obligation to accept, any voluntary prepayment, whether in whole or in part, of the Loan during the Lockout Period (defined below). Notwithstanding the foregoing, if either (i) Lender, in its sole and absolute discretion, accepts a full or partial voluntary prepayment during the Lockout Period or (ii) there is an involuntary prepayment during the Lockout Period, then, in either case, Borrower shall, in addition to any portion of the Loan prepaid (together with all interest accrued and unpaid thereon), pay to Lender a prepayment premium in an amount calculated in accordance with subsection (c) below. The term "**Lockout Period**" shall mean the period commencing on the date hereof and ending on the date which is three (3) months prior to the Anticipated Maturity Date.

(b) Defeasance.

(i) Notwithstanding any provisions of this Article 5 to the contrary, including, without limitation, subsection (a) of this Article 5, at any time other than (1) during a REMIC Prohibition Period (defined below) or (2) after the Anticipated Maturity Date, Borrower may cause the release of the Property from the lien of the Security Instrument and the other Loan Documents (and, subject to Borrower's satisfaction of clause (iii) under this subsection (b), a release of Borrower and Indemnitor (as defined in that certain Indemnity Agreement dated as of the date hereof among Borrower, American Assets, Inc. and Lender (the **"Indemnity Agreement"**)) from any further liability or obligation under this Note, the Security Instrument or the Other Security Documents other than a liability or obligation (1) in connection with a provision of this Note, the Security Instrument or Other Security Document which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument or (2) which expressly survives pursuant to the Defeasance Assumption Agreement (defined below)) upon the satisfaction of the following conditions:

(A) no Event of Default shall exist under any of the Loan Documents;

(B) not less than sixty (60) (but not more than ninety (90)) days prior written notice shall be given to Lender specifying a date on which the Defeasance Collateral (as hereinafter defined) is to be delivered (the "**Release Date**"), such date being on a Monthly Payment Date; provided, however, that Borrower shall have the right (i) to cancel such notice by providing Lender with notice of cancellation ten (10) days prior to the scheduled Release Date, or (ii) to extend the scheduled Release Date until the next Monthly Payment Date; provided that in each case, Borrower shall pay all of Lender's costs and expenses incurred as a result of such cancellation or extension;

(C) all accrued and unpaid interest and all other sums due under this Note, the Other Note, the Security Instrument and under the Other Security Documents up to the Release Date, including, without limitation, all reasonable fees, costs and expenses incurred by Lender and its agents in connection with such release (including, without limitation, legal fees and expenses for the review and preparation of the Defeasance Security Agreement (as hereinafter defined) and of the other materials described in subsection (b)(i)(D) below and any related documentation, and any servicing fees, Rating Agency (as defined in the Security Instrument) fees or other reasonable costs related to such release), shall be paid in full on or prior to the Release Date;

(D) Borrower shall deliver to Lender on or prior to the Release Date:

(1) a pledge and security agreement, in form and substance satisfactory to a prudent lender, creating a first priority security interest in favor of Lender in the Defeasance Collateral (the "**Defeasance Security Agreement**"), which shall provide, among other things, that any excess

amounts received by Lender from the Defeasance Collateral over the amounts payable by Borrower on a given Monthly Payment Date, which excess amounts are not required to cover all or any portion of amounts payable on a future Monthly Payment Date, shall be refunded to Borrower promptly after each such Monthly Payment Date;

(2) direct non-callable obligations of the United States of America or other obligations which are "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940 (to the extent the applicable Rating Agencies rating the Securities have confirmed in writing that the same will not cause a downgrade, withdrawal or qualification of the initial, or, if higher, then applicable ratings of the Securities) that provide for payments prior and as close as possible to (but in no event later than) all successive Monthly Payment Dates occurring after the Release Date, with each such payment being equal to or greater than the amount of the corresponding Monthly Payment required to be paid under this Note and the Other Note (including all amounts due on the Anticipated Maturity Date (assuming that the entire amount of the Debt is due and payable on the Anticipated Maturity Date)) for the balance of the term hereof (the "**Defeasance Collateral**"), each of which shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance wholly satisfactory to Lender in its sole discretion (including, without limitation, such certificates, documents and instruments as may be required by the depository institution holding such securities or the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the Defeasance Security Agreement the first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing granting of such security interests;

(3) a certificate of Borrower certifying that all of the requirements set forth in this subsection (b)(i) have been satisfied;

(4) one or more opinions of counsel for Borrower in form and substance and delivered by counsel which would be satisfactory to a prudent lender stating, among other things, that (i) Lender has a perfected first priority security interest in the Defeasance Collateral and that the Defeasance Security Agreement is enforceable against Borrower in accordance with its terms, (ii) in the event of a bankruptcy proceeding or similar occurrence with respect to Borrower, none of the Defeasance Collateral nor any proceeds thereof will be property of Borrower's estate under Section 541 of the U.S. Bankruptcy Code or any similar statute and the grant of security interest therein to Lender should not constitute an avoidable preference under Section 547 of the U.S. Bankruptcy Code or applicable state law, (iii) the release of the lien of the Security Instrument and the pledge of Defeasance Collateral will not directly or indirectly

result in or cause any "real estate mortgage investment conduit" within the meaning of Section 860D of the Internal Revenue Code that holds this Note and the Other Note (a "**REMIC Trust**") to fail to maintain its status as a REMIC Trust and (iv) the defeasance will not cause any REMIC Trust to be an "investment company" under the Investment Company Act of 1940;

(5) a certificate in form and scope acceptable to Lender in its sole discretion from an Acceptable Accountant (defined below) certifying that the Defeasance Collateral will generate amounts sufficient to make all payments of principal and interest due under this Note and the Other Note (including the scheduled outstanding principal balance of the Loan due on the Anticipated Maturity Date (assuming that the entire amount of the Debt is due and payable on the Anticipated Maturity Date)). The term "**Acceptable Accountant**" shall mean a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender; and

(6) such other certificates, documents and instruments as Lender may reasonably require; and

(E) in the event the Loan is held by a REMIC Trust, Lender has received written confirmation from each Rating Agency rating any Securities (as defined in the Security Instrument) that substitution of the Defeasance Collateral will not result in a downgrade, withdrawal, or qualification of the ratings then assigned to any of the Securities.

(ii) Upon compliance with the requirements of subsection (b)(i), the Property shall be released from the lien of the Security Instrument and the Other Security Documents, and the Defeasance Collateral shall constitute the sole collateral which shall secure this Note and the Other Note and all other obligations under the Loan Documents. Lender will, at Borrower's expense, execute and deliver any agreements reasonably requested by Borrower to release the lien of the Security Instrument and the Other Security Documents from the Property and will, subject to Borrower's satisfaction of clause (iii) under this subsection (b), cause a release of Borrower and Indemnitor from any further liability or obligation under this Note, the Security Instrument or the Other Security Documents other than a liability or obligation (1) in connection with a provision of this Note, the Security Instrument or Other Security Document which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument or (2) which expressly survives pursuant to the Defeasance Assumption Agreement.

(iii) Upon the release of the Property in accordance with this subsection (b), Borrower shall assign all its obligations and rights under this Note and the Other Note, together with the pledged Defeasance Collateral, to a successor entity designated and approved by Lender in its reasonable discretion ("**Successor Borrower**"). Successor Borrower shall execute an assignment and assumption agreement (the "**Defeasance**

Assumption Agreement") in form and substance satisfactory to Lender in its sole and absolute discretion pursuant to which it shall assume Borrower's obligations under this Note, the Other Note and the Defeasance Security Agreement. As conditions to such assignment and assumption, Borrower shall (A) deliver to Lender one or more opinions of counsel in form and substance and delivered by counsel which would be satisfactory to a prudent Lender stating, among other things, that such Defeasance Assumption Agreement is enforceable against Borrower and the Successor Borrower in accordance with its terms and that this Note, the Other Note, the Defeasance Security Agreement and the other Loan Documents, as so assigned and assumed, are enforceable against the Successor Borrower in accordance with their respective terms, and opining to such other matters relating to Successor Borrower and its organizational structure as Lender may reasonably require, and (B) pay all fees, costs and expenses incurred by Lender or its agents in connection with such assignment and assumption (including, without limitation, legal fees and expenses and for the review of the proposed transferee and the preparation of the assignment and assumption agreement and related certificates, documents and instruments and any fees payable to any Rating Agencies and their counsel in connection with the issuance of the confirmation referred to in subsection (b)(i)(E) above). Upon such assignment and assumption, Borrower and Indemnitor shall be relieved of their obligations under this Note, under the Other Note, under the other Loan Documents and under the Defeasance Security Agreement, except for any liability or obligation (1) in connection with a provision of this Note, the Other Note, the Security Instrument or any Other Security Document which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument or (2) which expressly survives pursuant to the Defeasance Assumption Agreement.

(iv) For purposes of this Article 5, "**REMIC Prohibition Period**" means the period commencing on the date hereof and ending on the earlier to occur of (i) the first Monthly Payment Date occurring after the second anniversary of the "startup day" within the meaning of Section 860G(a)(9) of the Code of any REMIC Trust that holds this Note and the Other Note and (ii) the first Monthly Payment date occurring after the third anniversary of the date hereof. In no event shall Lender have any obligation to notify Borrower that a REMIC Prohibition Period is in effect with respect to the Loan, except that Lender shall notify Borrower if any REMIC Prohibition Period is in effect with respect to the Loan after receiving any notice described in subsection (b)(i)(B); provided, however, that the failure of Lender to so notify Borrower shall not impose any liability on Lender or grant Borrower any right to defease the Loan during any such REMIC Prohibition Period.

(c) Involuntary Prepayment During the Lockout Period. During the Lockout Period, in the event of any involuntary prepayment of the Loan or any other amount under this Note, whether in whole or in part, in connection with or following Lender's acceleration of this Note and the Other Note or otherwise, and whether the Security Instrument is satisfied or released by foreclosure (whether by power of sale or judicial proceeding), deed in lieu of foreclosure or by any other means, including, without limitation, repayment of the Loan by Borrower or any other Person pursuant to any statutory or common law right of redemption, Borrower shall, in addition to any portion of the principal balance of the Loan prepaid (together with all interest accrued and

unpaid thereon and in the event the prepayment is made on a date other than a Monthly Payment Date, a sum equal to the amount of interest which would have accrued under this Note and the Other Note on the amount of such prepayment if such prepayment had occurred on the next Monthly Payment Date), pay to Lender a prepayment premium in an amount calculated in accordance with this subsection (c). Such prepayment premium shall be in an amount equal to the greater of:

(i) 1% of the portion of the Loan being prepaid; or

(ii) the product obtained by multiplying:

(A) the portion of the Loan being prepaid, times;

(B) the difference obtained by subtracting (I) the Yield Rate (defined below) from (II) the Applicable Interest Rate, times;

(C) the present value factor calculated using the following formula:

$$\frac{1-(1+r)^{-n}}{r}$$

r = Yield Rate

n = the number of years and any fraction thereof, remaining between the date the prepayment is made and the Anticipated Maturity Date.

As used herein, "**Yield Rate**" means the yield rate for the 4.25% U.S. Treasury Security due August 15, 2013, as reported in The Wall Street Journal on the fifth Business Day preceding the Prepayment Calculation Date. If the Yield Rate is not published for the such U.S. Treasury Security, then the "Yield Rate" shall mean the yield rate for the nearest equivalent U.S. Treasury Security (as selected at Lender's sole and absolute discretion) as reported in The Wall Street Journal on the fifth Business Day preceding the Prepayment Calculation Date. If the publication of such Yield Rate in The Wall Street Journal is discontinued, Lender shall determine such Yield Rate from another source selected by Lender in Lender's sole and absolute discretion. The "**Prepayment Calculation Date**" shall mean, as applicable, the date on which (i) Lender applies any partial prepayment to the reduction of the outstanding principal amount of this Note and the Other Note, in the case of a voluntary partial prepayment which is accepted by Lender, (ii) Lender accelerates the Loan, in the case of a prepayment resulting from acceleration, or (iii) Lender applies funds held under any reserve account held in connection with the Loan, in the case of a prepayment resulting from such an application (other than in connection with acceleration of the Loan).

(d) Insurance and Condemnation Proceeds; Excess Interest. Notwithstanding any other provision herein to the contrary, and provided no Event of Default exists, Borrower shall not be required to pay any prepayment premium in connection with any prepayment occurring solely as a result of (i) the application of insurance proceeds or condemnation proceeds pursuant to the terms of the Loan Documents, (ii) the application of any interest in excess of the maximum

rate permitted by applicable law to the reduction of the Loan, or (iii) the exercise by Lender of any other right under the Loan Documents to apply an amount received by Lender to the principal balance of this Note or the Other Note, other than any exercise in connection with an Event of Default, which shall be controlled by the preceding paragraph (c).

(e) After the Lockout Period. Commencing on the day after the expiration of the Lockout Period, and upon giving Lender at least fifteen (15) days (but not more than ninety (90) days) prior written notice, Borrower may voluntarily prepay (without premium) this Note and the Other Note in whole (but not in part) on a Monthly Payment Date. Lender shall accept a prepayment pursuant to this subsection (e) on a day other than a Monthly Payment Date provided that, in addition to payment of the full outstanding principal balance of this Note and the Other Note, Borrower pays to Lender a sum equal to the amount of interest which would have accrued on this Note and the Other Note if such prepayment occurred on the next Monthly Payment Date.

(f) Limitation on Partial Prepayments. In no event shall Lender have any obligation to accept a partial prepayment.

(g) Prepayment and Defeasance of this Note and the Other Note. Notwithstanding anything to the contrary contained herein, any defeasance or prepayment permitted hereunder and consummated in accordance with the terms and conditions contained herein must occur simultaneously with a defeasance or prepayment permitted by (and consummated in accordance with the applicable terms and conditions of) the Other Note. Lender shall have no obligation to accept any payment or defeasance of this Note in accordance with the terms and provisions of this Note unless the Other Note is simultaneously prepaid or defeased, as applicable, in accordance with the terms and conditions of the Other Note.

ARTICLE 6: SECURITY

This Note is secured by the Security Instrument and the Other Security Documents. The term "**Security Instrument**" as used in this Note and the Other Note shall mean the Deed of Trust and Security Agreement dated as of the date hereof given by Borrower (among others) to (or for the benefit of) Lender covering the fee simple and leasehold estate of Borrower in certain premises located in Bexar County, State of Texas, and other property, as more particularly described therein (collectively, the "**Property**") and intended to be duly recorded in said County. The term "**Other Security Documents**" as used in this Note shall mean all and any of the documents other than this Note, the Other Note or the Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guarantee payment of this Note. Whenever used, the singular number shall include the plural, the plural number shall include the singular, and the words "Lender" and "Borrower" shall include their respective successors, assigns, heirs, executors and administrators. The term "**Other Note**" as used herein shall refer, individually or collectively (as the context requires), to each Note (as defined in the Security Instrument) other than this Note. Lender by acceptance of this Note hereby agrees to pursue its remedies under each Note executed by Borrower jointly and in a manner which is not more detrimental to Borrower than if Borrower executed only one Note.

All of the terms, covenants and conditions contained in the Other Note, the Security Instrument and the Other Security Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein.

ARTICLE 7: SAVINGS CLAUSE

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

ARTICLE 8: LATE CHARGE

If any monthly installment of principal and interest payable under this Note is not paid on the date on which it was due, Borrower shall pay to Lender upon demand an amount equal to the lesser of two and one-half percent (2.5%) of the unpaid sum or the maximum amount permitted by applicable law to defray the expenses incurred by Lender in handling and processing the delinquent payment and to compensate Lender for the loss of the use of the delinquent payment and the amount shall be secured by the Security Instrument and the Other Security Documents.

ARTICLE 9: NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 10: JOINT AND SEVERAL LIABILITY

If there is more than one Borrower, the obligations and liabilities of each such person or party shall be joint and several.

ARTICLE 11: WAIVERS

Except as otherwise provided herein, in the Other Note, in the Security Instrument, or in the Other Security Documents, Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest and notice of protest and non-payment and all other notices of any

kind. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof or the Other Note or any installment thereof, and no alteration, amendment or waiver of any provision of this Note, the Other Note, the Security Instrument or the Other Security Documents made by agreement between Lender or any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other person or entity who may become liable for the payment of all or any part of the Debt, under this Note, the Other Note, the Security Instrument or the Other Security Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Other Note, the Security Instrument or the Other Security Documents. If Borrower is a partnership, the agreements herein contained shall remain in force and applicable, notwithstanding any changes in the individuals comprising the partnership. If Borrower is a corporation, the agreements contained herein shall remain in full force and applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation. If Borrower is a limited liability company, the agreements contained herein shall remain in full force and applicable notwithstanding any changes in the members comprising, or the managers, officers or agents relating to, the limited liability company. The term "Borrower", as used herein, shall include any alternate or successor partnership, corporation, limited liability company or other entity or person to the Borrower named herein, but any predecessor partnership (and their partners), corporation, limited liability company, other entity or person shall not thereby be released from any liability except as otherwise provided in the Security Instrument or Other Security Documents. Nothing in this Article 11 shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership which may be set forth in the Security Instrument or any Other Security Document.

ARTICLE 12: INTENTIONALLY OMITTED

ARTICLE 13: WAIVER OF TRIAL BY JURY

BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THIS NOTE AND THE OTHER NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THIS NOTE AND THE OTHER NOTE, THIS NOTE, THE OTHER NOTE THE SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

ARTICLE 14: EXCULPATION

(a) Notwithstanding any contrary provisions contained herein or in the Other Note, the Security Instrument or the Other Security Documents (other than a provision herein or therein which expressly states that it is intended to override any exculpatory provisions of this Note or the Other Note), Lender shall not enforce the liability and obligation of Borrower, to perform and observe the obligations contained in this Note, the Other Note, the Security

Instrument or the Other Security Documents by any action or proceeding wherein a money judgment shall be sought against Borrower or any partner or member of Borrower, except that Lender may bring a foreclosure action (where no deficiency judgment is sought against Borrower or any partner or member of Borrower), an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon this Note, the Other Note, the Security Instrument, the Other Security Documents, and the interests in the Property; and any other collateral given to Lender pursuant to the Security Instrument and the Other Security Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall not be enforceable against Borrower (or any partner or member of Borrower) except to the extent of Borrower's interest in the Property and in any other collateral given to Lender as security, and Lender, by accepting this Note, the Security Instrument and the Other Security Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower (or any partner or member of Borrower) in any such action or proceeding, under or by reason of or in connection with this Note, the Other Note, the Security Instrument or the Other Security Documents. The provisions of this paragraph shall not, however, (1) constitute a waiver, release or impairment of any obligation evidenced or secured by this Note, the Other Note, the Security Instrument or the Other Security Documents; (2) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument, where Lender is required to do so in order to properly pursue such action (and subject to the above-described prohibition on suing for, seeking or demanding any deficiency judgment); (3) affect the validity or enforceability of any guaranty or indemnity made in connection with this Note, the Other Note, the Security Instrument or the Other Security Documents; (4) impair the right of Lender to obtain the appointment of a receiver; (5) impair the enforcement of any assignment; or (6) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any losses suffered by Lender arising out of the following:

(i) fraud or intentional misrepresentation by Borrower in connection with the making of this Note, the Other Note, the Security Instrument or the Other Security Documents (including, without limitation, in connection with the representations contained in the AAI Estoppel (as defined in that certain Post Closing Obligations Letter executed by Borrower in connection with the Loan));

(ii) the breach of provisions in this Note, the Other Note, the Security Instrument or the Other Security Documents concerning Environmental Laws and Hazardous Substances and any indemnification of Lender with respect thereto in any document;

(iii) the removal or disposal of any portion of the Property by Borrower after the occurrence and during the continuance of an Event of Default under this Note, the Other Note, the Security Instrument or the Other Security Documents;

(iv) the misapplication or conversion by Borrower of (i) any insurance proceeds paid by reason of any loss, damage or destruction to the Property, (ii) any awards or other amounts received in connection with the condemnation of all or a portion of the Property, or (iii) any Rents (other than as permitted by the Cash Management Agreement) after the occurrence and during the continuance of an Event of Default under this Note, the Other Note, the Security Instrument or the Other Security Documents;

(v) any security deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to such foreclosure or action in lieu thereof;

(vi) the violation by Borrower or Master Lessee (if the Master Lease Termination (as defined in the Security Instrument) has not yet occurred) of the representations or covenants contained in Section 4.3 of the Security Instrument; or

(vii) Borrower's failure to making any required deposit to the Escrow Fund as required pursuant to the Security Instrument.

(b) Notwithstanding anything to the contrary in this Note, the Other Note, the Security Instrument or the Other Security Documents, the agreement of Lender not to pursue recourse liability as set forth in subsection (a) above SHALL BECOME NULL AND VOID and shall be of no further force and effect and the Debt shall be fully recourse to Borrower in the event that: (A) the first full Monthly Payment is not paid when due; (B) a Prohibited Transfer (as defined in the Security Instrument) occurs in violation of Article 8 of the Security Instrument; or (C) if (I) an involuntary petition (other than the collusive involuntary petitions described in the following clause (II)) is filed against Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) under the U.S. Bankruptcy Code or any other federal or state bankruptcy or insolvency law (collectively, the **"Insolvency Laws**") and is not dismissed within ninety (90) days of the filing thereof, or (II) Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) files or consents to the filing against Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) of a petition, voluntary or involuntary, under applicable Insolvency Laws, or any partner, member or equivalent person of Borrower or Master Lessee (if the Master Lease Termination has not yet occurred), or any person acting in concert with Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) or any of the foregoing persons, files or joins in the filing against Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) of an involuntary petition under applicable Insolvency Laws.

(c) Nothing herein shall be deemed to be a waiver of any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with this Note, the Security Instrument or the Other Security Documents.

(d) Notwithstanding anything to the contrary contained herein or in any other Loan Document, in no event shall First American Exchange Corporation of California, a California corporation, the initial sole member of Vista, have any liability hereunder or under any other Loan Document, in its capacity as the sole member of Vista.

ARTICLE 15: AUTHORITY

Borrower (and the undersigned representative of Borrower, if any) represents that Borrower has full power, authority and legal right to execute and deliver this Note, the Other Note, the Security Instrument and the Other Security Documents and that this Note, the Other Note, the Security Instrument and the Other Security Documents constitute valid and binding obligations of Borrower, except as may be limited by (i) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and (ii) general principles of equity.

ARTICLE 16: APPLICABLE LAW

This Note shall be deemed to be a contract entered into pursuant to the laws of the State of Texas and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Texas and applicable laws of the United States of America.

ARTICLE 17: SERVICE OF PROCESS

(a) Borrower will maintain a place of business or an agent for service of process in San Diego, California and give prompt notice to Lender of the address of such place of business and of the name and address of any new agent appointed by it, as appropriate. Borrower further agrees that the failure of its agent for service of process to give it notice of any service of process will not impair or affect the validity of such service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of Borrower available to be served, and if it at that time has no place of business in San Diego, California then Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to the first paragraph hereof.

(b) Borrower initially designates John W. Chamberlain, with offices on the date hereof at 11455 El Camino Real, Suite 200, San Diego, California 92130, to receive for and on behalf of Borrower service of process with respect to this Note and the other Loan Documents.

ARTICLE 18: COUNSEL FEES

In the event that it should become necessary to employ counsel to collect the Debt or to protect or foreclose the security therefor, Borrower also agrees to pay all reasonable fees and expenses of Lender, including, without limitation, reasonable attorney’s fees for the services of such counsel whether or not suit be brought.

ARTICLE 19: NOTICES

All notices or other written communications to Borrower or Lender hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Borrower or Lender at their addresses set forth in the Security Instrument or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

ARTICLE 20: MISCELLANEOUS

Except as otherwise specified herein (or in the Other Note, the Security Instrument or the Other Security Documents), wherever pursuant to this Note (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the reasonable determination of Lender applied in good faith. All approvals of or waivers by Lender in respect of any of the terms, conditions or requirements of this Note must be in writing. No waiver with respect to any condition, breach or other matter shall extend to or be taken in any manner whatsoever to affect any other condition, breach or matter or affect Lender's rights resulting therefrom. Whenever any payment to be made hereunder or under any other Loan Document shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day; provided, however, with respect to the payment due hereunder on the Maturity Date, if the Maturity Date does not occur on a Business Day, the Maturity Date shall be deemed to occur on the immediately preceding Business Day.

ARTICLE 21: DEFINITIONS

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Security Instrument and the Other Security Documents.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

[_____]

By: _____
Name:
Title:

ADDENDUM TO NOTE

(TEXAS)

The term "**Maximum Rate**" shall mean the highest lawful rate of Interest applicable to this Note. In determining the Maximum Rate, due regard shall be given to all payments, fees, charges, deposits, balances and agreements which may constitute interest or be deducted from principal when calculating interest. If Chapter 303 of the Finance Code, Vernon's Texas Civil Statutes, is deemed (by any court of competent jurisdiction) to be applicable to this Note, and applicable state or federal law does not permit a higher interest rate, the "weekly ceiling" (as defined in Chapter 303 of the Finance Code, Vernon's Texas Civil Statutes) shall be the interest rate ceiling applicable to this Note and shall be the basis for determining the Maximum Rate. If applicable state or federal law allows a higher interest rate or federal law preempts the state law limiting the rate of interest, then the foregoing interest rate ceiling shall not be applicable to this Note. If the Maximum Rate is increased by statute or other governmental action subsequent to the date of this Note, then the new Maximum Rate shall be applicable to this Note from the effective date thereof, unless otherwise prohibited by applicable law.

Interest on the unpaid principal balance of this Note shall be computed on the basis set forth in the Articles 1 and 2 of this Note (the "**Stated Rate**"), but in no event shall the Stated Rate be greater than the Maximum Rate described immediately above.

It is expressly stipulated and agreed to be the intent of the undersigned and holder hereof (together with its successors and assigns, the "**Noteholder**") at all times to comply with applicable law governing the Maximum Rate or amount of interest payable on or in connection with this Note and the Loan (or applicable United States federal law to the extent that it permits the Noteholder to contract for, charge, take, reserve or receive a greater amount of interest than under any such applicable State law). If the applicable law is ever judicially interpreted so as to render usurious any amount called for under this Note or under the Security Instrument or any other Loan Document, or contracted for, charged, taken, reserved or received with respect to the Loan, or if acceleration of the maturity of this Note or if any prepayment by the undersigned results in the undersigned having paid any interest in excess of that permitted by law, then it is the undersigned's and the Note holder's express intent that all excess amounts theretofore collected by the Noteholder be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to the undersigned), and the provisions of this Note, the Security Instrument and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. The right to accelerate maturity of this Note does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and the Noteholder does not intend to collect any unearned interest in the event of acceleration. All sums paid or owed to be paid to the Noteholder for the use, forbearance or detention of the indebtedness evidence hereby shall, to the extent permitted by applicable law be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the Maximum Rate. Notwithstanding any provisions contained in this Note, the Security Instrument or in any of the other Loan Documents

that permit the compounding of interest (including, without limitation, any provision by which any accrued interest is added to the principal amount of this Note), if and to the extent the laws of the State of Texas are deemed to apply to the aforesaid provisions (by any court of competent jurisdiction), the total amount of interest that the undersigned is obligated to pay and the Noteholder is entitled to receive with respect to this Note shall not exceed the amount calculated on a simple (i.e., non-compounded) interest basis at the Maximum Rate on principal amounts actually advanced to or for the account of the undersigned, including all current and prior advances and any advances made pursuant to the Security Instrument or other Loan Documents (such as for the payment of taxes, insurance premiums, repairs and other expenses or costs).

THE UNDERSIGNED AND ALL OTHER MAKERS, SIGNERS, SURETIES, GUARANTORS AND ENDORSERS OF THIS NOTE WAIVE DEMAND, PRESENTMENT, NOTICE OF DISHONOR, NOTICE OF INTENT TO DEMAND OR ACCELERATE PAYMENT HEREOF, DILIGENCE IN THE COLLECTING, GRACE, NOTICE AND PROTEST AND AGREE TO ONE OR MORE EXTENSIONS FOR ANY PERIOD OR PERIODS OF TIME AND PARTIAL PAYMENTS, BEFORE OR AFTER MATURITY, WITHOUT PREJUDICE TO THE HOLDER HEREOF. IF COLLECTION PROCEDURES ARE EVER COMMENCED, BY ANY MEANS, INCLUDING LEGAL PROCEEDINGS OR THROUGH A PROBATE OR BANKRUPTCY COURT, OR IF THIS NOTE IS PLACED IN THE HANDS OF ANY ATTORNEY FOR COLLECTION AFTER DEFAULT OR MATURITY, THE UNDERSIGNED AGREES TO PAY ALL COSTS OF COLLECTION OR ATTEMPTED COLLECTION, INCLUDING REASONABLE ATTORNEY'S FEES.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Addendum to the Note as of the day and year first above written.

[_____]

By: _____
Name:
Title:

Exhibit 10.19

LAND COURT SYSTEM | REGULAR SYSTEM

After Recordation, Return By Mail To:

Gerard Keegan, Esq.
Dechert LLP
30 Rockefeller Plaza
New York, New York 10112-2200

TITLE OF DOCUMENT:

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING

PARTIES TO DOCUMENT:

MORTGAGOR: Waikele Reserve West Holdings, LLC and
Waikele Venture Holdings, LLC
11455 El Camino Real, Suite 200
San Diego, California 92130

MORTGAGEE: Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179

TAX MAP KEY(S):
9-4-007-054
9-4-007-056

(This document consists of ____ pages.)

TRANSFER CERTIFICATE OF
TITLE NUMBER: 716235 and
_____

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING (this "**Security Instrument**") is made as of the 28th day of October, 2004, by **WAIKELE RESERVE WEST HOLDINGS, LLC**, a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**West**") and **WAIKELE VENTURE HOLDINGS, LLC**, a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**Venture**"; West and Venture are individually or collectively (as the context requires) referred to herein as "**Borrower**"), as mortgagor, to **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 (together with its successors and assigns, "**Lender**"), as mortgagee.

RECITALS:

Borrower by (i) that certain Promissory Note A-1 given to Lender dated as of the date hereof (the "**A-1 Note**"), (ii) that certain Promissory Note A-2 given to Lender dated as of the date hereof (the "**A-2 Note**"), (iii) that certain Promissory Note A-3 given to Lender dated as of the date hereof (the "**A-3 Note**") of even date herewith, (iv) that certain Promissory Note A-4 given to Lender dated as of the date hereof (the "**A-4 Note**"; each of the A-1 Note, the A-2 Note, the A-3 Note and the A-4 Note, together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to herein as the "**Note**") is indebted to Lender in the aggregate principal sum of $140,700,000 (the "**Loan**") in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note.

Borrower desires to secure the payment of the Debt (as defined in Article 2) and the performance of all of the Other Obligations (as defined in Article 2).

Article 1. GRANTS OF SECURITY

Section 1.1. PROPERTY GRANTED. For the purpose of securing payment and performance of the Obligations (as defined in Article 2), Borrower, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration in hand paid, the receipt of which hereby is acknowledged, and the further consideration, uses, purposes and trusts herein set forth and declared, has granted, deeded, mortgaged, sold, bargained, transferred, assigned, set-over and conveyed and by these presents does grant, deed, mortgage, bargain, sell, transfer, assign, set-over and convey unto Lender and its successors and assigns all of Borrower's right, title and interest in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**"):

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

(b) Intentionally Omitted;

(c) Intentionally Omitted;

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

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

(f) Easements. All easements, rights of way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

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

(h) Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, including, without limitation, any guaranty of any of the foregoing leases (a "**Lease**" or "**Leases**"), including, without limitation, those Leases listed on Exhibit C hereto, and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements (the "**Rents**"), subject to the license to collect and use such Rents pursuant to the provisions of Section 3.7 below, and all proceeds from the sale or other disposition of the Leases;

(i) Intentionally Omitted;

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

(k) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property (whether or not Borrower is required to carry such insurance by Lender hereunder), including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property, subject to the provisions hereof;

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

(m) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

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

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

(p) Letter of Credit Rights. All letter of credit rights (whether or not the letter of credit is evidenced by a writing) Borrower now has or hereafter acquires relating to the properties, rights, titles and interest referred to in this Section 1.1;

(q) Tort Claims. All commercial tort claims Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(r) Borrower Accounts. All payments for goods or property sold or leased or for services rendered arising from the operation of the Land and the Improvements, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper;

(s) Reserve Accounts. All reserves, escrows and deposit accounts required under the Loan Documents and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(t) TIC Agreement. Borrower's contract rights under that certain Tenancy-in-Common Agreement executed by and among West and Venture and dated on or about the date hereof (such agreements, together with all amendments, restatements, memoranda or other modifications thereof, collectively, the "**TIC Agreement**");

(u) Assignments/Modifications of TIC Agreement. Borrower's contract rights under all assignments, modifications, extensions and renewals of the TIC Agreement and all credits, deposits, options, privileges and rights of West and/or Venture under the TIC Agreement, including, but not limited to, any rights of first refusal relating thereto arising under Section 363(i) of the Bankruptcy Code;

(v) Proceeds. All proceeds of any of the foregoing items set forth in subsections (a) through (r); and

(w) Other Rights. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (t) above.

Section 1.2. ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Notwithstanding the foregoing or anything to the contrary contained herein, until (a) the occurrence and continuance of an Event of Default in connection with which Lender has elected to accelerate the Loan in accordance with the applicable terms hereof and (b) such Event of Default has continued up to the earlier date of the following occurrences: (i) ninety (90) days after Lender's delivery to Borrower of written notice of the commencement of such Event of Default or (ii) Lender's commencement of a foreclosure (either judicial or non-judicial) or acceptance of a deed-in lieu of foreclosure (the "**Acceleration Default**"), all Rents shall be deposited, held and applied pursuant to that certain Restricted Account Agreement by and among Borrower and Lender (among others) (the "**Restricted Account Agreement**") and that certain Cash Management Agreement dated as of the date hereof between Borrower and Lender (the "**Cash Management Agreement**").

Section 1.3. SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations, a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code. To the extent permitted by law, Borrower and Lender agree that with respect to all items of Personal Property, which are or will become fixtures on the Land, this Security Instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the applicable provisions of the Uniform Commercial Code of the State of Hawaii. Borrower is the record owner of the Land.

Section 1.4. PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies belonging to Borrower which are now or hereafter held by Lender, and which are (i) deposited in the Escrow Fund (as defined in Section 3.5), (ii) Net Proceeds (as defined in Section 4.4), and/or (iii) condemnation awards or payments described in Section 3.6, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender its successors and assigns, forever, however, upon the terms and conditions set forth herein;

PROVIDED, HOWEVER, these presents are upon the express condition that, when all of the Obligations have been paid in full, Lender shall re-convey the Property and shall surrender this Security Instrument and all notes and instruments evidencing the Obligations to Borrower.

Article 2. PAYMENTS

Section 2.1. DEBT AND OBLIGATIONS SECURED. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the "**Debt**"): (a) the payment of the indebtedness evidenced by the Note in lawful money of the United States of America; (b) the payment of interest, prepayment premiums, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the Other Security Documents (defined below); (c) the payment of all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument or the Other Security Documents (collectively sometimes referred to herein as the "**Loan Documents**"); (d) the payment of all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; (e) the payment of all sums reasonably advanced and costs and expenses reasonably incurred (including unpaid or unreimbursed servicing and special servicing fees) by Lender in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of all other obligations of Borrower contained herein and the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of this Security Instrument, the Note, or the Other Security Documents (collectively, the "**Other Obligations**"). Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations**."

Section 2.2. PAYMENTS. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all

or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall not cure any then-existing Event of Default (defined below).

Article 3. BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1. PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

Section 3.2. INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Note (the "**Other Security Documents**"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3. INSURANCE.

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall obtain and maintain, or cause to be maintained, during the entire term of this Security Instrument policies of insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk insurance ("**Special Form**") including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Loan; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of Twenty-Five Thousand and No/100 Dollars ($25,000.00) for all such insurance coverage and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the Full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of

such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such lesser amount as Lender shall require; and (z) earthquake insurance in amounts and in form and substance reasonably satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance required to be maintained pursuant to clauses (y) and (z) above shall be on terms consistent with the Special Form policy required pursuant to this subsection (i). Notwithstanding anything to the contrary in this Security Instrument, the insurance coverage described in the foregoing subparagraphs (y) and (z) shall be required (1) as of the date hereof only if determined to be necessary by Lender based upon its reasonable evaluation of third party reports, and (2) at any time hereafter in the event subsequent third party reports indicate a change in the condition of or circumstances surrounding the Property;

(ii) rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an annual aggregate amount equal to 100% of all rents or estimated gross revenues from the operation of the Properties (as reduced to reflect actual vacancies and expenses not incurred during a period of Restoration) and covering rental losses for a period of at least eighteen (18) months, after the date of the casualty, and notwithstanding that the Policy may expire prior to the end of such period; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the Personal Property has been repaired, the continued loss of income will be insured until such income returns to the same level it was prior to the loss, or the expiration of six (6) months from the date of the completion of the Restoration, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such rental loss insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Property for the succeeding eighteen (18) month period and a reasonable vacancy factor acceptable to Lender. All proceeds payable to Lender pursuant to this subsection shall be disbursed by Lender to Borrower immediately following Lender's receipt thereof, provided no Event of Default is then in existence; provided, however, (i) if a Cash Management Period (as defined in the Cash Management Agreement) then exists, such proceeds shall be deposited into the Cash Management Account (as defined in the Cash Management Agreement) and disbursed in accordance with the applicable terms and conditions of the Cash Management Agreement, and (ii) that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form referenced in subsection (i), above, does not otherwise apply, (A) owner's contingent or protective liability insurance, otherwise known as Owner Contractor's Protective Liability, covering claims not covered by or under the terms or provisions of the commercial general liability insurance policy in (v) below; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(iv) comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(v) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars ($2,000,000.00) in the aggregate and One Million and No/100 Dollars ($1,000,000.00) per occurrence; (B) to continue at not less than the aforesaid limit until reasonably required to be changed by Lender as provided in subsection 3.3(b) below; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability and (5) contractual liability covering the indemnities contained in Section 13.1 to the extent the same is available;

(vi) automobile liability coverage for all owned and non-owned vehicles, if any, used by Borrower in the operation of the Property, including rented and leased vehicles containing minimum limits per occurrence of One Million and No/100 Dollars ($1,000,000.00);

(vii) umbrella liability insurance in an amount not less than Ten Million and No/100 Dollars ($10,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above, including, but not limited to, supplemental coverage for workers' compensation and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (vi) above;

(viii) so-called "dramshop" insurance, if applicable, or other liability insurance required in connection with the sale of alcoholic beverages; and

(ix) upon sixty (60) days' written notice, such other reasonable insurance such as sinkhole or land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 3.3(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and (i) shall be issued by financially sound and responsible insurance companies reasonably approved by Lender, and authorized or licensed to do business in the state where the Property is located, with claims paying ability/financial strength ratings of "AA" or better by S&P (as defined in the Cash Management Agreement) and Fitch (as defined in the Cash Management Agreement) and "Aa2" or better by Moody's (as defined in the Cash Management Agreement) and general policy ratings of A or better and financial classes of X or better by A.M. Best Company, Inc.; (ii) shall name Borrower as the insured and Lender as an additional insured, as its interests may appear; (iii) in the case of property damage, boiler and machinery and, if required pursuant to the provisions hereof, flood and earthquake insurance, shall contain a so called New York Non Contributory Standard Mortgagee Clause and (other than those strictly limited to liability protection) a

Lender's Loss Payable Endorsement (Form 438 BFU NS), or their equivalents, naming Lender as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Lender; (v) shall be maintained throughout the term of this Security Instrument without cost to Lender; (vi) shall be assigned and, if requested in writing by Lender, the originals (or duplicate originals certified to be true and correct by the applicable insurer or its agent) delivered to Lender; and (vii) shall contain such provisions, consistent with the provisions hereof, as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements or clauses providing that (I) neither Borrower, Lender nor any other party shall be a co insurer under said Policies, (II) that Lender shall receive at least ten (10) days prior written notice of any modification, reduction or cancellation of any Policy, (III) no act or negligence of Borrower, or anyone acting for Borrower, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned, (IV) Lender shall not be liable for any Insurance Premiums (defined below) thereon or subject to any assessments thereunder, and (V) such Policies do not exclude coverage for acts of terror or similar acts of sabotage. Any blanket Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 3.3(a). Borrower shall pay the premiums for such Policies (the "**Insurance Premiums**") as the same become due and payable and shall furnish to Lender evidence of the renewal of each of the new Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided that such Insurance Premiums have not been paid to Lender or Lender's servicing agent pursuant to Section 3.5 hereof). If Borrower does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any apparently expiring Policy, then Lender may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Borrower agrees to reimburse Lender for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like; provided, however, such increased coverages shall not be requested more frequently than once every three years, and shall only be requested if such coverage is commercially available at commercially reasonable rates and such rates are consistent with those paid in respect of comparable properties in comparable locations, and Lender also reasonably determines that either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including without limitation, investment banks) to such owners are generally requiring that such owners maintain such insurance.

(c) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be approved by Lender (the "**Restoration**") and otherwise in accordance with Section 4.4 of this Security Instrument. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. In case of loss covered by Policies, Lender may either (1) settle and adjust any claim, or (2) allow Borrower to agree with

the insurance company or companies on the amount to be paid upon the loss; provided, that (A) provided no Event of Default shall have occurred and be continuing, Borrower may adjust losses aggregating not in excess of the Threshold Amount (defined below) if such adjustment is carried out in a competent and timely manner and (B) if no Event of Default shall have occurred and be continuing, Lender shall not settle or adjust any such claim under clause (1), above, without the consent of Borrower, which consent shall not be unreasonably withheld or delayed. In any case Lender shall and is hereby authorized to collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Borrower to Lender upon demand.

Section 3.4. PAYMENT OF TAXES, ETC. (a) Subject to the provisions of Sections 3.4(b) and 3.5 hereof, Borrower shall pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "**Taxes**"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "**Other Charges**"), and all charges for utility services provided to the Property prior to the same becoming delinquent. Borrower will deliver to Lender, promptly upon Lender's written request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge against the Property arising out of such Taxes, Other Charges and utility service charges. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish to Lender, promptly upon Lender's written request, paid receipts for the payment of the Taxes and Other Charges.

(b) Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the Other Security Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, and (vii) Borrower shall have furnished the security as may be required in the proceeding to insure the payment of any contested Taxes, together with all interest and penalties thereon.

Section 3.5. ESCROW FUND. Except as provided below, Borrower shall pay to Lender on the first day of each calendar month (a) one twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, during the next

ensuing twelve (12) months and (b) one twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the amounts in (a) and (b) above shall be called the "**Escrow Fund**"). Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has obtained knowledge and authorizes Lender or its agent to obtain the bills for Taxes and Other Charges directly from the appropriate taxing authority. The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Lender will timely apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3.3 and 3.4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 3.3 and 3.4 hereof, Lender shall promptly return any excess to Borrower. In disbursing such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Escrow Fund shall be payable to Borrower. Notwithstanding the foregoing, Borrower shall not be required to make deposits to the Escrow Fund for Insurance Premiums pursuant to this Section 3.5 so long as (i) no Event of Default occurs and is continuing hereunder, (ii) Borrower pays all Insurance Premiums by no later than ten (10) Business Days prior to the delinquency thereof, and (iii) Borrower provides Lender paid receipts for the payment of the Insurance Premiums by no later than one (1) Business Day prior to the delinquency thereof. Upon the occurrence of a failure of any of the conditions specified in clauses (i) through (iii) above, Borrower shall, upon Lender's demand therefor, commence making the deposits to the Escrow Fund for Insurance Premiums required pursuant to this Section 3.5 commencing with the next Monthly Payment Date (as defined in the Note), which payments shall continue until Borrower corrects each such failure.

Section 3.6. CONDEMNATION. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting the Land and/or the Improvements and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender is hereby irrevocably appointed as Borrower's attorney in fact coupled with an interest, with exclusive powers to collect, receive and apply to the Debt (or provide to Borrower to pay for Restoration) any award or payment for any taking accomplished through a condemnation or eminent domain proceeding and, at any time during which an Event of Default has occurred and is continuing, to make any compromise or settlement in connection therewith. All condemnation awards or proceeds shall be either (a) paid to Lender for application against the Debt or (b) applied to Restoration of the Property in accordance with Section 4.4 hereof. Notwithstanding any taking by any public or quasi public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the

rate or rates provided herein or in the Note. Any award or payment to be applied to the reduction or discharge of the Debt or any portion thereof may be so applied whether or not the Debt or such portion thereof is then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been or may be sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the unpaid portion of the Debt.

Notwithstanding anything contained in this Section 3.6 or this Security Instrument to the contrary, but subject to the provisions of Section 4.4, below, Lender may elect to (y) apply the net proceeds of any condemnation award (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) in reduction of the Debt in such order and manner as Lender may elect, whether due or not, or (z) make the proceeds available to Borrower for the restoration or repair of the Property. Any implied covenant in this Security Instrument restricting the right of Lender to make such an election is waived by Borrower. In addition, Borrower hereby waives the provisions of any law prohibiting Lender from making such an election.

Section 3.7. LEASES AND RENTS. (a) Borrower does hereby absolutely and unconditionally assign to Lender, Borrower's right, title and interest in all current and future Leases and Rents, it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Lender shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Lender. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereafter be requested by Lender to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section 3.7, Lender grants to Borrower a revocable license (revocable only as provided herein) to operate and manage the Property and to collect, retain, and enjoy the Rents pursuant to (and as such license may be limited by) the terms and conditions contained in the Restricted Account Agreement and the Cash Management Agreement. Furthermore, notwithstanding anything to contrary contained herein and notwithstanding the rights granted to Lender pursuant to this Section 3.7, all Rents shall be deposited, held and applied pursuant to the provisions of the Restricted Account Agreement and the Cash Management Agreement. Upon the occurrence and continuance of an Acceleration Default, the license granted to Borrower herein shall automatically be revoked (subject to automatic reinstatement upon Borrower's cure of the applicable Event of Default), and Lender shall, subject to the provisions of the Other Security Documents, immediately be entitled to possession of all Rents, whether or not Lender enters upon or takes control of the Property. Subject to the provisions of the Other Security Documents, Lender is hereby granted by Borrower the right, at its option, during any period of revocation of the license granted herein, to enter upon the Property in person, by agent or by court appointed receiver to collect the Rents. Any Rents collected during the revocation of the license shall, subject to any contrary provision of the Other Security Documents, be applied by Lender against the Debt, in such order and priority as it may determine.

(b) All Leases entered into after the date hereof shall be written on (i) the standard form of lease which has been approved by Lender or (ii) an Acceptable Chain Tenant Form

(defined below). Commercially reasonable changes may be made to the Lender-approved standard lease or an Acceptable Chain Tenant Form without the prior written consent of Lender in the ordinary course of Borrower's business. All Leases (including any Acceptable Chain Tenant Form) shall provide that they are subordinate to this Security Instrument (subject to Lender's agreement (by Lender's acceptance of this Security Instrument hereby given) not to disturb such tenant's tenancies while they are in compliance with the terms of their Lease) and that the tenant thereunder agrees to attorn to Lender. As used herein, the term "**Acceptable Chain Tenant Form**" shall mean the form of lease promulgated by a prospective national or regional chain tenant that insists, on a programmatic or institutional basis, on using its own form of lease; provided, that, the provisions contained in such form of lease (i) are commercially reasonably for properties similar to the Property, (ii) do not contain any rights, options (including, without limitation, rights to purchase the Property or any interest therein) or obligations that would be unacceptable to a prudent secondary market lender substantially similar to Lender and (iii) do not have a Material Adverse Effect (defined below). As used above, the term "**Material Adverse Effect**" shall mean a material adverse effect on (i) the Property, (ii) the business, profits, prospects, management, operations or condition (financial or otherwise) of Borrower, Guarantor or the Property, (iii) the enforceability, validity, perfection or priority of the lien of this Security Instrument or the other Loan Documents, or (iv) the ability of Borrower to perform its obligations under this Security Instrument or the other Loan Documents.

(c) Borrower (i) shall observe and perform all material obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall receive thereunder; (iii) shall not collect any of the Rents more than one (1) month in advance (other than security deposits and prepaid first and last month's rent collected in the ordinary course of Borrower's business); and (iv) shall not execute any other assignment of the lessor's interest in the Leases or the Rents. Borrower (A) shall enforce all material terms, covenants and conditions contained in the Leases upon the part of the lessees thereunder to be observed or performed, short of termination thereof and short instituting litigation (provided, that, Borrower (1) shall be obligated to so institute litigation if the failure to do so would have a Material Adverse Effect and (2) may terminate a Lease only in the event of (aa) a monetary event of default under such Lease or (bb) a material non-monetary default under such Lease where the tenant fails to cure such event of default 30 days beyond the cure period set forth in the subject Lease); (B) may alter, modify or change the terms of the Leases in any material respect without the prior written consent of Lender, provided that such alterations, modifications or changes are commercially reasonable alterations, modifications or changes agreed to in the ordinary course of Borrower's business; (C) shall not, without Lender's consent, convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights, or a termination or diminution of the obligations of, tenants under the Leases; (D) may approve or consent to any assignment of or subletting under the Leases in accordance with the terms of such Leases, without the prior written consent of Lender; and (E) shall not cancel the Leases or accept a surrender thereof, except that any Lease may be canceled if at the time of the cancellation thereof a new Lease is entered into on substantially the same terms or more favorable terms as the canceled Lease.

(d) Borrower, as the lessor thereunder, may enter into proposed lease renewals and new leases without the prior written consent of Lender, provided each such proposed lease:

(i) shall have an initial term of not less than three (3) years or greater than ten (10) years; (ii) shall provide for rental rates (including rates during any renewal or option term or rates applicable to any expansion space) comparable to then existing local market rates that would be agreed to in an arm's length transaction; (iii) shall be to a tenant which Borrower reasonably determines to be capable and reputable; and (iv) shall comply with the provisions of subsection (b) above (except that any lease renewals may be on the same form as the original lease). Borrower may enter into a proposed lease which does not satisfy all of the conditions set forth in clauses (i) through (iv) immediately above, provided Lender consents in writing to such proposed lease, such consent not to be unreasonably withheld or delayed. Borrower expressly understands that any and all proposed leases are included in the definition of "Lease" or "Leases" as such terms may be used throughout this Security Instrument, the Note and the Other Security Documents. Borrower shall furnish Lender with executed copies of all Leases and any amendments or other agreements pertaining thereto.

(e) Notwithstanding anything to the contrary contained herein or in any other Loan Document, Borrower shall not, without the prior written consent of Lender, enter into, renew, extend, terminate (for reasons other than non-payment of rent), reduce rents under, permit an assignment or subleasing of (other than in accordance with its express terms) or otherwise amend, modify or waive any material or economic provisions of, accept a surrender of space under, or shorten the term of, any Major Lease or any instrument guaranteeing or providing credit support for any Major Lease. As used herein, the term "**Major Lease**" shall mean (i) any Lease which, individually or when aggregated with all other Leases at the Property with the same tenant or any Affiliate (defined below) of such tenant, demises 25,000 square feet or more of the Property's net rentable square footage, (ii) any Lease which contains any option, offer, right of first refusal or other similar entitlement to purchase all or any portion of the Property (which such rights shall be deemed to be exclusive of any rights under any Lease to extend the term thereof or to lease additional space at the Property) or (iii) any instrument guaranteeing or providing credit support for any Lease meeting the requirements of (i) or (ii) above. As used above, the term "**Affiliate**" shall mean, with respect to any tenant under any Lease at the Property, any affiliate of such tenant, unless such affiliate (i) operates under a separate trade name and under a separate corporate or other similar division from such tenant and (ii) is otherwise treated as a separate tenant under a separate Lease by Borrower. Notwithstanding the foregoing, Lender's prior written consent shall be required in order for Borrower to terminate (for reasons other than non-payment of rent), accept a surrender of space under or shorten the term of any Lease (or any instrument guaranteeing or providing credit support for such Lease) if such applicable Lease, individually or when aggregated with all other Leases at the Property with the same tenant or any Affiliate of such tenant, demises 20,000 square feet or more of the Property's net rentable square footage.

(f) Notwithstanding anything to the contrary contained herein, to the extent Lender's prior approval is required for any leasing matters set forth in this Section, Lender shall have ten (10) Business Days from receipt of written request and all required information and documentation relating thereto in which to approve or disapprove such matter, provided that such request to Lender is marked in bold lettering with the following language: "LENDER'S RESPONSE IS REQUIRED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF A MORTGAGE BETWEEN THE UNDERSIGNED AND LENDER". In the event that Lender fails to respond to the leasing

matter in question within such time, Lender's approval shall be deemed given for all purposes. Borrower shall provide Lender with such information and documentation as may be reasonably required by Lender, including, without limitation, lease comparables and other market information as reasonably required by Lender. Lender shall not be entitled to any fee or reimbursement in connection with any such review and approval process in excess of the reasonable fees or reimbursements customarily charged by lenders or servicers of secondary market loans similar to the Loan for actions similar to the foregoing.

(g) Intentionally Omitted.

(h) Intentionally Omitted.

(i) Within ten (10) Business Days after receipt of written request therefore and a copy of the executed corresponding Lease, Lender shall execute and deliver to Borrower a subordination, non-disturbance and attornment agreement (an "**SNDA**"). If the form of the SNDA shall be prescribed by the Lease in question, and Lender shall have approved (or been deemed to have approved) such Lease, Lender shall execute and deliver the SNDA in the form prescribed by such Lease. In the case of any other Lease or any Lease as to which Lender's approval is not required pursuant to the terms hereof where such tenant thereunder requests an SNDA, the SNDA to be executed and delivered by Lender shall be in substantially the form attached hereto as Exhibit B, as such form may be modified to reflect reasonable changes thereto negotiated by Lender and such tenant. Lender agrees to negotiate in good faith the terms of the SNDA with any tenant under any Lease. All reasonable attorneys' fees and disbursements incurred by Lender in connection with the negotiation of such SNDA shall be payable by Borrower within ten (10) Business Days after Lender's written request therefore, whether or not the SNDA is ultimately executed and/or recorded.

Section 3.8. MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender. Without limiting the foregoing, Lender hereby acknowledges that Borrower has informed Lender that Borrower is contemplating developing (for retail purposes) a portion of the Property located to the east of the premises currently demised to Kmart. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof which may have a material adverse affect on the use, operation or value of the Property. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or abandoned without the express written consent of Lender.

Section 3.9. WASTE. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk

of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.10. COMPLIANCE WITH LAWS. Borrower shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted to affect the Property, or the use thereof ("**Applicable Laws**"). Borrower shall from time to time, upon Lender's request, based on Lender's belief, in the exercise of Lender's reasonable judgment, that the Property is in violation of any Applicable Law, provide Lender with evidence satisfactory to Lender that the Property complies with the Applicable Laws which Lender believes the Property is in violation of or is exempt from compliance with such Applicable Laws. Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

Section 3.11. BOOKS AND RECORDS. (a) Borrower shall keep adequate books and records of account in accordance with Borrower's current methods (which such methods are tax basis accounting) or such other method as may be acceptable to Lender in its reasonable discretion, in each case consistently applied (each or any of the foregoing, the "**Approved Accounting Method**") and furnish to Lender:

(i) prior to Securitization (defined below), monthly (but in no event for a period of more than two (2) years from the date hereof) and, thereafter, quarterly, rent rolls signed, dated and certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) to be true and complete to the best knowledge of such person, detailing the names of all tenants of the Improvements, the portion of Improvements occupied by each tenant, the base rent and any other charges payable under each Lease and the term of each Lease, including the expiration date, and any other information as is reasonably required by Lender, within thirty (30) days after the end of each calendar month or quarter (as applicable);

(ii) prior to Securitization (defined below), monthly (but in no event for a period of more than two (2) years from the date hereof) and, thereafter, quarterly, operating statements of the Property certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) to be true and complete to the best knowledge of such person, detailing the total revenues received, total expenses incurred, total capital expenditures (including, but not limited to, all capital improvements (including, but not limited to, tenant improvements)), leasing commissions and other leasing costs, total debt service and total cash flow, and if available, any quarterly operating statement prepared by an independent certified public accountant, within thirty (30) days after the close of each calendar month or quarter (as applicable); and

(iii) an annual balance sheet and profit and loss statement of Borrower, prepared and certified by Borrower, and, if available, any financial statements prepared by an independent certified public accountant within ninety (90) days after the close of each fiscal year of Borrower.

(b)

(i) Upon request from Lender, Borrower and its affiliates shall furnish to Lender: (1) an accounting of all security deposits held in connection with any Lease of any part of the Property; and (2) an annual operating budget presented on a monthly basis consistent with the annual operating statement described above for the Property and all proposed capital replacements and improvements.

(ii) (A) During the occurrence and continuance of a Cash Management Period (as defined in the Cash Management Agreement dated the date hereof), Lender shall have the right to approve each annual operating budget for the Property, which such budget shall set forth in reasonable detail budgeted monthly operating income and monthly budgeted operating capital and other expenses for the Property. Borrower shall submit to Lender (a) a draft operating budget in form and substance reasonably acceptable to Lender no later than thirty (30) days prior to the commencement of each Fiscal Year (defined below) during the continuance of a Cash Management Period; and (b) a final operating budget in form and substance reasonably acceptable to Lender no later than fifteen (15) days prior to the commencement of each Fiscal Year during the continuance of a Cash Management Period. In no event shall Lender be required to make (or cause to be made) any disbursements from the Borrower Expense Subaccount (as defined in the Cash Management Agreement) until Lender has received the Approved Annual Budget (defined below) for the applicable Fiscal Year. Prior to Lender's approval of a draft operating budget, the most recent Approved Annual Budget shall apply. Any annual operating budget approved by Lender in accordance with the terms hereof shall be referred to as an "**Approved Annual Budget**". Notwithstanding the foregoing, upon the commencement of a Cash Management Period, Lender shall have the right to approve all requests by Borrower for disbursement for operating costs and expenses and Extraordinary Expenses (as defined in the Cash Management Agreement dated the date hereof) pursuant to the terms of such Cash Management Agreement until Lender's approval of the Approved Annual Budget for the immediately succeeding Fiscal Year in accordance with this Subsection 3.11(b)(ii).

(B) Notwithstanding anything to the contrary contained herein, to the extent Lender's prior approval is required for any budget or budget matters set forth in this Section 3.11(b)(ii), Lender shall have ten (10) Business Days from receipt of written request and all required information and documentation relating thereto in which to approve or disapprove such matter, provided that such request to Lender is marked in bold lettering with the following language: "LENDER'S RESPONSE IS REQUIRED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE (SUBJECT TO LENDER'S RIGHT TO RECEIVE AN EXTENSION NOTICE) PURSUANT TO THE TERMS OF A MORTGAGE BETWEEN THE UNDERSIGNED AND LENDER" and the envelope containing the request must be marked "PRIORITY." Borrower shall be further obligated to send to Lender a subsequent written notice (the "**Extension Notice**") if Lender does not respond to Borrower's initial ten (10) Business Day Notice, which Extension Notice shall not be delivered by Borrower until the expiration of the

initial ten (10) Business Day period set forth above. In the event that Lender fails to respond to the budget or budget matter in question within five (5) Business Days of receipt of the Extension Notice, Lender's approval shall be deemed given for all purposes. Borrower shall provide Lender with such information and documentation as may be reasonably required by Lender.

(c) Borrower and its affiliates shall furnish Lender with such other additional financial or management information as may, from time to time, be reasonably required by Lender.

(d) If requested by Lender, Borrower shall provide Lender with the following financial statements (it being understood that Lender shall request (i) full financial statements only if it anticipates that the principal amount of the Loan at the time of Securitization may, or if the principal amount of the Loan at any time during which the Loan is included in a Securitization does, equals or exceeds 20% of the aggregate principal amount of all mortgage loans included in the Securitization and (ii) summaries of such financial statements only if the principal amount of the Loan at any such time equals or exceeds 10% of such aggregate principal amount):

(i) As of the date of the closing of the Loan (the "**Closing Date**"), a balance sheet with respect to the Property for the two most recent fiscal years of Borrower or Sponsor (each such year, a "**Fiscal Year**"), meeting the requirements of Section 210.3-01 of Regulation S-X of the Securities Act (defined below) and statements of income and statements of cash flows with respect to the Property for the three most recent Fiscal Years, meeting the requirements of Section 210.3-02 of Regulation S-X, and, to the extent that such balance sheet is more than 135 days old as of the Closing Date, interim financial statements of the Property meeting the requirements of Section 210.3-01 and 210.3-02 of Regulation S-X (all of such financial statements, collectively, the "**Standard Statements**"); provided, however, to the extent the Property that has been acquired by Borrower from an unaffiliated third party (an "**Acquired Property**") and as to which the other conditions set forth in Section 210.3-14 of Regulation S-X for the provision of financial statements in accordance with such Section have been met (other than any Property that is a hotel, nursing home or other property that would be deemed to constitute a business and not real estate under Regulation S-X and as to which the other conditions set forth in Section 210.3-05 of Regulation S-X for provision of financial statements in accordance with such Section have been met (a "**Business Property**")), in lieu of the Standard Statements otherwise required by this Section, Borrower shall instead provide the financial statements required by such Section 210.3-14 of Regulation S-X; provided, further, however, with respect to any Business Property which is an Acquired Property, Borrower shall instead provide the financial statements required by Section 210.3-05 (such Section 210.3-14 or Section 210.3-05 financial statements referred to herein as ("**Acquired Property Statements**")).

(ii) Not later than 30 days after the end of each fiscal quarter following the Closing Date, a balance sheet of the Property as of the end of such fiscal quarter, meeting the requirements of Section 210.3-01 of Regulation S-X, and statements of income and statements of cash flows of the Property for the period commencing on the day following the last day of the most recent Fiscal Year and ending on the date of such balance sheet and for the corresponding period of the most recent Fiscal Year, meeting the requirements of Section 210.3-02 of Regulation S-X (provided, that if for such corresponding period of the most recent Fiscal Year

Acquired Property Statements were permitted to be provided hereunder pursuant to paragraph (i) above, Borrower shall instead provide Acquired Property Statements for such corresponding period). If requested by Lender, Borrower shall also provide "summarized financial information," as defined in Section 210.1-02(bb) of Regulation S-X, with respect to such quarterly financial statements.

(iii) Not later than 60 days after the end of each Fiscal Year following the Closing Date, a balance sheet of the Property as of the end of such Fiscal Year, meeting the requirements of Section 210.3-01 of Regulation S-X, and statements of income and statements of cash flows of the Property for such Fiscal Year, meeting the requirements of Section 210.3-02 of Regulation S-X. If requested by Lender, Borrower shall provide summarized financial information with respect to such annual financial statements.

(iv) Within ten (10) Business Days after notice from Lender in connection with the Securitization of this Loan, such additional financial statements, such that, as of the date (each a "**Disclosure Document Date**") of each Disclosure Document (defined below), Borrower shall have provided Lender with all financial statements as described in paragraph (i) above; provided that the Fiscal Year and interim periods for which such financial statements shall be provided shall be determined as of such Disclosure Document Date.

(v) In the event Lender determines, in connection with a Securitization, that the financial statements required in order to comply with Regulation S-X or Applicable Laws are other than as provided herein, then notwithstanding the provisions of this Section, Lender may request, and Borrower shall promptly provide, such combination of Acquired Property Statements and/or Standard Statements as may be necessary for such compliance.

(vi) Any other or additional financial statements, or financial, statistical or operating information, as shall be required pursuant to Regulation S-X or other Applicable Laws in connection with any Disclosure Document or any filing under or pursuant to the Exchange Act in connection with or relating to a Securitization (hereinafter an "**Exchange Act Filing**") or as shall otherwise be reasonably requested by Lender to meet disclosure, Rating Agency or marketing requirements.

(vii) All financial statements provided by Borrower pursuant to this Section shall be prepared in accordance with GAAP, and shall meet the requirements of Regulation S-X and other Applicable Laws. All financial statements relating to a Fiscal Year shall be audited by the independent accountants in accordance with generally accepted auditing standards, Regulation S-X and all other Applicable Laws, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation S-X and all other Applicable Laws, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as "experts" in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided. All other financial statements shall be certified by the chief financial officer of Borrower, which certification shall state that such financial statements meet the requirements set forth in the first sentence of this paragraph.

Section 3.12. PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist (subject to Borrower's right to contest any such matter as described below) beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof. Nothing contained herein shall, however, affect or impair Borrower's ability to diligently and in good faith contest any lien or bill for labor or materials, provided that any lien placed upon the Property must be fully and irrevocably discharged (by bond or otherwise) at least 30 days prior to the date such lien could otherwise be foreclosed upon pursuant to Applicable Law.

Section 3.13. PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing an obligation secured hereby and any amendments, modifications or changes thereto.

Section 3.14. PROPERTY MANAGEMENT.

(a) Borrower shall (i) promptly perform and observe all of the covenants required to be performed and observed by it under the agreement between Manager and Borrower pursuant to which the manager of the Property (the "**Manager**") is employed to perform management services for the Property (the "**Management Agreement**") and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of any notice of default or other material notice received by Borrower under the Management Agreement; (iv) promptly give notice to Lender of any notice or information that Borrower receives which indicates that Manager is terminating the Management Agreement or that Manager is otherwise discontinuing its management of the Property; and (v) promptly enforce the performance and observance of all of the material covenants required to be performed and observed by Manager under the Management Agreement. Borrower shall not, without the prior written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed): (i) surrender, terminate or cancel the Management Agreement or otherwise replace Manager or enter into any other management agreement with respect to the Property; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. In the event that Borrower replaces Manager at any time during the term of Loan, such Manager shall be a Qualified Manager (defined below).

(b) In the event that (i) an Event of Default occurs and is not cured within the applicable cure period (if any) or waived, (ii) Manager shall become insolvent or a debtor in a proceeding under any applicable Insolvency Laws (as defined in the Note), or (iii) a material

default by Manager has occurred and is continuing under the Management Agreement beyond any applicable grace, notice or cure periods thereunder, then, upon the occurrence of any of the events described in clauses (i) through (iii) above, Borrower shall, at Lender's direction, immediately terminate the Management Agreement and enter into a new property management agreement reasonably acceptable to Lender with a management company reasonably acceptable to Lender, which such new property management company must (i) be a Qualified Manager, (ii) not be an affiliate of, or controlled by, Lender, and (iii) have not provided (nor agreed to provide) Lender (or its affiliates) with any compensation for being so named. In the event Lender directs Borrower to engage a professional third party property manager, then Borrower shall engage such a property manager pursuant to an agreement reasonably acceptable to Lender, and Borrower and such manager shall execute an agreement acceptable to Lender conditionally assigning Borrower's interest in such management agreement to Lender and subordinating manager's right to receive fees and expenses under such agreement while the Debt remains outstanding. In no event shall Lender or Borrower be liable for any termination, severance or other fees to Manager or others resulting from any termination of any property management agreement (including, without limitation the Management Agreement).

(c) As used herein, the term "**Qualified Manager**" shall mean (I) American Assets, Inc. ("**AAI**") (unless such entity is the entity being replaced as property manager), or (II) a reputable and experienced professional management organization (a) which manages, together with its affiliates, at least 2,000,000 square feet of gross leasable area (including all anchor space), exclusive of the Property and (b) approved by Lender, which approval shall not have been unreasonably withheld and for which Lender shall have received (i) written confirmation from the Rating Agencies that the employment of such manager will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization, and (ii) with respect to any Affiliated Manager (defined below), a New Non-Consolidation Opinion (defined below).

Article 4. SPECIAL COVENANTS

Borrower covenants and agrees that:

Section 4.1. PROPERTY USE. The Property shall be used only as a retail shopping center and appurtenant and related uses (and, upon the prior written consent of Lender, which consent shall not be unreasonably withheld, related uses typical of a property such as the Property, and allowed by the Property's zoning classification and all agreements pertaining to the Property) and for no other use without the prior written consent of Lender, which consent may be withheld in Lender's reasonable discretion.

Section 4.2. ERISA. (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Security Instrument and the Other Security Documents) to be a non exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**").

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Security Instrument, as requested by Lender in its reasonable discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended (the "**Code**"), or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

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

(B) Less than 25 percent of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R.§ 2510.3 101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R § 2510.3 101(c) or (e) or an investment company registered under The Investment Company Act of 1940.

Section 4.3. SINGLE PURPOSE ENTITY.

(a) Borrower has not and shall not:

(i) Own any asset or property other than (A) the Property, and (B) incidental personal property necessary for the ownership or operation of the Property.

(ii) Engage in any business other than the ownership, management and operation of the Property or fail to conduct and operate its business as presently conducted and operated.

(iii) Enter into any contract or agreement with any affiliate of Borrower, any constituent party of Borrower or any affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(iv) Incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) with respect to West only, the Refinanced Loan (defined below), (B) the Debt, (C) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than sixty (60) days past the date incurred and paid on or prior to such date, and/or (D) financing leases and purchase money indebtedness incurred in the ordinary course of business relating to personal property on commercially reasonable terms and conditions; provided however, the aggregate amount of the indebtedness described in (C) and (D) shall not exceed at any time three percent (3%) of the outstanding principal amount of the Debt. No Indebtedness other than the Debt may be secured (subordinate or pari passu) by the Property. As used above, the

"**Refinanced Loan**" shall mean that certain loan made by Wells Fargo Bank, N.A. to West (among others). With respect to the Refinanced Loan, Borrower hereby represents and warrants that (i) the Refinanced Loan was repaid in full with the proceeds of the Loan, and (ii) none of Borrower, American Assets, Inc. ("**Guarantor**") or any constituent party of Borrower has any remaining liabilities or obligations in connection with the Refinanced Loan (other than environmental and other limited and customary indemnity obligations).

(v) Make any loans or advances to any third party (including any affiliate or constituent party) or acquire obligations or securities of its affiliates.

(vi) Fail to remain solvent or fail to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(vii) Fail to do or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, or permit any constituent party to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of Borrower or such constituent party without the prior consent of Lender in any manner that (i) violates the single purpose covenants set forth in this Section, or (ii) amends, modifies or otherwise changes any provision thereof that by its terms cannot be modified at any time when the Loan is outstanding or by its terms cannot be modified without Lender's consent.

(viii) Fail to maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party. Borrower's assets have not been and will not be listed as assets on the financial statement of any other person or entity, provided, however, that Borrower's assets may be included in a consolidated financial statement of its affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such affiliates or any other person or entity and (ii) such assets shall be listed on Borrower's own separate balance sheet. Borrower will file its own tax returns (to the extent Borrower is required to file any such tax returns) and will not file a consolidated federal income tax return with any other person or entity. Borrower shall maintain its books, records, resolutions and agreements as official records.

(ix) Fail to be, or fail to hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Borrower or any constituent party of Borrower), fail to correct any known misunderstanding regarding its status as a separate entity, fail to conduct business in its own name, identify itself or any of its affiliates as a division or part of the other, fail to allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an affiliate) among the persons or entities sharing such expenses or fail to maintain and utilize separate stationery, invoices and checks bearing its own name.

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

(xi) Seek or effect the liquidation, dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of Borrower.

(xii) Commingle the funds and other assets of Borrower with those of any affiliate or constituent party or any other person or entity or fail to hold all of its assets in its own name. Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party or any other person or entity.

(xiii) Guarantee or become obligated for the debts of any other person or entity or hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other person or entity.

(xiv) Fail to conduct its business so that the assumptions made with respect to Borrower in that certain non-consolidation opinion delivered by Solomon Ward Seidenwurm & Smith, LLP in connection with the closing of the Loan (together with any subsequently delivered confirmations or amendments thereto or any subsequent substantive non-consolidation opinions, collectively, the "**Non-Consolidation Opinion**") shall fail to be true and correct in all respects.

(xv) Permit any affiliate or constituent party independent access to its bank accounts.

(xvi) Fail to pay the salaries of its own employees (if any) from its own funds or fail to maintain a sufficient number of employees (if any) in light of its contemplated business operations.

(xvii) Fail to compensate each of its consultants and agents from its funds for services provided to it or fail to pay from its own assets all obligations of any kind incurred.

(xviii) If Borrower is a single member limited liability company, fail to observe all Delaware limited liability company required formalities.

(xix) own any subsidiary, or make any investment in, any person or entity.

(xx) if Borrower is a partnership or limited liability company, without the unanimous written consent of all of its partners or members, as applicable, and the written consent of 100% of the board of directors or managers of Borrower (if Borrower is a Delaware single member limited liability company or a corporation) or each SPE Component Entity (defined below) (if Borrower is an entity other than a Delaware single member limited liability company or a corporation), including, without limitation, each Independent Director (defined below), (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable Insolvency Laws, (b) seek or consent to the appointment of a receiver, liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, or (d) make an assignment for the benefit of creditors.

(b) If Borrower is a partnership or limited liability company (other than a Delaware single member limited liability company), each general partner in the case of a general partnership, each general partner in the case of a limited partnership, or the managing member in the case of a limited liability company (each an "**SPE Component Entity**") of Borrower, as applicable, shall be a corporation or a Delaware single member limited liability company whose sole asset is its interest in Borrower. Each SPE Component Entity (i) will own at least a 0.5% direct equity interest in Borrower, (ii) will at all times comply with each of the covenants, terms and provisions contained in Section 4.3(a) above, to the extent applicable, as if such representation, warranty or covenant was made directly by such SPE Component Entity; (iii) will not engage in any business or activity other than owning an interest in Borrower; (iv) will not acquire or own any assets other than its partnership, membership, or other equity interest in Borrower; (v) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (vi) will cause Borrower to comply with the provisions of Section 4.3. Prior to the withdrawal or the disassociation of any SPE Component Entity from Borrower, Borrower shall immediately appoint a new general partner or managing member whose articles of incorporation are substantially similar to those of such SPE Component Entity and deliver a New Non-Consolidation Opinion to Lender and the Rating Agencies with respect to the new SPE Component Entity and its equity owners. Notwithstanding the foregoing, to the extent West or Venture is (1) a single member Delaware limited liability company, or (2) a multiple member Delaware limited liability company whose organization documents contain springing member provisions satisfying the requirements of the Delaware Limited Liability Company Act and are otherwise acceptable to Lender, so long as West or Venture (as applicable) maintains such formation status, no SPE Component Entity shall be required.

(c) (i) The organizational documents of each SPE Component Entity (if any) or Borrower (to the extent Borrower is a Delaware single member limited liability company or a corporation) shall provide that at all times there shall be, and Borrower shall cause there to be, at least one duly appointed members of the board of directors or managers (an "**Independent Director**") of such SPE Component Entity or Borrower (as applicable) reasonably satisfactory to Lender each of whom are not at the time of such individual's initial appointment, and shall not have been at any time during the preceding five (5) years, and shall not be at any time while serving as a director of such SPE Component Entity or Borrower (as applicable), either (i) a shareholder (or other equity owner) of, or an officer, director (other than serving as the Independent Director of any of West, Venture or any SPE Component Entity), partner, manager, member (other than as a Special Member in the case of single member Delaware limited liability companies), employee (other than serving as the Independent Director of any of West, Venture or any SPE Component Entity), attorney or counsel of, Borrower, such SPE Component Entity or any of their respective shareholders, partners, members, subsidiaries or affiliates; (ii) a customer or creditor of, or supplier to, Borrower or any of its respective shareholders, partners, members, subsidiaries or affiliates who derives any of its purchases or revenue from its activities with Borrower or such SPE Component Entity or any affiliate of any of them (other than in such person's employment as the Independent Director of any of West, Venture or any SPE Component Entity); (iii) a Person who Controls (defined below) or is under common Control with any such shareholder, officer, director, partner, manager, member, employee, supplier, creditor or customer; or (iv) a member of the immediate family of any such shareholder, officer, director, partner, manager, member, employee, supplier, creditor or customer. Notwithstanding the foregoing, a person who serves as an independent director for affiliates of Borrower may

serve as an Independent Director so long as (A) such person is appointed by a nationally recognized provider of independent directors (such as CT Corporation) or (B) such person derives less than 5% of their total annual income from their service as independent director for Borrower and each applicable affiliate of Borrower.

(ii) The organizational documents of each SPE Component Entity (if any) or Borrower (as applicable) shall provide that the board of directors or board of managers of such SPE Component Entity or Borrower (as applicable) shall not take any action which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to any common stock, requires an unanimous vote of the board of directors or managers of such SPE Component Entity or Borrower (as applicable) unless at the time of such action there shall be at least one member of the board of directors or managers who is an Independent Director. Such SPE Component Entity or Borrower (as applicable) will not, without the unanimous written consent of its board of directors or managers including each Independent Director, on behalf of itself or Borrower, (i) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable Insolvency Laws; (ii) seek or consent to the appointment of a receiver, liquidator or any similar official; (iii) take any action that might cause such entity to become insolvent; or (iv) make an assignment for the benefit of creditors.

(d) (I) In the event Borrower or any SPE Component Entity is a single member Delaware limited liability company, the limited liability company agreement of Borrower or such SPE Component Entity (as applicable) (the "**LLC Agreement**") shall provide that (i) upon the occurrence of any event that causes the sole member of Borrower or such SPE Component Entity (as applicable) ("**Member**") to cease to be the member of Borrower or such SPE Component Entity (as applicable) (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower or such SPE Component Entity (as applicable) and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower or such SPE Component Entity (as applicable) in accordance with the terms of the Loan Documents and the LLC Agreement), any person acting as Independent Director of Borrower or such SPE Component Entity (as applicable) shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower or such SPE Component Entity (as applicable), automatically be admitted to Borrower or such SPE Component Entity (as applicable) ("**Special Member**") and shall continue Borrower or such SPE Component Entity (as applicable) without dissolution and (ii) Special Member may not resign from Borrower or such SPE Component Entity (as applicable) or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower or such SPE Component Entity (as applicable) as Special Member in accordance with requirements of Delaware law and (B) such successor Special Member has also accepted its appointment as an Independent Director. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower or such SPE Component Entity (as applicable) upon the admission to Borrower or such SPE Component Entity (as applicable) of a substitute Member, (ii) Special Member shall be a member of Borrower or such SPE Component Entity (as applicable) that has no interest in the profits, losses and capital of Borrower or such SPE Component Entity (as applicable) and has no right to receive any distributions of Borrower or such SPE Component Entity (as applicable) assets, (iii) pursuant to Section 18-301 of the Delaware Limited Liability Company Act (the "**Act**"), Special Member shall not be required to make any capital

contributions to Borrower or such SPE Component Entity (as applicable) and shall not receive a limited liability company interest in Borrower or such SPE Component Entity (as applicable), (iv) Special Member, in its capacity as Special Member, may not bind Borrower or such SPE Component Entity (as applicable) and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower or such SPE Component Entity (as applicable), including, without limitation, the merger, consolidation or conversion of Borrower or such SPE Component Entity (as applicable); provided, however, such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Director, to vote on such matters required by the Loan Documents or the LLC Agreement. In order to implement the admission to Borrower or such SPE Component Entity (as applicable) of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower or such SPE Component Entity (as applicable) as Special Member, Special Member shall not be a member of Borrower or such SPE Component Entity (as applicable).

(II) Upon the occurrence of any event that causes the Member to cease to be a member of Borrower or such SPE Component Entity (as applicable), to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower or such SPE Component Entity (as applicable), agree in writing (i) to continue Borrower or such SPE Component Entity (as applicable) and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower or such SPE Component Entity (as applicable), effective as of the occurrence of the event that terminated the continued membership of Member of Borrower or such SPE Component Entity (as applicable) in Borrower or such SPE Component Entity (as applicable). Any action initiated by or brought against Member or Special Member under any applicable Insolvency Laws shall not cause Member or Special Member to cease to be a member of Borrower or such SPE Component Entity (as applicable) and upon the occurrence of such an event, the business of Borrower or such SPE Component Entity (as applicable) shall continue without dissolution. The LLC Agreement shall provide that each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower or such SPE Component Entity (as applicable) upon the occurrence of any action initiated by or brought against Member or Special Member under any applicable Insolvency Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower or such SPE Component Entity (as applicable).

(e) Borrower shall not change or permit to be changed (a) Borrower’s name, (b) Borrower’s identity (including its trade name or names), (c) Borrower’s principal place of business set forth on the first page of this Security Instrument, (d) the corporate, partnership or other organizational structure of Borrower, each SPE Component Entity (if any), or Guarantor, (e) Borrower’s state of organization, or (f) Borrower’s organizational identification number, without in each case notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower’s structure, without first obtaining the prior written consent of Lender. In addition, Borrower shall not change or permit to be changed any organizational documents of Borrower or any SPE Component Entity (if any) if such change would adversely impact the covenants set forth in this Section 4.3. Borrower authorizes Lender to file any financing statement or financing statement amendment

required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property. If Borrower does not now have an organizational identification number and later obtains one, or if the organizational identification number assigned to Borrower subsequently changes, Borrower shall promptly notify Lender of such organizational identification number or change.

(f) Notwithstanding anything to the contrary contained herein, upon written notice from Lender following the occurrence and during the continuance of an Additional Director Trigger Event (hereafter defined), Borrower shall amend its own (or any SPE Component Entity's (as applicable)) organizational documents to require the appointment and maintenance of no less than two (2) Independent Directors for Borrower or such SPE Component Entity (as applicable) for the remaining term of the Loan. Thereafter and during the continuance of an Independent Director Trigger Event, any provision herein relating to any Independent Director shall be deemed to relate to both Independent Directors (for example (and by way of illustration only), any provision herein (i) requiring that an Independent Director be in place for any vote to be effective shall require that both Independent Directors be in place for such vote to be effective or (ii) requiring the vote of the Independent Director shall require the vote of both Independent Directors). Borrower shall cause its (or the applicable SPE Component Entity's) organizational documents to be amended to be consistent with the foregoing. Borrower's compliance with the foregoing shall be at Borrower's sole cost and expense. Failure of Borrower to comply with this subsection (f) shall, at Lender's option, constitute an immediate Event of Default. As used herein, the term "**Additional Director Trigger Event**" shall mean an event (i) occurring upon the Debt Service Coverage Ratio falling below 1.25 to 1.00 and (ii) ending upon the Debt Service Coverage Ratio being in excess of 1.25 to 1.00 for four (4) consecutive calendar quarters. For the purposes hereof, the Debt Service Coverage Ratio shall be calculated monthly as of the first day of each calendar month.

(g) Intentionally Omitted.

Section 4.4. RESTORATION AFTER CASUALTY/CONDEMNATION. In the event of a casualty or a taking by eminent domain, the following provisions shall apply in connection with the Restoration of the Property:

(a) If the Net Proceeds (defined below) shall be less than the amount equal to five percent (5%) of the original aggregate principal amount of the Loan (the "**Threshold Amount**") and the costs of completing the Restoration shall be less than the Threshold Amount, the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Subsection 4.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Security Instrument.

(b) If the Net Proceeds are equal to or greater than the Threshold Amount or the costs of completing the Restoration is equal to or greater than the Threshold Amount, Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this

Subsection 4.4(b). The term "**Net Proceeds**" for purposes of this Section 4.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Subsection 3.3(a)(i), (iii), (iv) and (x) of this Security Instrument as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same or (ii) the net amount of all awards and payments received by Lender with respect to a taking referenced in Section 3.6 of this Security Instrument, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same, whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for the Restoration provided that each of the following conditions are met: (A) no Event of Default shall be continuing under the Note, this Security Instrument or any of the Other Security Documents or an event which after the passage of time or the giving of notice would constitute an Event of Default; (B) Borrower shall deliver or cause to be delivered to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, reasonably satisfactory to Lender; (C) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's reasonable discretion to cover the cost of the Restoration; (D) Borrower shall deliver to Lender, at its expense, the insurance set forth in Subsection 3.3(a)(iii) hereof; (E) Borrower shall commence the Restoration as soon as reasonably practicable and shall diligently pursue the same to satisfactory completion; (F) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note at the Applicable Interest Rate (as defined in the Note), which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Subsection 3.3(a)(ii), if applicable, or (3) by other funds of Borrower which are deposited with Lender prior to the commencement of the Restoration; (G) Lender shall be satisfied that, upon the completion of the Restoration and following a rent-up period from the time such Restoration is complete through the date which is three (3) months prior to the expiration of the rental loss insurance coverage maintained by Borrower pursuant to Section 3.3(a)(ii) above, the (1) fair market value of the Property, as reasonably determined by Lender, is equal to or greater than the fair market value of the Property immediately prior to the casualty or condemnation, and (2) gross cash flow and the net cash flow of the Property will be restored to a level sufficient to cover all carrying costs and operating expenses of the Property, including, without limitation, a Debt Service Coverage Ratio of at least 1.00 to 1.00; (H) Lender shall be reasonably satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date (as defined in the Note), (2) one (1) year after the occurrence of such fire or other casualty or taking, whichever the case may be, or (3) such time as may be required under applicable zoning law, ordinance, rule or regulation in order to repair and restore the Property to the condition it was in immediately prior to such fire or other casualty or to as nearly as possible the condition it was in immediately prior to such taking, as applicable; (I) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable zoning laws, ordinances, rules and regulations; (J) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable governmental laws, rules and regulations (including, without limitation, all applicable Environmental Laws (defined below)); (K) such fire or other casualty or taking, as applicable, does not result in the loss of access to the Property or the Improvements; (L) (1) in the event the

Net Proceeds are insurance proceeds, less than thirty-five percent (35%) of each of (i) fair market value of the Property as reasonably determined by Lender, and (ii) rentable area of the Property has been damaged, destroyed or rendered unusable as a result of a casualty or (2) in the event the Net Proceeds are condemnation proceeds, less than fifteen percent (15%) of each of (i) the fair market value of the Property as reasonably determined by Lender and (ii) rentable area of the Property is taken and such land is located along the perimeter or periphery of the Property; and (M) the Required Leases (defined below) shall remain in full force and effect during and after the completion of the Restoration. Lender agrees to use due diligence and good faith efforts to process its determination of Borrower's compliance with the requirements of this Paragraph 4.4(b)(i) as promptly as possible, recognizing the need for a quick determination in order to avoid delay in Restoration of the Property. As used above, the term "**Required Leases**" shall mean Leases encumbering, in the aggregate, 65% of the rentable square footage at the Property.

(ii) The Net Proceeds shall be held by Lender, and until disbursed in accordance with the provisions of this Subsection 4.4(b), shall constitute additional security for the Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialmen's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the reasonable satisfaction of Lender and discharged of record or in the alternative fully insured to the reasonable satisfaction of Lender by the title company insuring the lien of this Security Instrument.

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior reasonable review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "**Casualty Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior reasonable review and acceptance by Lender and the Casualty Consultant. All reasonable costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "**Casualty Retainage**" as used in this Subsection 4.4(b) shall mean an amount equal to 10% of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until such time as the Casualty Consultant certifies to Lender that 50% of the required Restoration has been completed. There shall be no Casualty Retainage with respect to costs actually incurred by Borrower for work in place in completing the last 50% of the required Restoration. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Subsection 4.4(b), be less than

the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b) and that all approvals necessary for the re occupancy and use of the Property have been obtained from all appropriate governmental and quasi governmental authorities, and Lender receives evidence reasonably satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage, provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, and the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company insuring the lien of this Security Instrument. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Subsection 4.4(b) shall constitute additional security for the Obligations.

(vii) With respect to Restorations related to casualties, the excess, if any, of the Net Proceeds, and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b), and the receipt by Lender of evidence reasonably satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Security Instrument or any of the Other Security Documents.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection 4.4(b)(vii) may, at Lender's election, be retained and applied by Lender toward the payment of the principal balance of the Debt whether or not then due and payable, either in whole or in part, or disbursed to Borrower. If Lender shall receive and retain Net Proceeds, as permitted above, the lien of this Security Instrument shall be reduced only by the amount thereof received and retained by Lender

and actually applied by Lender in reduction of the Debt. Notwithstanding the foregoing, if Lender does not make the Net Proceeds available for Restoration and such Net Proceeds are received by Lender in connection with a casualty or condemnation to the Property, Lender shall allow Borrower to prepay the Debt in whole (but not in part) without penalty, provided, that, such prepayment is made by Borrower by no later than the date which is six (6) months prior to the expiration of the rental loss insurance coverage maintained by Borrower pursuant to Section 3.3(a)(ii) above.

Section 4.5. INTENTIONALLY OMITTED.

Section 4.6. TIC AGREEMENT COVENANTS. Until such time as this Security Instrument is released or reconveyed in connection with the repayment of the Debt or such time as the Loan is defeased in full in accordance with the applicable terms and conditions of the Note or such time as Borrowers cease to be tenants-in-common pursuant to a transfer permitted by this Security Instrument, each of West and Venture hereby covenant and agree that:

(a) they shall each pay all sums required to be paid under the TIC Agreement pursuant to the provisions thereof;

(b) they shall each diligently perform and observe all of the terms, covenants and conditions of the TIC Agreement;

(c) they shall not, without the prior consent of Lender, surrender the interest in the Property created by the TIC Agreement or terminate or cancel the TIC Agreement or modify, change, supplement, alter or amend the TIC Agreement (either orally or in writing) in any material respect;

(d) neither West nor Venture shall institute or prosecute (nor shall West or Venture permit any other person or entity to institute or prosecute) an Action for Partition (defined below);

(e) each of West and Venture hereby waive each of their respective rights to an Action for Partition under the TIC Agreement and under Applicable Law;

(f) notwithstanding (but in no way abrogating or otherwise waiving) the foregoing, if any Action for Partition is brought by either West or Venture, the other party shall purchase West’s or Venture’s (as applicable) tenancy in common interest in the Property at fair market value;

(g) in the event that the purchase described in subclause (f) shall fail to occur within fifteen (15) Business Days of the occurrence of the aforesaid Action for Partition (or such shorter time period as may be required for this subsection (g) to become effective immediately prior to the consummation of such Action for Partition), Sponsor (through an entity which Sponsor Controls, owns at least a 51% direct or indirect equity interest and which satisfies the criteria set forth in Section 4.3 hereof for single purpose, bankruptcy remote entities) shall purchase such interest at fair market value;

(h) in the event that the purchase described in subclauses (f) or (g) shall occur, the purchasing entity shall execute any documents or instruments reasonably requested by Lender (and shall provide such opinions, title endorsements or other documents or instruments reasonably requested by Lender) to affirm and/or assume the Loan and such entity's respective obligations thereunder;

(i) (1) any lien rights, indemnity rights, rights of subrogation or rights of first offer, first refusal or other rights to purchase or other similar rights inuring to West, Venture, Manager or any other person or entity under the TIC Agreement or Applicable Law are subject and subordinate to the Loan and the Loan Documents and Lender's rights thereunder and (2) with respect to the aforesaid rights (other than rights to payment from the cash flow of the Property), each applicable person or entity (including, without limitation, West and/or Venture) agrees to waive the same or "standstill" with respect to the enforcement of the same until such time as this Security Instrument is released or reconveyed in connection with the repayment of the Debt or such time as the Loan is defeased in full in accordance with the applicable terms and conditions of the Note; and

(j) the sale or issuance of any tenancy in common interests pursuant to the TIC Agreement will not violate any applicable provisions of the Securities Act or the Exchange Act or any other Applicable Law.

With respect to the foregoing covenants, Lender hereby acknowledges and agrees that the same are (i) restrictions customarily imposed by Lender in connection with commercial loans similar to the Loan and (ii) are intended to be restrictions which are "consistent with customary commercial lending practices" within the meaning of the applicable provisions of Revenue Procedure 2002-22. The foregoing covenants shall only be deemed to apply to West and Venture so long as they are parties to the TIC Agreement and such covenants shall cease to bind West and/or Venture (as applicable) at such time as West or Venture ceases to be a party to the TIC Agreement as a result of a transfer permitted under Section 8.4 below.

Article 5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1. WARRANTY OF TITLE. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same, and that Borrower possesses an unencumbered fee simple absolute in the Land and the Improvements, and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions (other than standard printed exceptions) shown in the title insurance policy insuring the lien of this Security Instrument (the "**Permitted Exceptions**"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever. Borrower hereby represents and warrants that none of the Permitted Exceptions will materially and adversely affect the ability of the Borrower to pay in full the Loan, the use of the Property for the use currently being made thereof, the operation of the Property or the value thereof.

Section 5.2. AUTHORITY. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

Section 5.3. LEGAL STATUS AND AUTHORITY. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the State where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted and proposed to be conducted. Borrower now has and shall continue to have the full right, power and authority to operate and lease the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Note, this Security Instrument and the Other Security Documents. Borrower's exact legal name and Borrower's organization identification number assigned by its state of formation, if any, is correctly set forth on the first page of this Security Instrument.

Section 5.4. VALIDITY OF DOCUMENTS. The execution, delivery and performance of the Note, this Security Instrument and the Other Security Documents and the borrowing evidenced by the Note (i) are within the corporate/partnership/limited liability company (as the case may be) power of Borrower; (ii) have been authorized by all requisite corporate/partnership/limited liability company (as the case may be) action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by laws, partnership, trust or operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby).

Section 5.5. LITIGATION. There is no action, suit or proceeding (including any condemnation or similar proceeding), or any governmental investigation or any arbitration, in each case pending or, to the knowledge of Borrower, threatened against Borrower or the Property before any governmental or administrative body, agency or official which (i) challenges the validity of this Security Instrument, the Note or any of the Other Security Documents or the authority of Borrower to enter into this Security Instrument, the Note or any of the Other Security Documents or to perform the transactions contemplated hereby or thereby or (ii) if adversely determined would have a material adverse effect on the occupancy of the Property or the business, financial condition or results of operations of Borrower or the Property.

Section 5.6. STATUS OF PROPERTY. (a) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.3 hereof, if required under the terms of that section.

(b) Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(c) The Property and the present and contemplated use and occupancy thereof are in compliance in all material respects with all applicable zoning ordinances, building codes, land use and environmental laws and other similar laws.

(d) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all weather and are physically and legally open for use by the public.

(f) The Property is served by public water and sewer systems.

(g) The Property is free from damage caused by fire or other casualty.

(h) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.

(i) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property and any trash compactors which are used under a lease) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(j) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.

Section 5.7. NO FOREIGN PERSON. Borrower is not a "foreign person" within the meaning of Sections 1445(f)(3) of the Code and the related Treasury Department regulations, including temporary regulations.

Section 5.8. SEPARATE TAX LOT. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 5.9. ERISA COMPLIANCE. (a) As of the date hereof and throughout the term of this Security Instrument, (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the Code, and (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA or Section 4975 of the Code; and

(b) As of the date hereof and throughout the term of this Security Instrument (i) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA and (ii) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

Section 5.10. LEASES. (a) Borrower is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable; (c) the terms of all alterations, modifications and amendments to the Leases are reflected in the certified rent roll delivered to and approved by Lender; (d) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (e) none of the Rents have been collected for more than one (1) month in advance; (f) the premises demised under the Leases have been completed for the tenants who have accepted and have taken possession of the same on a rent paying basis; (g) to the best of Borrower's knowledge (which for purposes hereof will mean the actual knowledge of John Chamberlain and Chris Sullivan, and their respective successors), there exist no offsets or defenses to the payment of any portion of the Rents; and (h) the number and type of parking spaces available at the Property as of the date hereof satisfy any applicable requirements relating thereto contained in the Leases.

Section 5.11. FINANCIAL CONDITION. (a) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated, and (b) Borrower has received reasonably equivalent value for the granting of this Security Instrument. Borrower has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditors.

Section 5.12. BUSINESS PURPOSES. The loan evidenced by the Note is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 5.13. TAXES. Borrower has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Borrower does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.14. MAILING ADDRESSES. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

Section 5.15. NO CHANGE IN FACTS OR CIRCUMSTANCES. All information submitted to Lender in connection with any request by Borrower for the loan evidenced by the Note and/or any letter of application, preliminary commitment letter, final commitment letter or other application or letter of intent (including, but not limited to, all financial statements, rent rolls, reports and certificates) were accurate, complete and correct in all respects when delivered. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading.

Section 5.16. DISCLOSURE. To the best of Borrower's knowledge (which for purposes hereof will mean the actual knowledge of John Chamberlain and Chris Sullivan, and their respective successors), Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 5.17. LETTER-OF-CREDIT RIGHTS. If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 of this Security Instrument now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall, pursuant to an agreement in form and substance satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing in each case that upon an Event of Default, the proceeds of any drawing under the letter of credit are to be applied as provided in Section 11.2 of this Security Agreement.

Section 5.18. AUTHORIZATION TO FILE FINANCING STATEMENTS, POWER OF ATTORNEY. Borrower hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of Borrower as authorized by Applicable Law, as applicable to all or part of the fixtures or Personal Property. For purposes of such filings, Borrower agrees to furnish any information requested by Lender promptly upon request by Lender. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Borrower or in Borrower's own name to execute in Borrower's name any documents and otherwise to carry out the purposes of this Section 5.18, to the extent that Borrower authorization above is not sufficient. To the extent permitted by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

Section 5.19. INTENTIONALLY OMITTED.

Section 5.20. TIC AGREEMENT REPRESENTATIONS. (a) The TIC Agreement is in full force and effect and has not been modified or amended in any manner whatsoever; (b) there are no material defaults under the TIC Agreement and no event has occurred which but for the

passage of time, or notice, or both would constitute a material default under the TIC Agreement, (c) all sums due and payable (if any) under the TIC Agreement as of the date hereof have been paid in full; and (d) neither West nor Venture (nor, to the knowledge of West and/or Venture, any other person or entity) has (i) commenced any action or given or received any notice for the purpose of terminating the TIC Agreement, or (ii) instituted or prosecuted any action for partition of the Property (or any portion thereof or interest therein) or any similar action pursuant to the TIC Agreement or any other contractual agreement or instrument or under Applicable Law (including, without limitation, common law) (any such action, the "**Action for Partition**").

Article 6. OBLIGATIONS AND RELIANCES

Section 6.1. RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, this Security Instrument and the Other Security Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 6.2. NO RELIANCE ON LENDER. The general partners, shareholders, members, principals or other beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 6.3. NO LENDER OBLIGATIONS. (a) Notwithstanding any of the provisions of this Security Instrument (including, but not limited to, the provisions of Subsections 1.1(f) and (l), Section 1.2 or Section 3.7), Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

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

Section 6.4. RELIANCE. Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument and the Other Security Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 5 without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Note, this Security Instrument and the Other Security Documents; and that Lender would not be willing to make the loan evidenced by the Note, this Security Instrument and the Other Security Documents and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 5.

Article 7. FURTHER ASSURANCES

Section 7.1. RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses (the "**Expenses**") incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the Other Security Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law to do so.

Section 7.2. FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender pursuant to this Section 7.2.

Section 7.3. CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS. (a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

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

Section 7.4. ESTOPPEL CERTIFICATES. (a) After request by Lender, Borrower, within ten (10) Business Days, shall furnish Lender or any proposed assignee or Investor (as defined in Section 19.1) with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Loan, (ii) the unpaid principal amount of each individual promissory note comprising the defined term "Note" hereunder (each such promissory note, an "**Individual Note**"), (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of each Individual Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, Borrower has no actual knowledge (which for purposes hereof will mean the actual knowledge of John Chamberlain and Chris Sullivan, and their respective successors) of any defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under the Note or the Security Instrument, (vii) that the Note and this Security Instrument are valid, legal and binding obligations (except as may be limited by (A) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and (B) general principles of equity) and have not been modified or if modified, giving particulars of such modification, (viii) whether, to Borrower's actual knowledge (which for purposes hereof will mean the actual knowledge of John Chamberlain and Chris Sullivan, and their respective successors), any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect, (x) the date to which the Rents thereunder have been paid pursuant to the Leases, (xi) whether or not, to the actual knowledge (which for purposes hereof will mean the actual knowledge of John Chamberlain and Chris Sullivan, and their respective successors), of Borrower, any of the lessees under the Leases are in default under the Leases, and, if any of the aforesaid lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other factual matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or this Security Instrument.

(b) Borrower shall use its commercially reasonable best efforts to deliver to Lender, promptly upon request (provided such request is not made more than once in any calendar year other than any request by Lender made in connection with the securitization of the Loan or

following an Event of Default), duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding the Lease as Lender may require, including but not limited to attestations that each Lease covered thereby is in full force and effect (and to the best of lessee's knowledge) with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) Lender, by its acceptance of this Security Instrument, agrees to deliver to Borrower promptly upon Borrower's request therefor (provided such request is not made more than twice in any calendar year) a written statement setting forth the unpaid principal amount of the Note, the accrued and unpaid interest thereon, the date on which an installment of interest and/or principal were last paid thereunder and whether there are any Events of Default which currently exist and are actually known to Lender.

(d) Intentionally Omitted.

Section 7.5. FLOOD INSURANCE. After Lender's request, Borrower shall deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally designated "special flood hazard area." or, if any of the Improvements are located within any such area Borrower will obtain and maintain the insurance required prescribed in Section 3.3 hereof, if required under the terms of that section.

Section 7.6. SPLITTING OF SECURITY INSTRUMENT. This Security Instrument and each Individual Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender and at Lender's sole cost and expense, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of this Security Instrument, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be reasonably required by Lender. Borrower's obligations hereunder are conditioned upon Lender's agreement, as evidenced by its acceptance hereof, that such splitting or division shall not result in any decrease of any rights of Borrower or any Indemnitor (as defined in the Indemnity Agreement (defined below)) hereunder or under any other Loan Document or any additional cost or potential liability to Borrower or any Indemnitor that exceeds that which exists hereunder prior to such splitting or division.

Section 7.7. REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of any Individual Note or any other Loan Document which is not of public record: (i) with respect to any Loan Document other than any Individual Note, Borrower will issue, in lieu thereof, a replacement of such other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Loan Document in the same principal amount thereof and otherwise of like tenor and (ii) with respect to any Individual Note, (a) Borrower will execute a reaffirmation of the portion of the Debt as evidenced by such Individual Note acknowledging that Lender has informed Borrower that such Individual Note

was lost, stolen destroyed or mutilated and that such portion of the Debt continues to be an obligation and liability of the Borrower as set forth in such Individual Note, a copy of which shall be attached to such reaffirmation or (b) if requested by Lender, Borrower will execute a replacement note, provided, that Lender or Lender's custodian (at Lender's option) shall provide to Borrower Lender's (or Lender's custodian's) then standard form of lost note affidavit and indemnity, which such form shall be reasonably acceptable to Borrower.

Article 8. DUE ON SALE/ENCUMBRANCE

Section 8.1. LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the loan secured hereby, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 8.2. NO SALE/ENCUMBRANCE.

(a) Except as provided in this Security Instrument, Borrower shall not cause or permit a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein nor permit a Sale or Pledge of an interest in any Restricted Party (in each case, a "**Prohibited Transfer**"), other than pursuant to Leases of space at the Property to tenants in accordance with the applicable provisions hereof, without the prior written consent of Lender.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (iv) any action for partition of the Property (or any portion thereof or interest therein) or any similar action instituted or prosecuted by any Borrower, as a tenant-in-common, or by any other person or entity, pursuant to any contractual agreement or other instrument or under Applicable Law (including, without limitation, common law); (v) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new partnership interests; (vi) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of any member or any profits or proceeds relating to such membership interest; (vii) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a

Restricted Party or the creation or issuance of new legal or beneficial interests; or (viii) the removal or the resignation of Manager (including, without limitation, an Affiliated Manager) other than in accordance with the applicable terms and conditions hereof.

Section 8.3. PERMITTED TRANSFERS. Notwithstanding anything to the contrary contained in this Article 8, the following transfers shall not be Prohibited Transfers and shall be permitted without Lender's consent: (a) a transfer (but not a pledge) by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party, (b) the transfer (but not the pledge), in one or a series of transactions, of the stock, partnership interests or membership interests (as the case may be) in a Restricted Party, and (c) the sale, transfer or issuance of shares of common stock in any Restricted Party that is a publicly traded entity, provided such shares of common stock are listed on the New York Stock Exchange or another nationally recognized stock exchange; provided, however, with respect to the transfers listed in clauses (a) or (b) above, (A) Lender shall receive not less than five (5) days prior written notice thereof, (B) no such transfers shall result in a change in Control of Sponsor or Affiliated Manager (provided, however, a "change in Control" of Sponsor or Affiliated Manager shall not be deemed to have occurred for the purposes of this subsection (B) if any one of the persons or entities comprising the definition of "Sponsor" contained herein succeeds to the interest of the then current Sponsor and such successor Sponsor Controls the Affiliated Manager), (C) after giving effect to such transfers, Sponsor shall (I) (aa) own at least a 51% direct or indirect equity interest in each of Borrower and any SPE Component Entity, or (bb) Sponsor shall own at least a (A) 5% direct or indirect equity interest in Venture and any SPE Component Entity applicable to Venture and GE (provided such transfer to GE is a Qualified GE Transfer) shall own at least a 46% direct or indirect equity interest in each of Venture and any SPE Component Entity applicable to Venture and (B) 51% direct or indirect equity interest in West and any SPE Component Entity related to West, (II) Control Borrower and any SPE Component Entity and (III) control the day-to-day operation of the Property, (D) the Property shall continue to be managed by Affiliated Manager or a Qualified Manager, (E) in the case of the transfer of any direct equity ownership interests in Borrower or in any SPE Component Entity, such transfers shall be conditioned upon continued compliance with the relevant provisions of Sections 4.2 and 4.3 hereof and (F) in the case of (1) the transfer of the management of the Property to a new Affiliated Manager in accordance with the applicable terms and conditions hereof, or (2) the transfer (in one or in a series of transactions) in excess of 49% (in the aggregate) of any equity ownership interests (I) directly in Borrower or in any SPE Component Entity, or (II) in any Restricted Party whose sole asset is a direct or indirect equity ownership interest in Borrower or in any SPE Component Entity, such transfers shall be conditioned upon delivery to Lender of a substantive non-consolidation opinion, which such opinion shall be provided by outside counsel acceptable to Lender and the Rating Agencies and shall otherwise be in form, scope and substance reasonably acceptable to Lender and acceptable to the Rating Agencies (such opinion, the "**New Non-Consolidation Opinion**").

Section 8.4. ASSUMPTION. Notwithstanding anything to the contrary contained in this Article 8 and in addition to the transfers permitted under Section 8.3, the following transfers shall not be Prohibited Transfers and Lender's consent to any TIC Assumption (defined below) shall not be required and Lender's consent to the first four (4) other transfers of the Property (at any time after the first (1st) anniversary of the closing of the Loan or at any time prior to such date if Lender determines that such assignment or transfer will not hinder, delay or prevent

Lender from completing a Secondary Market Transaction (as defined in Section 19.3)) shall not be withheld; provided, that, in each case, Lender receives sixty (60) days prior written notice of each such transfer hereunder and no Event of Default has occurred and is continuing, and further provided that, the following additional requirements are satisfied:

(a) With respect to (i) any TIC Assumption, no transfer fee shall be due, and (ii) other than in connection with a TIC Assumption, with respect to the (I) first such transfer, Borrower shall pay Lender a transfer fee equal to 0.125% of the outstanding principal balance of the Loan at the time of such transfer, (II) second such transfer, Borrower shall pay Lender a transfer fee equal to 0.375% of the outstanding principal balance of the Loan at the time of such transfer, (III) third such transfer, Borrower shall pay Lender a transfer fee equal to 0.75% of the outstanding principal balance of the Loan at the time of such transfer and (IV) fourth such transfer, Borrower shall pay Lender a transfer fee equal to 1.0% of the outstanding principal balance of the Loan at the time of such transfer;

(b) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with, as applicable, each TIC Assumption and the transfer of the Property (including, without limitation, Lender's reasonable counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and, other than with respect to any TIC Assumption, the fees and expenses of the Rating Agencies pursuant to clause (j) below);

(c) Other than in connection with a TIC Assumption, the proposed transferee (the "**Transferee**") or Transferee's Principals (hereinafter defined) must have demonstrated expertise in owning and operating properties similar in location, size and operation to the Property, which expertise shall be reasonably determined by Lender. The term "**Transferee's Principals**" shall include Transferee's (A) managing members, general partners or Controlling shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a 15% or greater interest in Transferee;

(d) Other than in connection with a TIC Assumption, Transferee's Principals shall, as of the date of such transfer, have an aggregate net worth and liquidity reasonably acceptable to Lender;

(e) Other than in connection with a TIC Assumption, Transferee, Transferee's Principals and all other entities which may be owned or controlled directly or indirectly by Transferee's Principals ("**Related Entities**") must not have been a party to any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed transfer of the Property;

(f) Transferee or Assuming Borrower (defined below) under a TIC Assumption, as applicable, shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance reasonably satisfactory to Lender;

(g) There shall be no material litigation or regulatory action pending or threatened against, as applicable, Transferee, Transferee's Principals or Related Entities or Assuming Borrower or Sponsor which is not reasonably acceptable to Lender;

(h) Other than in connection with a TIC Assumption, Transferee's Principals and Related Entities shall not have defaulted under its or their obligations with respect to any other indebtedness in a manner which is not reasonably acceptable to Lender;

(i) Transferee or Assuming Borrower, as applicable, must be able to satisfy all the covenants set forth in Sections 4.3, and both Transferee and Transferee's Principals or both Assuming Borrower and Sponsor (as applicable) must be able to satisfy all the covenants set forth in Sections 4.3 and 5.9 hereof, no Event of Default or event which, with the giving of notice, passage of time or both, shall constitute an Event of Default, shall otherwise occur as a result of such transfer, and Transferee and Transferee's Principals or Assuming Borrower and Sponsor (as applicable) shall deliver (A) all organization documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender, and (B) all certificates, agreements and covenants reasonably required by Lender (including, without limitation, hazard insurance endorsements or certificates or other similar evidence that the Policies required hereunder have been obtained or maintained, as applicable);

(j) Other than in connection with a TIC Assumption, Transferee shall be approved by the Rating Agencies selected by Lender;

(k) Transferee or Assuming Borrower, as applicable, shall furnish (I) a New Non-Consolidation Opinion, and (II) an opinion of counsel reasonably satisfactory to Lender and its counsel (A) that the assumption of the Debt has been duly authorized, executed and delivered, and that the Note, this Security Instrument, the assumption agreement and the other Loan Documents are valid, binding and enforceable against Transferee or Assuming Borrower, as applicable, in accordance with their terms, and (B) that Transferee or Assuming Borrower, as applicable, and any entity which is a controlling stockholder, member or general partner of Transferee or Assuming Borrower, as applicable, have been duly organized, and are in existence and good standing;

(l) Borrower shall deliver, at its sole costs and expense, an endorsement to the existing title policy insuring the Security Instrument, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee or Assuming Borrower, as applicable, as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the title policy issued on the date hereof. Immediately upon a transfer of the Property to such Transferee or Assuming Borrower, as applicable, and the satisfaction of all of the above requirements, the named Borrower herein or, in the case of a TIC Assumption, any entity constituting the defined term "Borrower" hereunder other than the Assuming Borrower or any other Borrower that is not transferring its interest in the Property to the Assuming Borrower shall be released from all liability under this Security Instrument, the Note and the Other Security Documents accruing after such transfer, and, in the case of a transfer hereunder other than a TIC Assumption, the Indemnitor under that certain Indemnity Agreement in favor of Lender relating hereto (the "**Indemnity Agreement**"), dated of

even date herewith, shall be released from its obligations and liabilities thereunder accruing after such transfer provided that a new indemnitor approved by Lender, which approval shall be granted or withheld pursuant to Lender's customary underwriting procedures, enters into and delivers to Lender a new indemnity agreement in the form and content of the Indemnity Agreement. The foregoing release shall be effective upon the date of such transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower; and

(m) Other than in connection with a TIC Assumption, Borrower's obligations under the contract of sale pursuant to which the transfer is proposed to occur shall expressly be subject to the satisfaction of the terms and conditions of this Section.

Any transfer made pursuant to and in accordance with the terms and provisions of this Section 8.4 shall not be deemed to be a Prohibited Transfer. A consent by Lender with respect to a transfer of the Property in its entirety to, and the related assumption of the Loan by, a Transferee pursuant to this Section shall not be construed to be a waiver of the right of Lender to consent to any subsequent transfer of the Property.

Section 8.5. LENDER'S RIGHTS. Lender reserves the right to condition the consent to a Prohibited Transfer requested hereunder upon (a) a modification of the terms hereof and an assumption of the Note and the other Loan Documents as so modified by the proposed Prohibited Transfer, (b) receipt of payment of a transfer fee equal to one percent (1%) of the outstanding principal balance of the Loan and all of Lender's expenses incurred in connection with such Prohibited Transfer, (c) receipt of written confirmation from the Rating Agencies (a "**Ratings Confirmation**") that the Prohibited Transfer will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization, (d) the proposed transferee's continued compliance with the covenants set forth in this Security Instrument (including, without limitation, the covenants in Sections 4.2 and 4.3) and the other Loan Documents, (e) a new manager for the Property and a new management agreement satisfactory to Lender, and (f) the satisfaction of such other conditions and/or legal opinions as Lender shall determine in its sole discretion to be in the interest of Lender. All expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Prohibited Transfer made without Lender's consent. This provision shall apply to each and every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer.

Section 8.6. DEFINITIONS. As used in this Article 8, the following terms shall have the following meanings:

(a) "**Affiliated Manager**" shall mean any managing agent of the Property in which Borrower, Guarantor, Sponsor, any SPE Component Entity or any affiliate of such entities has, directly or indirectly, any legal, beneficial or economic interest.

(b) "**Control**" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of an entity, whether through ownership of voting securities, by contract or otherwise.

(c) "**GE**" shall mean a General Electric pension trust reasonably acceptable to Lender with a net worth exceeding $1,000,000,000.

(d) "**Qualified GE Transfer**" shall mean a transfer of a direct or indirect interest in Borrower to GE (i) which shall occur no later than 60 days of the date hereof and (ii) as a condition precedent to which, Borrower shall re-make to Lender the representations and covenants contained herein relating to ERISA effective as of the date of the Qualified GE Transfer.

(e) "**Restricted Party**" shall mean Borrower, Guarantor, Sponsor, any SPE Component Entity, any Affiliated Manager, or any shareholder, partner, member, non-member manager or any direct or indirect legal or beneficial owner of any of the foregoing.

(f) "**Sale or Pledge**" shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

(g) "**Sponsor**" shall mean (i) Guarantor, (ii) a Rady Family Entity, (iii) a Qualified Equityholder or (iv) GE (provided that (A) the initial transfer to GE is a Qualified GE Transfer and (B) GE has obtained Control over Borrower, any SPE Component Entity, any manager of the Property and the day to day operation of the Property) (the "**GE Sponsor**"); provided, that, as conditions precedent to any transfer of Guarantor's or the Rady Family Entity's interest as "Sponsor" to (A) a Qualified Equityholder, Lender shall have received a Ratings Confirmation in connection therewith and with respect to the (I) first such transfer, Borrower shall pay Lender a transfer fee equal to 0.125% of the outstanding principal balance of the Loan at the time of such transfer, (II) second such transfer, Borrower shall pay Lender a transfer fee equal to 0.375% of the outstanding principal balance of the Loan at the time of such transfer, (III) third such transfer, Borrower shall pay Lender a transfer fee equal to 0.75% of the outstanding principal balance of the Loan at the time of such transfer and (IV) fourth such transfer and each subsequent transfer thereafter, Borrower shall pay Lender a transfer fee equal to 1.0% of the outstanding principal balance of the Loan at the time of such transfer or (B) GE Sponsor, GE Sponsor shall have executed and delivered to Lender an indemnity agreement in form and substance substantially identical to the Indemnity Agreement.

(h) "**Qualified Equityholder**" shall mean

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

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

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

(D) any entity (1) Controlled by any of the entities described in clauses (A), (B) or (C) above and (2) in which any of the entities described in clauses (A), (B) or (C) above own a 51% direct or indirect equity ownership interest;

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

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

Notwithstanding the foregoing, no person or entity shall be deemed to be a Qualified Equityholder if (y) such person or entity (or any other person or entity owned or Controlled by such person or entity or affiliated with such person or entity) has been, within the last ten (10) years, (I) subject to any material, uncured event of default in connection with a loan financing which resulted in litigation or an acceleration of an indebtedness held by Lender or any other secondary market or institutional lender or (II) the subject of any action or proceeding under applicable Insolvency Laws; or (z) any of the principals or entities which Control such person or entity or own a material direct or indirect equity interest in such person or entity have ever been convicted of a felony.

As used in the above definition of "Qualified Equityholder", the following terms shall have the following meanings:

(i) "**Eligibility Requirements**" shall mean, with respect to any person or entity, that such person or entity (A) has total assets (in name or under management) in excess of $750,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's equity of $500,000,000 and (B) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties.

(ii) "**Permitted Fund Manager**" shall mean any Person or entity that on the date of determination is (A) a nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (B) investing through a fund with committed capital of at least $500,000,000 and (C) not subject to any action or proceeding under any bankruptcy, insolvency, rehabilitation or other similar proceeding.

(iii) "**Qualified Trustee**" shall mean (A) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least $300,000,000 and subject to supervision or examination by federal or state authority, (B) an institution insured by the Federal Deposit Insurance Corporation or (C) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

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

(i) "**Rady Family Entity**" shall mean an entity (i) in which Ernest S. Rady or a spouse, siblings, children or grandchildren, nieces, nephews or cousins of Ernest S. Rady or trusts for the benefit of any such persons (collectively, the "**Rady Family Group**") own at least a 51% direct or indirect equity interest, and (ii) which is Controlled by one or more members of the Rady Family Group having commercial real estate experience at least comparable to that of the current management of Guarantor.

(j) "**Rady SPE**" shall mean entity (i) which is a single purpose, bankruptcy remote entity meeting the requirements of Sections 4.3 and 5.9 hereof, (ii) which is Controlled by a Rady Family Entity and (iii) in which a Rady Family Entity owns at least a 51% direct or indirect equity ownership interest.

(k) "**TIC Assumption**" shall mean the transfer of the ownership interest in the Property currently held by one (or, in the case of a transfer to a Rady SPE, both) of the entities comprising the defined term "Borrower" hereunder to (i) the other party comprising the defined term "Borrower" hereunder or (ii) a Rady SPE (each of the foregoing, an "**Assuming Borrower**") and such Assuming Borrower's assumption of the Debt and the other obligations of the transferring Borrower hereunder and under the other Loan Documents in accordance with the terms and conditions set forth in Section 8.4 above; provided, that, no such TIC Assumption shall be permitted hereunder (A) if the same would result in (1) more than two (2) tenants-in-common owning the Property or (2) each such tenant-in-common Borrower not being 51% owned (directly or indirectly) and Controlled by one or more Rady Family Entities and/or Guarantor and (B) more frequently than once in any calendar year (unless otherwise consented to in writing by Lender); provided, that, Borrower shall have the one time right to have a TIC Assumption occur twice in the same calendar year.

Article 9. PREPAYMENT

Section 9.1. PREPAYMENT. The Debt may be prepaid only in strict accordance with the express terms and conditions of the Note and this Security Instrument including the payment (if applicable) of any prepayment consideration or premium due under the Note (whether due prior to or after the occurrence of an Event of Default).

Article 10. DEFAULT

Section 10.1. EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "**Event of Default**":

(a) if any portion of the Debt is not paid on the date the same is due or if the entire Debt is not paid on or before the Maturity Date; provided, however, Borrower shall not be in default so long as there is sufficient money in the Cash Management Account for payment of all amounts then due and payable (including any deposits into Reserve Accounts (as such term is defined in that certain Reserve Agreement by and among Borrower and Lender executed in connection with the Loan (the "**Reserve Agreement**"))) and Lender's access to such money has not been constrained or constricted in any manner;

(b) if any of the Taxes or Other Charges are not paid within ten (10) days following the date the same is due and payable except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument;

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender within ten (10) days of Lender's request;

(d) if the Property is subject to actual waste;

(e) if Borrower violates or does not comply with any of the provisions of Sections 3.7 (and does not cure such failure within ten days of written notice) or 4.3 or Articles 8, 12 or 13;

(f) if any representation or warranty of Borrower or any person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument (including, without limitation, Guarantor) or any general partner, managing member, principal or beneficial owner of any of the foregoing, made herein or any guaranty or indemnity, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;

(g) if (i) Borrower or any general partner or managing member of Borrower or any SPE Component Entity shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower or any general partner or managing member of Borrower or any SPE Component Entity shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or any general partner or managing member of Borrower or any SPE Component Entity any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of ninety (90) days; or (iii) there shall be commenced against Borrower or any general partner or managing member of Borrower or any SPE Component Entity any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; or (iv) Borrower or any general partner or managing member of Borrower or any SPE Component Entity shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower or any general partner of Borrower or any SPE Component Entity shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

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

(i) Subject to Borrower’s contest rights contained in Section 3.12 hereof, if the Property becomes subject to any mechanic’s, materialman’s or other lien (other than a lien for local real estate taxes and assessments not then due and payable) and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of ninety (90) days;

(j) if any federal tax lien is filed against Borrower, any general partner or managing member of Borrower, or the Property and same is not discharged of record within ninety (90) days after same is filed;

(k) if Borrower fails to cure any violations of Applicable Laws within ninety (90) days, of first having received notice thereof;

(l) if (i) Borrower fails to timely provide Lender with the written certification and evidence referred to in Section 4.2 hereof, or (ii) Borrower consummates a transaction which would cause the Security Instrument or Lender's exercise of its rights under this Security Instrument, the Note or the Other Security Documents to constitute a nonexempt prohibited transaction under ERISA or result in a violation of a state statute regulating governmental plans, subjecting Lender to liability for a violation of ERISA or a state statute;

(m) if Borrower shall fail to reimburse Lender on demand, with interest calculated at the Default Rate (defined below), for all Insurance Premiums or Taxes, together with interest and penalties imposed thereon, paid by Lender pursuant to this Security Instrument;

(n) if Borrower shall fail to timely deliver to Lender an estoppel certificate pursuant to the terms of Subsection 7.4(a);

(o) if Borrower shall fail to timely deliver to Lender, after request by Lender, the statements referred to in Section 3.11 in accordance with the terms thereof;

(p) if any default occurs in the performance of any guarantor's or indemnitor's (including, without limitation, Guarantor's) obligations under any guaranty or indemnity executed in connection herewith (including, without limitation, the Indemnity Agreement) and such default continues after the expiration of applicable grace periods set forth in such guaranty or indemnity, or if any representation or warranty of any guarantor or indemnitor thereunder shall be false or misleading in any material respect when made;

(q) Intentionally Omitted;

(r) Intentionally Omitted;

(s) Intentionally Omitted;

(t) if for more than thirty (30) days after notice from Lender, Borrower shall continue to be in default under any other term, covenant or condition of the Note, this Security Instrument or the Other Security Documents in the case of any default which can be cured by the payment of a sum of money or for sixty (60) days after notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such sixty (60) day period and Borrower shall have commenced to cure such default within such sixty (60) day period and thereafter diligently and expeditiously proceeds to cure the same, such sixty (60) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days; or

(u) a default beyond applicable notice or cure periods (if any) shall occur under any Other Security Documents.

Section 10.2. LATE PAYMENT CHARGE. If any monthly installment of principal and interest is not paid on the date on which it was due, Borrower shall pay to Lender upon demand an amount equal to the lesser of two and one half percent (2.5%) of such unpaid portion of the outstanding monthly installment of principal and interest then due or the maximum amount permitted by Applicable Law, to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment, and such amount shall be secured by this Security Instrument and the Other Security Documents.

Section 10.3. DEFAULT INTEREST. Borrower will pay, from the date of an Event of Default through the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal balance of the Note at a per annum rate equal to the lesser of (a) four percent (4%) plus the Applicable Interest Rate (as defined in the Note), and (b) the maximum interest rate which Borrower may by law pay or Lender may charge and collect (the "**Default Rate**").

Article 11. RIGHTS AND REMEDIES

Section 11.1. REMEDIES. Except as specifically limited hereby or the Other Security Documents, Upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender: (a) declare the entire unpaid Debt to be immediately due and payable; (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner; (c) with or without entry, to the extent permitted and pursuant to the procedures provided by Applicable Law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority; (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law; (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the Other Security Documents; (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents; (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower or of any person, firm or other entity liable for the payment of the Debt; (h) subject to Applicable Law, and following notice to Borrower, the license granted to Borrower under Section 1.2 shall be revoked (subject to reinstatement as provided herein) and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom,

without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and, subject to the Cash Management Agreement, receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; (i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower; (j) apply any sums then deposited in the Escrow Fund and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any Other Security Document to the payment of the following items in any order in its discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) any other items or expenses for which such escrow was established; or (iv) during the continuance of an Acceleration Default, (A) interest on the unpaid principal balance of the Note, (B) the unpaid principal balance of the Note; or (C) all other sums payable pursuant to the Note, this Security Instrument and the Other Security Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument; (k) surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney in fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums; (l) pursue such other remedies as Lender may have under Applicable Law; (m) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or

(n) under the power of sale hereby granted, Lender shall have the discretionary right to cause some or all of the Property, including any Personal Property, to be sold or otherwise disposed of in any combination and in any manner permitted by Applicable Law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. In the event of a sale, by foreclosure, power of sale, or otherwise, Lender may bid for and acquire the Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder and any other sums which Lender is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid. Notwithstanding the provisions of this Section 11.1 to the contrary, if any Event of Default as Subsection 10.1(g) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 11.2. APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender after the occurrence of an Event of Default pursuant to the Note, this Security Instrument or the Other Security Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Upon any foreclosure sale or sales of all or any portion of the Property under the power of sale herein granted, Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

Section 11.3. RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 11.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 11.4. ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 11.5. RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 11.6. EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower and each other "Indemnitor" under the Indemnity Agreement delivered in connection herewith which reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower or such other Indemnitor or where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower and such other Indemnitor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower and such other Indemnitor where the books and records are located.

Section 11.7. OTHER RIGHTS, ETC. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the Other Security Documents.

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

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

Section 11.8. RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 11.9. VIOLATION OF LAWS. If the Property is not in compliance with Applicable Laws, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 11.10. RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 11.11. EXCULPATION. All rights and remedies of Lender under this Security Instrument and the Other Security Documents are expressly made subject to the limitations and exculpations set forth in Article 15, below.

Article 12. ENVIRONMENTAL HAZARDS

Section 12.1. ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants, based upon an environmental assessment of the Property and information that Borrower knows (which for purposes hereof will mean the actual knowledge of John Chamberlain and Chris Sullivan, and their successors) that: (a) there are no Hazardous Substances (defined below) or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with, if required, Environmental Laws (defined below) and with permits issued pursuant thereto or (ii) fully disclosed to Lender by Borrower in writing or pursuant to the written reports resulting from the environmental assessments of the Property delivered to Lender (the "**Environmental Report**"); (b) there are no past, present or threatened Releases (defined below) of Hazardous Substances in, on, under or from the Property except as described in the Environmental Report; (c) there is no likely threat of any Release of Hazardous Substances migrating to the Property except as described in the Environmental Report; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Report; (e) Borrower has not received, any written or oral notice from any person or entity (including but not limited to a governmental entity) relating to any unlawful accumulations of Hazardous Substances or Remediation (defined below) thereof on the Property, or of possible liability of any person or entity pursuant to violation of any Environmental Law in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to conditions in, on, under or from the Property that is known to Borrower (which for purposes hereof will mean the actual knowledge of John Chamberlain and Chris Sullivan, and their successors) and that is contained in Borrower's files and records, including but not limited to any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property.

"**Environmental Law**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right to Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. "Environmental Law" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law; conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property. "**Hazardous Substances**" include but are not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives provided, however, that "Hazardous Substances" shall not include cleaning materials, office supplies, cleaning supplies and other substances commonly used or sold by establishments similar to those leasing space at the Property in the ordinary course of their business and customarily used at properties similar to the Property, to the extent such materials are used, stored and disposed of in accordance with Environmental Laws.

"**Release**" of any Hazardous Substance means any unlawful release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

"**Remediation**" means any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to

comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in Article 12.

Section 12.2. ENVIRONMENTAL COVENANTS. Borrower covenants and agrees that so long as Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property: (a) all uses and operations on or of the Property shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances by Borrower, its agents or employees in, on, under or from the Property; (c) Borrower shall not knowingly permit any Hazardous Substances in, on, or under the Property, except those that are in compliance with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required; (d) the Property shall be kept free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other person or entity (the "**Environmental Liens**"); (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 12.3 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any written request of Lender (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties (as defined herein) shall be entitled to rely on such reports and other results thereof provided, however, that no such request shall be made by Lender unless Lender has reasonable grounds to believe that a Release of Hazardous Substances or a violation of Environmental Law has occurred; (g) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate Remediation of any condition (including but not limited to a Release of a Hazardous Substance) in, on, under or from the Property; (ii) comply with any Environmental Law; (iii) comply with any directive from any governmental authority; and (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment; (h) Borrower shall not do or knowingly allow any tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; and (i) Borrower shall immediately notify Lender in writing of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property; (B) any non compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication which Borrower becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Substances or Remediation thereof affecting the Property, possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Article 12. Any failure of Borrower to perform its obligations pursuant to this Section 12.2 shall constitute bad faith waste with respect to the Property.

Section 12.3. LENDER'S RIGHTS. Subject to the rights of quiet enjoyment of tenants under existing Leases, Lender and any other person or entity designated by Lender, including but not limited to any receiver, any representative of a governmental entity, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender. The costs and expenses of such assessments shall be borne by Lender except in instances where such report or assessment is performed due to Borrower's failure to comply with its obligations under Section 12.2(f), in which cases the costs and expenses of such assessments shall be paid for by Borrower.

Article 13. INDEMNIFICATION

Section 13.1. GENERAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to attorneys' fees and other costs of defense) (the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties (defined below) and directly or indirectly arising out of or in any way relating to any one or more of the following which shall have occurred prior to the foreclosure of this Security Instrument (or delivery and acceptance of a deed in lieu of such foreclosure), except to the extent any of the following are attributable to the gross negligence or willful misconduct of an Indemnified Party: (a) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Note or any of the Other Security Documents, whether or not suit is filed in connection with same, or in connection with Borrower and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (e) the failure of any person other than an Indemnified Party to file timely with the Internal Revenue Service an accurate Form 1099 B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (f) any failure of the Property to be in compliance with any Applicable Laws; (g) the

enforcement by any Indemnified Party of the provisions of this Article 13; (h) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (i) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the loan evidenced by the Note and secured by this Security Instrument; or (j) any misrepresentation made by Borrower in this Security Instrument or any Other Security Document. Any amounts payable to Lender by reason of the application of this Section 13.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. As used herein, the term "Indemnified Parties" means Lender and any person or entity who is or will have been involved in the origination of the loan evidenced by the Note, any person or entity who is or will have been involved in the servicing of the loan evidenced by the Note, any person or entity in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the loan evidenced by the Note (including, but not limited to, Investors (as defined herein) or prospective Investors in the Securities (as defined herein), as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the loan evidenced by the Note as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the loan evidenced by the Note or the Property, whether during the term of the loan evidenced by the Note or as a part of or following a foreclosure of the loan evidenced by the Note and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business).

Section 13.2. MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the Other Security Document, except for income taxes and franchise taxes (imposed in lieu of income taxes) imposed on an Indemnified Party as a result of a present or former connection between the jurisdiction of the government or taxing authority imposing such tax and the Indemnified Party (excluding a connection arising solely from the Indemnified Party having executed, delivered, or performed its obligations or received a payment under, or enforced, this Security Instrument, the Note and the Other Security Documents) or any political subdivision or taxing authority thereof or therein.

Section 13.3. ERISA INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Sections 4.2 or 5.9.

Section 13.4. ENVIRONMENTAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses and costs of Remediation (whether or not performed voluntarily), engineers' fees, environmental consultants' fees, and costs of investigation (including but not limited to sampling, testing, and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas) imposed upon or incurred by or asserted against any Indemnified Parties, and directly or indirectly arising out of or in any way relating to any one or more of the following (except to the extent that (i) any such claims, losses or costs arise from the gross negligence or willful misconduct of any Indemnified Parties or (ii) the same relate solely to Hazardous Substances first introduced to the Property by anyone other than Borrower, its agents or employees following the foreclosure of this Security Instrument (or the delivery and acceptance of a deed in lieu of such foreclosure), the expiration of any right of redemption with respect thereto and the obtaining by the purchaser at such foreclosure sale or grantee under such deed of possession of the Property): (a) any presence of any Hazardous Substances in, on, above, or under the Property; (b) any past, present or threatened Release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property in connection with any actual or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (e) any past, present or threatened non compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including but not limited to any failure by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property to comply with any order of any governmental authority in connection with any Environmental Laws; (f) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in Article 12 and this Section 13.4; (h) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including but not limited to costs to investigate and assess such injury, destruction or loss; (i) any acts of Borrower or other users of the Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Substances owned or possessed by such Borrower or other users, at any facility or incineration vessel owned or operated by another person or entity and containing such or similar Hazardous Materials; (j) any acts of Borrower or other users of the Property, in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites selected by Borrower or such other users, from which there is a Release, or a threatened Release of any Hazardous Substance which causes the incurrence of costs for Remediation; (k) any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for the

maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property, and arising out of a Release of any Hazardous Substance on, under or about the Property; and (l) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to Article 12.

Section 13.5. DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, if they reasonably believe that their interests are not properly being represented by the counsel selected by Borrower, engage their own attorneys and other professionals to defend them. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Article 14. WAIVERS

Section 14.1. WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any of the Other Security Documents, or the Obligations. The foregoing shall not be deemed a waiver of Borrower's right to assert in a separate proceeding any claim against Lender which otherwise would constitute a defense, setoff, counterclaim or crossclaim of any nature arising from and after the date hereof.

Section 14.2. MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Applicable Law.

Section 14.3. WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument, the Note, or the Other Security Documents specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by Applicable Law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower or as required by law.

Section 14.4. DETERMINATIONS BY LENDER. Except as otherwise specifically set forth in the Note, this Security Instrument, or the Other Security Documents, wherever pursuant

to this Security Instrument (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be in the reasonable determination of Lender applied in good faith. All approvals of or waivers by Lender in respect of any of the terms, conditions or requirements of this Security Instrument must be in writing. No waiver with respect to any condition, breach or other matter shall extend to or be taken in any manner whatsoever to affect any other condition, breach or matter or affect Lender's rights resulting therefrom.

Section 14.5. SURVIVAL. The indemnifications made pursuant to Sections 13.3 and 13.4 and the representations and warranties, covenants, and other obligations arising under Article 12, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Note or any of the Other Security Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Note or the Other Security Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto. Notwithstanding the foregoing, upon a permitted transfer pursuant to Article 8, the transferee Borrower shall be released from any liability thereafter accruing under any such indemnification provision (other than as to matters which have already occurred).

Section 14.6. WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Article 15. EXCULPATION

Section 15.1. EXCULPATION. All rights and remedies of Lender under this Security Instrument and the Other Security Documents are expressly made subject to the limitations and exculpations set forth in Article 14 of the Note, the provisions of which are incorporated herein by this reference.

Article 16. NOTICES

Section 16.1. NOTICES. (a) All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt

acknowledged by the recipient thereof, (ii) one (l) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower: Waikele Reserve West Holdings, LLC
Waikele Venture Holdings, LLC
11455 El Camino Real, Suite 200
San Diego, California 92130
Attention: John W. Chamberlain and Robert Barton
Facsimile No.: (619) 350-2620

If to Lender: Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179
Attention: J. Christopher Hoeffel
Facsimile No.: (212) 272-7047

or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Security Instrument, "**Business Day**" shall mean any day other than Saturday, Sunday or any other day on which banks are authorized or required to close in New York, New York.

Article 17. SERVICE OF PROCESS

Section 17.1. CONSENT TO SERVICE. (a) Borrower will maintain a place of business or an agent for service of process in San Diego County, California and give prompt notice to Lender of the address of such place of business and of the name and address of any new agent appointed by it, as appropriate. Borrower further agrees that the failure of its agent for service of process to give it notice of any service of process will not impair or affect the validity of such service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of Borrower available to be served, and if it at that time has no place of business in San Diego County, California, then Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to the first paragraph hereof.

Section 17.2. Borrower initially and irrevocably designates John W. Chamberlain with offices on the date hereof at 11455 El Camino Real, Suite 200, San Diego, California 92130, to receive for and on behalf of Borrower service of process with respect to this Security Instrument.

Article 18. APPLICABLE LAW

Section 18.1. CHOICE OF LAW. THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF CALIFORNIA AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AND APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF CALIFORNIA SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING THEREUNDER.

Section 18.2. USURY LAWS. This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by Applicable Law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

Section 18.3. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

Article 19. SECONDARY MARKET

Section 19.1. TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Note, this Security Instrument and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage passthrough

certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "**Securities**"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such Securities or any Rating Agency rating such Securities (collectively, the "**Investor**") and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt, Sponsor, Indemnitor and to Borrower, and the Property, whether furnished by Borrower, or otherwise, as Lender determines necessary or desirable. Borrower agrees to reasonably cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Security Instrument, including, without limitation, the delivery of an estoppel certificate in accordance therewith, and such other documents as may be reasonably requested by Lender. Borrower shall also furnish and Borrower consents to Lender furnishing to such Investors or such prospective Investors or Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower, Indemnitor or Sponsor as may be requested by Lender, any Investor or any prospective Investor or Rating Agency in connection with any sale, transfer or participation interest. Lender may retain or assign responsibility for servicing the Note, this Security Instrument, and the Other Security Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer. Lender may make such assignment or delegation on behalf of the Investors if the Note is sold or this Security Instrument or the Other Security Documents are assigned. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

Section 19.2. CONVERSION TO REGISTERED FORM. At the request and the expense of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the "**Registrar**") reasonably acceptable to Lender which shall maintain, subject to such reasonable regulations as it shall provide, such books and records as are necessary for the registration and transfer of the Note in a manner that shall cause the Note to be considered to be in registered form for purposes of Section 163(f) of the Code. The option to convert the Note into registered form once exercised may not be revoked. Any agreement setting out the rights and obligation of the Registrar shall be subject to the reasonable approval of Lender. Borrower may revoke the appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Borrower or Lender or any other lender in respect of transfers of the Note and Security Instrument (other than Taxes and governmental charges and fees).

Section 19.3. COOPERATION. Borrower acknowledges that Lender and its successors and assigns may (a) sell this Security Instrument, the Note and Other Security Documents to one or more third parties as a whole loan, (b) participate the Loan secured by this Security Instrument to one or more third parties, (c) deposit, through one or a series of transactions, this Security Instrument, the Note and Other Security Documents with one or more trusts, which trusts may sell certificates to third parties evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to third parties (The transaction referred to in clauses (a), (b), (c) and (d) shall hereinafter be referred to collectively as "**Secondary Market Transactions**" and the transactions referred to in clause (c) shall hereinafter be referred to as a "**Securitization**". Any certificates, notes or other securities issued in connection with a Securitization are hereinafter referred to as "**Securities**"). Borrower shall cooperate in good faith (provided such cooperation will not result in expense or additional potential liability to Borrower) with Lender in effecting any such Secondary Market Transaction and shall cooperate

in good faith to implement all requirements imposed by any Rating Agency issuing any statistical rating in any Secondary Market Transaction or the requirements of potential investors in any Secondary Market Transaction. Borrower agrees to make upon Lender's written request, and at no material cost to Borrower, without limitation, all structural or other changes to the Loan (including delivery of one or more new component notes to replace any original Individual Note or modify any original Individual Note to reflect multiple components of the Loan and such new notes or modified note may have different interest rates and amortization schedules), modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to the Rating Agencies or potential investors and addressing such matters as the Rating Agencies or potential investors may require; provided, however, notwithstanding anything to the contrary in this Security Instrument, the Note, or the Other Security Documents, Borrower shall not be required to modify any documents evidencing or securing the Loan (or otherwise take any action) which would modify (i) the initial weighted average interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the aggregate amortization of principal of the Note, (iv) any other material economic term of the Loan, (v) decrease the time periods during which Borrower is permitted to perform its obligations under this Security Instrument or any of the Other Security Documents, or (vi) otherwise increase Borrower's or Indemnitor's obligations or decrease any of their rights under the Note, this Security Instrument or any of the other Security Documents except as otherwise expressly permitted herein. Borrower shall provide such information and documents relating to Borrower, Indemnitor, Sponsor, the Property and any tenants of the Improvements as Lender may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to prospective investors or Rating Agencies any information in its possession, including, without limitation, financial statements relating to Borrower, Sponsor, Indemnitor, the Property and any tenant of the Improvements. Borrower acknowledges that certain information regarding the Loan and the parties thereto, Sponsor and the Property may be included in disclosure documents in connection with the Securitization, including an offering circular, a prospectus, prospectus supplement, private placement memorandum or other offering document (each, an "**Disclosure Document**") and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), and may be made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization.

Section 19.4. MEZZANINE OPTION. Lender shall have the right (the "**Mezzanine Option**") at any time to divide the loan into two parts, a mortgage loan and a mezzanine loan, provided, that (i) the total loan amounts for such mortgage loan and such mezzanine loan shall equal the then outstanding amount of the Loan immediately prior to Lender's exercise of the Mezzanine Option and (ii) the weighted average interest rate of such mortgage loan and mezzanine loan shall equal the Interest Rate. Borrower shall cooperate with Lender in Lender's exercise of the Mezzanine Option in good faith and in a timely manner, which such cooperation shall include, but not be limited to, (i) executing such amendments to the Loan Documents and Borrower or any SPE Component Entity's organizational documents as may be reasonably requested by Lender or requested by the Rating Agencies (which such amendments shall include, without limitation, (1) providing that the Equity Collateral (defined below) be certificated (such that the holder of such certificated Equity Collateral would have "protected purchaser" status under Article 8 of the Uniform Commercial Code) and/or (2) providing that any restrictions on

the actions of Mezzanine Borrower, any SPE Component Entity and/or Borrower (such as the need to obtain the consent of any constituent parties of Mezzanine Borrower prior to taking any actions) shall be of no further force or effect upon a foreclosure of the Equity Collateral), (ii) creating a single purpose, bankruptcy remote entity satisfying the requirements of 4.3 hereof and of the Rating Agencies (the "**Mezzanine Borrower**"), which such Mezzanine Borrower shall (A) own, directly or indirectly, 100% of the equity ownership interests in Borrower (the "**Equity Collateral**"), and (B) together with such constituent equity owners of such Mezzanine Borrower or Borrower as may be designated by Lender, execute such agreements, instruments and other documents as may be required by Lender in connection with the mezzanine loan (including, without limitation, a promissory note evidencing the mezzanine loan and a pledge and security agreement pledging the Equity Collateral to Lender as security for the mezzanine loan); and (iii) delivering such opinions, title endorsements, UCC title insurance policies and other materials as may be required by Lender or the Rating Agencies. Lender hereby acknowledges and agrees that, notwithstanding anything to the contrary contained herein, (i) the exercise of the Mezzanine Option may not change the amount of aggregate amount of monthly debt service payments due under the Loan or the amortization term of the Loan and shall not require Borrower to further subdivide the Property, (ii) the institution of the Mezzanine Option (and the documentation relating thereto) may not diminish any of Borrower's (or Guarantor's) rights or increase any potential costs or liabilities of Borrower (or Guarantor) other than to the extent the aforesaid rights, costs or liabilities would be affected if the Loan were divided into a mortgage loan portion and a mezzanine loan portion (as contemplated hereby) as of the date of closing of the Loan and (iii) with respect to the foregoing provisions of this Section 19.4, the same are (A) restrictions and requirements customarily imposed by Lender in connection with commercial loans similar to the Loan and (B) intended to be restrictions and requirements which are "consistent with customary commercial lending practices" within the meaning of the applicable provisions of Revenue Procedure 2002-22. Lender will pay its own and Borrower's reasonable fees and expenses incurred in connection with the exercise of the Mezzanine Option.

Article 20. COSTS

Section 20.1. PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Lender may impose certain reasonable administrative, processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of its loan, (b) the release or substitution of collateral therefor, (c) if the servicer, in its reasonable determination, anticipates that there will occur an Event of Default and the Loan is transferred to a special servicer, (d) obtaining certain consents, waivers and approvals required hereunder (including, without limitation, Ratings Confirmations), and/or (e) the review of any Major Lease, proposed Major Lease or any other Lease for which Lender's approval is required hereunder or the preparation or review of any subordination, non disturbance agreement. Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof required by law, regulation, any governmental or quasi governmental authority. Subject to the limitations on cost and expense in Section 19.3 above, Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event of Default. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but

not be limited to, all reasonable legal fees and disbursements of Lender, whether retained firms, the reimbursement for the expenses of in house staff or otherwise. Whenever it is provided herein or in any other Loan Document that a Ratings Confirmation (or similar approval) by any Rating Agency is required hereunder (or under any other Loan Document), Borrower shall be responsible for the reasonable fees and other charges imposed by any Rating Agency in connection therewith as well as Lender's reasonable costs and expenses incurred in connection therewith.

Section 20.2. ATTORNEYS' FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with the items set forth in Section 20.1 above, and (b) Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, reasonably incurred or paid by Lender in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

Article 21. DEFINITIONS

Section 21.1. GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower, each party comprising Borrower (if Borrower consists of more than one person or entity) and any subsequent owner or owners of the Property or any part thereof or any interest therein"; the word "Lender" shall mean "Lender and any subsequent holder of the Note"; the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument"; the word "person" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Article 22. MISCELLANEOUS PROVISIONS

Section 22.1. NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 22.2. LIABILITY. If there is more than one Borrower, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 22.3. INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

Section 22.4. HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 22.5. DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 22.6. NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 22.7. SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower’s obligations hereunder, under the Note and the Other Security Documents and the performance and discharge of the Other Obligations.

Section 22.8. ENTIRE AGREEMENT. The Note, this Security Instrument and the Other Security Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, this Security Instrument and the Other Security Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, this Security Instrument and the Other Security Documents.

Section 22.9. TAX DISCLOSURE. Notwithstanding anything herein or in any other Loan Document to the contrary, except as reasonably necessary to comply with applicable securities laws, each party (and each employee, representative or other agent of each party) hereto may disclose to any and all Persons, without limitation of any kind, any information with

respect to the United States federal income "tax treatment" and "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such parties (or their representatives) relating to such tax treatment and tax structure; provided, that with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transaction as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to the United States federal income tax treatment or tax structure of the transactions contemplated hereby.

Section 22.10. APPLICATION OF PROCEEDS. Notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event that Lender, in the exercise of its rights or remedies hereunder or under any other Loan Document, elects to apply any sums realized by Lender as a result of such exercise of rights or remedies to any amounts due under the Note in accordance with the applicable terms and conditions hereof and of the other Loan Documents, such sums shall be deemed to be applied to each Individual Note in an amount equal to (1) the total amount of sums to be applied, *multiplied by* (2) the Proportionate Share (hereafter defined) allocated to such Individual Note. As used herein, the term **"Proportionate Share"** shall mean the amount obtained by dividing (i) the original principal amount of each applicable Individual Note *by* (ii) the original principal amount of the Loan as evidenced by all of the Individual Notes.

[PROVISIONS CONTINUE ON FOLLOWING PAGE]

Section 22.11. DUE ON SALE/ENCUMBRANCE. Borrower expressly agrees that upon a violation of Article 8 of this Security Instrument by Borrower and acceleration of the principal balance of the Note because of such violation, Borrower will pay all sums required to be paid in connection with a prepayment, if any, as described in the Note, herein imposed on prepayment after an Event of Default and acceleration of the principal balance. Borrower expressly acknowledges that Borrower has received adequate consideration for the foregoing agreement.

WAIKELE RESERVE WEST HOLDINGS, LLC
a Delaware limited liability company

By: /s/ John Chamberlain
John Chamberlain, President

By: /s/ Robert Barton
Robert Barton, CFO

WAIKELE VENTURE HOLDINGS, LLC
a Delaware limited liability company

By: /s/ John Chamberlain
John Chamberlain, President

By: /s/ Robert Barton
Robert Barton, CFO

[NO FURTHER TEXT ON THIS PAGE]

Section 22.12 SPECIAL STATE OF HAWAII PROVISIONS.

(a) In the event of any conflict between the provisions of this Section 22.12 and any provision of this Security Instrument, then the provisions of this Section 22.12 shall control.

(b) Borrower, at its sole cost, for the mutual benefit of Lender and Borrower, shall obtain and maintain (or cause to be obtained and maintained) during the term of this Loan policies of insurance in accordance with Section 3.3 hereof.

NOTICE IS HEREBY GIVEN BY LENDER TO BORROWER THAT LENDER MAY NOT CONDITION THE GRANTING OF THE LOAN SECURED BY THIS SECURITY INSTRUMENT ON BORROWER PROCURING ANY INSURANCE WHICH BORROWER IS REQUIRED TO OBTAIN UNDER THIS SECURITY INSTRUMENT FROM ANY SPECIFIC INSURANCE COMPANY OR ASSOCIATION DESIGNATED BY LENDER. BORROWER MAY PURCHASE THE INSURANCE REQUIRED HEREUNDER FROM AN INSURER OR PRODUCER OF BORROWER'S CHOICE, SUBJECT ONLY TO LENDER'S RIGHT TO REJECT A GIVEN INSURER OR PRODUCER NOT MEETING THE REQUIREMENTS SET FORTH IN SECTION 3.3 HEREOF.

(c) This Security Instrument shall be deemed to be and shall be construed as a mortgage of real property as well as a security agreement, financing statement, fixture filing and assignment of rents and profits. Lender is, for the purposes of this Security Instrument, deemed to be the "debtor", and Borrower is deemed to be the "secured party", as those terms are used in the Uniform Commercial Code in effect in the State of Hawaii, as amended. The addresses of the secured party and debtor, from which information concerning the security agreement may be obtained, are set forth in the initial paragraph of this Security Instrument. Borrower hereby authorizes Lender to file any and all financing statements, amendments to financing statements and extensions of financing statements pertaining to the Property. If an Event of Defaults occurs and is continuing, Lender shall have all of the rights and powers of a mortgagee under Hawaii Revised Statutes, Chapter 667, as amended, including but not limited to the power of sale.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

WAIKELE RESERVE WEST HOLDINGS, LLC
a Delaware limited liability company

By: /s/ John Chamberlain
John Chamberlain, President

By: /s/ Robert Barton
Robert Barton, CFO

WAIKELE VENTURE HOLDINGS, LLC
a Delaware limited liability company

By: /s/ John Chamberlain
John Chamberlain, President

By: /s/ Robert Barton
Robert Barton, CFO

Schedule 1

"**Debt Service Coverage Ratio**" means the ratio of (a) Net Operating Income, to (b) Annual Debt Service, all as determined by Lender.

"**Annual Debt Service**" means an amount equal to twelve (12) times the then applicable Monthly Payment (as defined in the Note) payable under the Note.

"**Net Operating Income**" means for the 12-month period immediately preceding the date of calculation, (A) all sustainable Rents and other income received from the Property received from tenants during such 12-month period, less (B) all Operating Expenses for such 12-month period and any Extraordinary Expenses approved by Lender and applicable to such 12-month period.

"**Operating Expenses**" means the aggregate of the following items: (a) real estate taxes, general and special assessments or similar charges, other than Taxes; (b) sales, use and personal property taxes; (c) management fees of not less than 3.5% of the gross income derived from the operation of the Property and disbursements for management services whether such services are performed at the Property or off-site; (d) wages, salaries, pension costs and all fringe and other employee-related benefits and expenses, of all employees up to and including (but not above) the level of the on-site manager, engaged in the repair, operation and maintenance of the Property and service to tenants and on-site personnel engaged in audit and accounting functions performed by Borrower; (e) insurance premiums including, but not limited to, casualty, liability, rent and fidelity insurance premiums, other than Insurance Premiums; (f) cost of all electricity, oil, gas, water, steam, HVAC and any other energy, utility or similar item and overtime services, the cost of building and cleaning supplies, and all other administrative, management, ownership, operating, advertising, marketing and maintenance expenses incurred by Borrower (and not paid directly by any tenant) in connection with the operation of the Property; (g) costs of necessary cleaning, repair, replacement, maintenance, decoration or painting of existing improvements on the Property (including, without limitation, parking lots and roadways), of like kind or quality or such kind or quality which is necessary to maintain the Property to the same standards as competitive properties of similar size and location of the Property; (h) the cost of such other maintenance materials, HVAC repairs, parts and supplies, and all equipment to be used in the ordinary course of business, which is not capitalized in accordance with approved accounting method; (i) legal, accounting and other professional expenses incurred in connection with the Property; (j) casualty losses to the extent not reimbursed by a third party; and (k) to the extent not already included in any of (f)-(h) above, a reserve for structural repairs, normalized leasing commissions and tenant improvements equal to the greater of (i) $250,000 or (ii) the minimum requirements of any Rating Agency therefore. The Operating Expenses shall be based on the above-described items actually incurred or payable on an accrual basis in accordance with the Approved Accounting Method by Borrower during the twelve (12) month period ending one month prior to the date on which the Net Operating Income is to be calculated, with customary adjustments for items such as taxes and insurance which accrue but are paid periodically, as adjusted by Lender to reflect projected adjustments for only those items which are definitively ascertainable and of a fixed amount (for example, real estate taxes) for the subsequent twelve (12) month period beginning on the date on which the Net Operating Income is to be calculated. Notwithstanding the foregoing, the term "Operating Expenses" shall not include (i) depreciation

or amortization or any other non-cash item of expense unless approved by Lender, (ii) interest, principal, fees, costs and expense reimbursements of Lender in administering the Loan or exercising remedies under the Note, this Security Instrument or the Other Security Documents; or (iii) any expenditure properly treated as a capital item under the Approved Accounting Method.

"**Extraordinary Expenses**" means expenses incurred in connection with necessary capital improvements or operating expenses of the Property which were not reasonably anticipated in the Approved Annual Budget, in each case as reasonably approved by Lender; provided, that, Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense prior to Lender's approval thereof.

EXHIBIT A

LEGAL DESCRIPTION

(attached hereto)

EXHIBIT A

LEGAL DESCRIPTION – WAIKELE CENTER

PARCEL FIRST: (TMK: (1) 9-4-007-056)

All of that certain parcel of land situate at Waipio, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

Lot 13213-B, area 9.772 acre, more or less, as shown on Map 1005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1000 of John Ii Estate, Limited.

TOGETHER WITH the following appurtenant easements:

(1) Crossings Numbers 3, 4, 5, 6 and 7 over Kamehameha Highway, and Crossing Number 28 over Government Main Road, as more particularly described in Exchange Deed between John Ii Estate, Limited, State of Hawaii and Oahu Sugar Company, Limited, dated June 13, 1934, recorded in the Bureau of Conveyances of the State of Hawaii in Book 1243 at Page 270, being certain of the easements mentioned in paragraph (7) of the list of appurtenant rights and easements in Certificate of Title No. 51,587.

(2) Easements over Lot 2-C more particularly described in Exchange Deed in favor of the State of Hawaii, being Document No. 64386, recorded in the Bureau of Conveyances of the State of Hawaii in Book 1708 at Page 468, noted on Original Certificate of Title No. 13,843, and on Transfer Certificate of Title No. 26,248 issued to the State of Hawaii.

Together also with non-exclusive rights of access appurtenant to Lot I3213, to be used in common with all others entitled thereto, over and across Roadway Lot 13813, as shown on Map 837, Roadway Lot 13193, as shown on Map 819, and Roadway Lots 13 and 14, as shown on File Plan No. 2057; provided, however, whenever any or all of said roadway lots are conveyed or dedicated to and accepted by the City and County of Honolulu or other governmental authority for use as public roadways or any part thereof shall be so dedicated and accepted, such rights of access over and across such roadway lots or part thereof so dedicated and accepted shall automatically terminate, reserving, however, unto Amfac Property Investment Corp., its successors and/or assigns, the right to so convey or dedicate such roadway lots to the City and County of Honolulu or other governmental authority for use as public roadways.

Being all of the property described in and covered by Transfer Certificate of Title No. 716,235 and _____.

PARCEL SECOND: (TMK (1) 9-4-007-054)

(Item A)

All of that certain parcel of land situate at Waipio, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

Lot 13211-B, area 12.686 acre, more or less, as shown on Map 1004, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No, 1000 of John Ii Estate, Limited.

TOGETHER WITH the following appurtenant easements:

(1) Crossings Numbers 3, 4, 5, 6 and 7 over Kamehameha Highway, and Crossing Number 28 over Government Main Road, as more particularly described in Exchange Deed between John Ii Estate, Limited, State of Hawaii and Oahu Sugar Company, Limited, dated June 13, 1934, recorded in the Bureau of Conveyances of the State of Hawaii in Book 1243 at Page 270, being certain of the easements mentioned in paragraph (7) in the list of appurtenant rights and easements in Certificate of Title No. 51,587.

(2) Easements over Lot 2-C more particularly described in Exchange Deed in favor of the State of Hawaii, being Document No. 64386, recorded in the Bureau of Conveyances of the State of Hawaii in Book 1708 at Page 468, noted on Original Certificate of Title No. 13,843, and on Transfer Certificate of Title No. 26,428 issued to the State of Hawaii.

Being all of the property described in and covered by Transfer Certificate of Title No. 716,235, and _____.

(Item B)

All of that certain parcel of land situate at Waikele, District of Ewa, City and County of Honolulu, State of Hawaii, being LOT 9, of the “WAIKELE DEVELOPMENT PHASE II”, as shown on File Plan No. 2057, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 19.179 acres, more or less.

AS TO PARCEL SECOND (Items A and B)

Together with non-exclusive rights of access to be used in common with all others entitled thereto, over and across Roadway Lot 13813, as shown on Map 837, Roadway Lot 13193, as shown on Map 819, and Roadway Lots 13 and 14, as shown on File Plan 2057, provided, however, whenever any or all of said roadway lots are conveyed or dedicated to and accepted by the City and County of Honolulu or other governmental authority for use as public roadways or any part thereof shall be so dedicated and accepted, such rights of access over and across such roadway lots or part thereof so dedicated and accepted shall automatically terminate, reserving, however, unto Amfac Property Investment Corp., its successors and/or assigns, the right to so convey or dedicate such roadway lots to the City and County of Honolulu or other governmental authority for use as public roadways.

NOTE: Lot 13211, as shown on Map 820, filed with Land Court Application No. 1000 of the John Ii Estate, Limited and Lot 9, as shown on File Plan No. 2057, shall not be sold separately, as set forth by Land Court Order No. 104945, filed December 9, 1991.

(Item C)

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 5732, Land Commission Award Number 8241 to Inone Ii) situate, lying and being at Waipio, District of Ewa, City and County of Honolulu, State of Hawaii, being REMAINDER PARCEL 14 of the "Interstate Highway" Federal Aid Project No. I-H-1(22), Kunia Interchange to Waiawa Interchange, being also a portion of Reservoir Lot, Exclusion 1 of Land Court Application 1000, and thus bounded and described:

Beginning at the southeast corner of this piece of land, being also the southwest corner of Lot 13,213, Map 820 of Land Court Application No. 1000, on the north side of Interstate Highway, Federal Aid Project No. I-H1-1(22), the coordinates of said point of beginning referred to "Hawaiian Plane Coordinate Grid System, Zone III" (Central Meridian 158 00' 00") being 85,628.69 feet north and 497,650.29 feet east, thence running by azimuths measured clockwise from true South:

1.	68º	52'	50"	10.86	feet along the north side of interstate Highway, Project no. I-H1-1(22)
2.	338º	52'	50"	20.00	feet along same
3.	68º	52'	50"	72.00	feet along same
4.	158º	52'	50"	20.00	feet along same
5.	68	52'	50"	20.00	
6.	172º	25'	37.7"	84.01	feet along Lot 13,211, map 820 of Land Court Application 1000
7.	262º	25'	37.7"	100.00	feet along same
8.	352º	25'	37.7"	59.92	feet along Lot 13,213, map 820 of Land Court Application 1000 to the point of beginning and containing an area of 8,686 square feet or 0.198 acre, more or less.

EXHIBIT B

FORM OF SNDA

(attached hereto)

BEAR STEARNS COMMERCIAL MORTGAGE, INC.
(Lender)

- and -

[_____]
(Tenant)

- and –

WAIKELE RESERVE WEST HOLDINGS, LLC, and

[_____]
(collectively, Landlord)

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

Dated:

Location:

Section:
Block:
Lot:
County:

PREPARED BY AND UPON
RECORDATION RETURN TO:

_____
_____
_____
Attention: _____

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made as of the __ day of _____, 200[__] by and among **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 (together with its successors and assigns, "**Lender**"), [_____] ("**Tenant**") and **WAIKELE RESERVE WEST HOLDINGS, LLC,** a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**West**") and **WAIKELE VENTURE HOLDINGS, LLC,** a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**Venture**"; West and Venture are individually or collectively (as the context requires) referred to herein as **"Landlord"**).

RECITALS:

A. Lender is the present owner and holder of a certain Mortgage and Security Agreement (the "**Security Instrument**") given by Landlord to Lender which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "**Property**") and which secures the payment of certain indebtedness owed by Landlord to Lender evidenced by the Note (as defined in the Security Instrument);

B. Tenant is the holder of a leasehold estate in a portion of the Property under and pursuant to the provisions of a certain [Lease] dated [_____, 200[__] between Landlord, as landlord, and Tenant, as tenant (the "**Lease**"); and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

For good and valuable consideration, Tenant, Lender and Landlord agree as follows:

1. Subordination. The Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate to the lien and terms of the Security Instrument, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. Non-Disturbance. If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use

of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note or the Security Instrument shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the term of the Lease shall have commenced pursuant to the provisions thereof, (b) Tenant shall be in possession of the premises demised under the Lease, (c) the Lease shall be in full force and effect and (d) Tenant shall not be in default beyond any applicable notice and cure period under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed.

3. Attornment. If Lender or any other subsequent purchaser of the Property shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter referred as "**Purchaser**"), and the conditions set forth in Section 2 above have been met at the time Purchaser becomes owner of the Property, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Property shall be deemed to have agreed to accept such attornment, provided, however, that Purchaser shall not be (a) liable for the failure of any prior landlord (any such prior landlord, including Landlord and any successor landlord, being hereinafter referred to as a "**Prior Landlord**") to perform any of its obligations under the Lease which have accrued prior to the date on which Purchaser shall become the owner of the Property, provided that the foregoing shall not limit Purchaser's obligations under the Lease to correct any conditions of a continuing nature that (i) existed as of the date Purchaser shall become the owner of the Property and (ii) violate Purchaser's obligations as landlord under the Lease; provided further, however, that Purchaser shall have received written notice of such omissions, conditions or violations and has had a reasonable opportunity to cure the same, all pursuant to the terms and conditions of the Lease, (b) subject to any offsets, defenses, abatements or counterclaims which shall have accrued in favor of Tenant against any Prior Landlord prior to the date upon which Purchaser shall become the owner of the Property, except for those that are specifically provided for in the Lease, (c) liable for the return of rental security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by Purchaser, (d) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser or (ii) such prepayment shall have been expressly approved of by Purchaser, (e) bound by any agreement terminating or amending or modifying the rent, term, commencement date or other material term of the Lease, or any voluntary surrender of the premises demised under the Lease, made without Lender's or Purchaser's prior written consent prior to the time Purchaser succeeded to Landlord's interest (provided, however, Purchaser's consent is not required for a termination of the Lease exercised pursuant to the original terms of the Lease) or (f) bound by any assignment of the Lease or sublease of the Property, or any portion thereof, made prior to the time Purchaser succeeded to Landlord's interest other than if pursuant to the provisions of the Lease. In the event that any liability of Purchaser does arise pursuant to this Agreement, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such interest. Alternatively, upon the written request of Lender or its successors or assigns, Tenant

shall enter into a new lease of the Premises with Lender or such successor or assign for the then remaining term of the Lease, upon the same terms and conditions as contained in the Lease (including without limitation any renewal options), except as otherwise specifically provided in this Agreement.

4. Notice to Tenant. After notice is given to Tenant by Lender that the Landlord is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.

5. Intentionally Omitted.

6. Notice to Lender and Right to Cure. Tenant shall notify Lender of any default by Landlord under the Lease if the default is of such a nature as to give Tenant a right to terminate the Lease, reduce the rent or to credit or offset any amounts against future rents, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of an abatement shall be effective unless Lender shall have received notice of default giving rise to such cancellation or abatement and (i) in the case of any such default that can be cured by the payment of money, until thirty (30) days shall have elapsed following the giving of such notice or (ii) in the case of any other such default, until a reasonable period for remedying such default shall have elapsed following the giving of such notice, provided Lender, with reasonable diligence, shall have commenced and continued to remedy such default or cause the same to be remedied. Notwithstanding the foregoing, (i) Lender shall have no obligation to cure any such default and (ii) in the event that any aforesaid default cannot, by its nature, be cured by Lender prior to Lender's gaining possession of Landlord's interest in the Property, the aforesaid "reasonable period for remedying such default" shall be deemed to include such time as is required for Lender to gain possession of Tenant's interest in the Property.

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for one (1) day overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: [_____]

If to Lender: Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179
Attention: J. Christopher Hoeffel
Facsimile No.: (212) 272-7047

With a copy to: c/o American Assets, Inc.
11455 El Camino Real, Suite 200
San Diego, California 92130

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 7, the term “Business Day” shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.

9. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

10. Miscellaneous. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

11. Joint and Several Liability. If there is more than one Tenant under the Lease, the obligations and liabilities of each hereunder shall be joint and several.

12. Definitions. The term “Lender” as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term “Landlord” as used herein shall

mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Security Instrument.

13. Limitations on Purchaser's Liability. In no event shall the Purchaser, nor any heir, legal representative, successor, or assignee of the Purchaser have any personal liability for the obligations of Landlord under the Lease and should the Purchaser succeed to the interests of the Landlord under the Lease, Tenant shall look only to the estate and property of any such Purchaser in the Property for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by any Purchaser as landlord under the Lease, and no other property or assets of any Purchaser shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease; provided, however, that the Tenant may exercise any other right or remedy provided thereby or by law in the event of any failure by Landlord to perform any such material obligation. Notwithstanding the foregoing, Tenant may offset against rent due under the Lease the amount of any judgment obtained against any Purchaser.

14. Estoppel Certificate. Tenant, shall, from time to time, within [_____] Business Days after request by Lender, execute, acknowledge and deliver to Lender a statement by Tenant certifying (a) that the Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) the amounts of fixed rent, additional rent, or other sums, if any, which are payable in respect of the Lease and the commencement date and expiration date of the Lease, (c) the dates to which the fixed rent, additional rent, and other sums which are payable in respect to the Lease have been paid, (d) whether or not Tenant is entitled to any then presently accrued credits or offsets against rent, and, if so, the reasons therefor and the amount thereof, (e) that to Tenant's actual knowledge (without investigation) it is not in default in the performance of any of its obligations under the Lease and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute such a default, (f) whether or not, to the actual knowledge (without investigation) of the person certifying on behalf of Tenant, Landlord is in default in the performance of any of its obligations under the Lease, and, if so, specifying the same, (g) whether or not, to the actual knowledge (without investigation) of such person, any event has occurred which with the giving of such notice or passage of time, or both would constitute such a default, and, if so, specifying each such event, and (h) whether or not, to the actual knowledge (without investigation) of such person, Tenant has any then presently accrued claims, defenses or counterclaims against Landlord under the Lease, and, if so, specifying the same, it being intended that any such statement delivered pursuant hereto shall be deemed a certification by Tenant to be relied upon by Lender and by others with whom Lender may be dealing. Tenant also shall include in any such statement such other information concerning the status of the Lease as Lender may reasonably request.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Lender, Tenant and Landlord have duly executed this Agreement as of the date first above written.

TENANT:

[_____]

By: _____
Name:
Title:

LANDLORD:

WAIKELE RESERVE WEST HOLDINGS, LLC, a Delaware limited liability company

By: _____
Name:
Title:

WAIKELE VENTURE HOLDINGS, LLC, a Delaware limited liability company

By: _____
Name:
Title:

LENDER:

BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation

By: _____

Name:

Title:

EXHIBIT A

[Attach Legal Description of Property]

EXHIBIT C

LIST OF RECORDED LEASES

1. "CompUSA" – A memorandum dated May 1, 1993 of that certain lease between WCC Associates, as lessor, and Tandy Corporation, as lessee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, Document No. 2038337, leasing and demising 24,000 square feet of space within the shopping center.

2. "Officemax" – A memorandum dated April 30, 1993 of that certain lease between WCC Associates, as lessor, and Pay Less Drug Stores Northwest, Inc., as lessee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, Document No. 2182764, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 94-157406, leasing and demising approximately 24,462 square feet of space within the shopping center, said lease was assigned to Officemax, Inc., by unrecorded assignment of lease dated April 3, 1995.

3. "Kmart" – A memorandum dated January 10, 1992 of that certain lease between WCC Associates, as lessor, and Kmart Corporation, as lessee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, Document No. 1957934, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 92-159884.

4. "McDonald's" – A memorandum dated March 30, 1993 of that certain lease between WCC Associates, as lessor, and McDonald's Restaurants of Hawaii, Inc., as lessee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, Document No. 2026091, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-081149, leasing and demising approximately 3,500 square feet of space within the shopping center.

5. "The Sports Authority" – A memorandum dated December 30,1993 of that certain lease between WCC Associates, as lessor, and Sports Authority, Inc., as lessee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, Document No. 2114423, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 94-017963, said lease was assigned to Authority International, Inc. by unrecorded assignment of lease dated December 30,1993.

6. "KFC"– A memorandum dated November 4,1998 of that certain lease between Waikele Center, L.P. (successor in interest to WCC Associates), as lessor, and KFC Management Company, as lessee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, Document No. 2442531, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 98-031101, said lease was assigned to Kazi Foods Corp. of Hawaii, by recorded assignment of lease dated March 4, 1998, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, Document No. 2442532, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 98-031102.

7. “Chili’s” – A memorandum dated December 7,1995 of that certain lease between WCC Associates, as lessor, and Pacific Meritage, LLC (d/b/a Chili’s Grill & Bar), as lessee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, Document No. 2278005, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-161759.

8. “Old Navy” – A memorandum dated April 10, 2000 of that certain lease between Waikele Center, L.P., as lessor, and Old Navy, Inc, as lessee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, Document No. 2624076, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-062289.

Exhibit 10.20

LAND COURT SYSTEM | REGULAR SYSTEM

After Recordation, Return By Mail To:

Gerard Keegan, Esq.
Dechert LLP
30 Rockefeller Plaza
New York, New York 10112-2200

TITLE OF DOCUMENT:

FIRST AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING

PARTIES TO DOCUMENT:

MORTGAGOR: Waikele Reserve West Holdings, LLC and
Waikele Venture Holdings, LLC
11455 El Camino Real, Suite 200
San Diego, California 92130

MORTGAGEE: Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179

TAX MAP KEY(S):
9-4-007-054
9-4-007-056

(This document consists of ____ pages.)

TRANSFER CERTIFICATE OF
TITLE NUMBER: 716235 and
_____

FIRST AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING

THIS FIRST AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING (this "**Agreement**") is made as of this 5th day of January, 2005, by and among **WAIKELE RESERVE WEST HOLDINGS, LLC,** a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**West**") and **WAIKELE VENTURE HOLDINGS, LLC,** a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**Venture**"; West and Venture are individually or collectively (as the context requires) referred to herein as **"Borrower"**) and **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 (together with its successors and assigns, "**Lender**"). All capitalized terms not defined herein shall have the respective meanings set forth in the Security Instrument (defined below).

RECITALS:

A. As of October 28, 2004, Lender made a first mortgage loan to Borrower in the original aggregate principal sum of $140,700,000.00 (the "**Loan**"), which such Loan is (i) secured by, among other things, that certain Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing given by Borrower to Lender and dated as of October 28, 2004 and recorded on November 3, 2004 in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3188056 and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-222632 (together with any and all extensions, renewals, substitutions, replacements, amendments, modifications and/or restatements thereof, collectively, the "**Security Instrument**") encumbering the Property (as defined in the Security Instrument) more particularly described on Exhibit A attached hereto and (ii) evidenced by the Note (as defined in the Security Instrument) (the Note, the Security Instrument and any and all documents or instruments now or hereafter executed in connection with the Loan are collectively herein referred to as the "**Loan Documents**").

B. As of the date hereof, Borrower and Lender desire to, in accordance with the terms hereof, amend certain provisions of the Security Instrument as more particularly specified herein.

AGREEMENT:

For the mutual premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions. All capitalized terms not defined herein shall have the meaning set forth in the Security Instrument.

2. Clarification of Provisions. The parties hereto acknowledge and agree that (a) Borrower shall not be deemed to have violated Sections 4.3(a)(xi) or 4.6(i)(2) of the Security Instrument in connection with a transfer of interests in the Property (whether in connection with an enforcement of its rights under the TIC Agreement or otherwise) to the extent such transfer is expressly and specifically permitted by (and consummated in accordance with) the relevant provisions of Article 8 of the Security Instrument (as the same is amended hereby); (b) the following clause is hereby added to the beginning of Section 4.6(c) of the Security Instrument: "except in connection with a transfer of interests in the Property that is not prohibited by (and that is consummated in accordance with) the relevant provisions of Article 8 hereof (provided that such transfer either (i) does not terminate, cancel, amend, modify, change, supplement or alter the TIC Agreement in any material respect or (ii) results in one entity directly owning 100% of the fee interest in the Property and provided further that if GE Sponsor has obtained Control over Venture, it shall have until the end of the Sponsor Cure Period to cause the fee interest in the Property to be so owned)" and (c) the following clause is hereby added to the beginning of each of Sections 4.3(a)(viii), 4.3(a)(xii) and 4.3(a)(xv) of the Security Instrument: "Except as is specifically contemplated by the Management Agreement in place for the Property as of January 5, 2005".

3. Amendment of Article 8 of the Security Instrument. The parties hereto acknowledge and agree that Article 8 of the Security Instrument is hereby deleted in it entirety and replaced with the following:

"Article 8 - DUE ON SALE/ENCUMBRANCE

Section 8.1 LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the loan secured hereby, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 8.2 NO SALE/ENCUMBRANCE.

(a) Except as provided in this Security Instrument, Borrower shall not cause or permit a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein nor permit a Sale or Pledge of an interest in any Restricted Party (in each case, a "**Prohibited Transfer**"), other than pursuant to Leases of space at the Property to tenants in accordance with the applicable provisions hereof, without the prior written consent of Lender.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer

of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (iv) any action for partition of the Property (or any portion thereof or interest therein) or any similar action instituted or prosecuted by any Borrower, as a tenant-in-common, or by any other person or entity, pursuant to any contractual agreement or other instrument or under Applicable Law (including, without limitation, common law); (v) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new partnership interests; (vi) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of any member or any profits or proceeds relating to such membership interest; (vii) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (viii) the removal or the resignation of Manager (including, without limitation, an Affiliated Manager) other than in accordance with the applicable terms and conditions hereof.

Section 8.3 PERMITTED EQUITY TRANSFERS. Notwithstanding anything to the contrary contained in this Article 8, the following transfers shall not be Prohibited Transfers and shall be permitted without Lender's consent: (a) a transfer (but not a pledge) by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party, (b) the transfer (but not the pledge (other than a Parent Level Pledge)) or Parent Level Pledge, in one or a series of transactions, of the stock, partnership interests or membership interests (as the case may be) in a Restricted Party, and (c) the sale, transfer or issuance of shares of common stock in any Restricted Party that is a publicly traded entity, provided such shares of common stock are listed on the New York Stock Exchange or another nationally recognized stock exchange; provided, however, with respect to the transfers listed in clauses (a) or (b) above, (A) Lender shall receive not less than five (5) days prior written notice thereof, (B) no such transfers shall result in a change in Control of Sponsor or Affiliated Manager (provided, however, a "change in Control" of Sponsor or Affiliated Manager shall not be deemed to have occurred for the purposes of this subsection (B) if any one of the persons or entities comprising the definition of "Sponsor" contained herein succeeds to the interest of the then current Sponsor and such successor Sponsor Controls the Affiliated Manager), (C) after giving effect to such transfers, any one of the entities comprising the defined term "Sponsor" shall (I) either (aa) own at least a 51% direct or indirect equity interest in each Borrower and any SPE Component Entity (it being understood that the requirement in this clause (aa) shall be deemed satisfied if such ownership is achieved by the end of the Sponsor Cure Period (defined below)), or (bb) own at least a (1) 5% direct or indirect equity interest in Venture and any SPE Component Entity applicable to Venture and GE Sponsor shall own at least a 46% direct or indirect equity interest in each of Venture and any SPE Component Entity applicable to Venture and (2) 51% direct or indirect equity interest in West and any SPE Component Entity applicable to West, (II) Control Borrower and any SPE Component Entity and (III) control the day-to-day operation of the Property, (D) the Property shall continue to be managed by Affiliated Manager or a Qualified Manager, (E) in the case of

the transfer of any direct equity ownership interests in Borrower or in any SPE Component Entity, such transfers shall be conditioned upon continued compliance with the relevant provisions of Sections 4.2 and 4.3 hereof and (F) in the case of (1) the transfer of the management of the Property to a new Affiliated Manager in accordance with the applicable terms and conditions hereof, or (2) the transfer (in one or in a series of transactions) in excess of 49% (in the aggregate) of any equity ownership interests (I) directly in Borrower or in any SPE Component Entity, or (II) in any Restricted Party (other than any Restricted Party owning equity interest above the level of the GE Sponsor) whose sole asset is a direct or indirect equity ownership interest in Borrower or in any SPE Component Entity, such transfers shall be conditioned upon delivery to Lender of a substantive non-consolidation opinion, which such opinion shall be provided by outside counsel acceptable to Lender and the Rating Agencies and shall otherwise be in form, scope and substance reasonably acceptable to Lender and acceptable to the Rating Agencies (such opinion, the **"New Non-Consolidation Opinion"**).

Section 8.4 PERMITTED PROPERTY TRANSFERS (ASSUMPTION). Notwithstanding anything to the contrary contained in this Article 8 and in addition to the transfers permitted under Section 8.3, the following transfers shall not be Prohibited Transfers and Lender's consent to any TIC Assumption (defined below) shall not be required and Lender's consent to the first four (4) other transfers of the Property (at any time after the first (1st) anniversary of the closing of the Loan or at any time prior to such date if Lender determines that such assignment or transfer will not hinder, delay or prevent Lender from completing a Secondary Market Transaction (as defined in Section 19.3)) shall not be withheld; provided, that, in each case, Lender receives (I) sixty (60) days prior written notice (in the case of any transfer other than a TIC Assumption) or (II) thirty (30) days prior written notice (in the case of a TIC Assumption) of each such transfer hereunder and no Event of Default has occurred and is continuing, and further provided that, the following additional requirements are satisfied:

(a) With respect to (i) any TIC Assumption, no transfer fee shall be due, and (ii) other than in connection with a TIC Assumption, with respect to the (I) first such transfer, Borrower shall pay Lender a transfer fee equal to 0.125% of the outstanding principal balance of the Loan at the time of such transfer, (II) second such transfer, Borrower shall pay Lender a transfer fee equal to 0.375% of the outstanding principal balance of the Loan at the time of such transfer, (III) third such transfer, Borrower shall pay Lender a transfer fee equal to 0.75% of the outstanding principal balance of the Loan at the time of such transfer and (IV) fourth such transfer, Borrower shall pay Lender a transfer fee equal to 1.0% of the outstanding principal balance of the Loan at the time of such transfer;

(b) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with, as applicable, each TIC Assumption and the transfer of the Property (including, without limitation, Lender's reasonable counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and, other than with respect to any TIC Assumption, the fees and expenses of the Rating Agencies pursuant to clause (j) below);

(c) Other than in connection with a TIC Assumption, the proposed transferee (the "**Transferee**") or Transferee's Principals (hereinafter defined) must have demonstrated expertise in owning and operating properties similar in location, size and operation to the Property, which

expertise shall be reasonably determined by Lender. The term "**Transferee's Principals**" shall include Transferee's (A) managing members, general partners or Controlling shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a 15% or greater interest in Transferee;

(d) Other than in connection with a TIC Assumption, Transferee's Principals shall, as of the date of such transfer, have an aggregate net worth and liquidity reasonably acceptable to Lender;

(e) Other than in connection with a TIC Assumption, Transferee, Transferee's Principals and all other entities which may be owned or controlled directly or indirectly by Transferee's Principals ("**Related Entities**") must not have been a party to any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed transfer of the Property;

(f) Transferee or Assuming Borrower (defined below) under a TIC Assumption, as applicable, shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance reasonably satisfactory to Lender;

(g) There shall be no material litigation or regulatory action pending or threatened against, as applicable, Transferee, Transferee's Principals or Related Entities or Assuming Borrower or Sponsor which is not reasonably acceptable to Lender;

(h) Other than in connection with a TIC Assumption, Transferee's Principals and Related Entities shall not have defaulted under its or their obligations with respect to any other indebtedness in a manner which is not reasonably acceptable to Lender;

(i) Transferee or Assuming Borrower, as applicable, must be able to satisfy all the covenants set forth in Sections 4.3, and both Transferee and Transferee's Principals or both Assuming Borrower and Sponsor (as applicable) must be able to satisfy all the covenants set forth in Sections 4.3 and 5.9 hereof, no Event of Default or event which, with the giving of notice, passage of time or both, shall constitute an Event of Default, shall otherwise occur as a result of such transfer, and Transferee and Transferee's Principals or Assuming Borrower and Sponsor (as applicable) shall deliver (A) all organization documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender, and (B) all certificates, agreements and covenants reasonably required by Lender (including, without limitation, hazard insurance endorsements or certificates or other similar evidence that the Policies required hereunder have been obtained or maintained, as applicable);

(j) Other than in connection with a TIC Assumption, Transferee shall be approved by the Rating Agencies selected by Lender;

(k) Transferee or Assuming Borrower, as applicable, shall furnish (I) a New Non-Consolidation Opinion, and (II) an opinion of counsel reasonably satisfactory to Lender and its

counsel (A) that the assumption of the Debt has been duly authorized, executed and delivered, and that the Note, this Security Instrument, the assumption agreement and the other Loan Documents are valid, binding and enforceable against Transferee or Assuming Borrower, as applicable, in accordance with their terms, and (B) that Transferee or Assuming Borrower, as applicable, and any entity which is a controlling stockholder, member or general partner of Transferee or Assuming Borrower, as applicable, have been duly organized, and are in existence and good standing;

(l) Borrower shall deliver, at its sole costs and expense, an endorsement to the existing title policy insuring the Security Instrument, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee or Assuming Borrower, as applicable, as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the title policy issued on the date hereof. Immediately upon a transfer of the Property to such Transferee or Assuming Borrower, as applicable, and the satisfaction of all of the above requirements, the named Borrower herein or, in the case of a TIC Assumption, any entity constituting the defined term "Borrower" hereunder other than the Assuming Borrower or any other Borrower that is not transferring its interest in the Property to the Assuming Borrower shall be released from all liability under this Security Instrument, the Note and the Other Security Documents accruing after such transfer, and, in the case of a transfer hereunder other than a TIC Assumption, the Indemnitor under that certain Indemnity Agreement in favor of Lender relating hereto (the "**Indemnity Agreement**"), dated of even date herewith, shall be released from its obligations and liabilities thereunder accruing after such transfer provided that a new indemnitor approved by Lender, which approval shall be granted or withheld pursuant to Lender's customary underwriting procedures, enters into and delivers to Lender a new indemnity agreement in the form and content of the Indemnity Agreement. The foregoing release shall be effective upon the date of such transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower; and

(m) Other than in connection with a TIC Assumption, Borrower's obligations under the contract of sale pursuant to which the transfer is proposed to occur shall expressly be subject to the satisfaction of the terms and conditions of this Section.

Any transfer made pursuant to and in accordance with the terms and provisions of this Section 8.4 shall not be deemed to be a Prohibited Transfer. A consent by Lender with respect to a transfer of the Property in its entirety to, and the related assumption of the Loan by, a Transferee pursuant to this Section shall not be construed to be a waiver of the right of Lender to consent to any subsequent transfer of the Property.

Section 8.5 LENDER'S RIGHTS. Lender reserves the right to condition the consent to a Prohibited Transfer requested hereunder upon (a) a modification of the terms hereof and an assumption of the Note and the other Loan Documents as so modified by the proposed Prohibited Transfer, (b) receipt of payment of a transfer fee equal to one percent (1%) of the outstanding principal balance of the Loan and all of Lender's expenses incurred in connection with such Prohibited Transfer, (c) receipt of written confirmation from the Rating Agencies (a **"Ratings Confirmation"**) that the Prohibited Transfer will not result in a downgrade,

withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization, (d) the proposed transferee's continued compliance with the covenants set forth in this Security Instrument (including, without limitation, the covenants in Sections 4.2 and 4.3) and the other Loan Documents, (e) a new manager for the Property and a new management agreement satisfactory to Lender, and (f) the satisfaction of such other conditions and/or legal opinions as Lender shall determine in its sole discretion to be in the interest of Lender. All expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Prohibited Transfer made without Lender's consent. This provision shall apply to each and every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer.

Section 8.6 DEFINITIONS. As used in this Article 8, the following terms shall have the following meanings:

(a) **"Affiliated Manager"** shall mean any managing agent of the Property in which Borrower, Guarantor, Sponsor, any SPE Component Entity or any affiliate of such entities has, directly or indirectly, any legal, beneficial or economic interest.

(b) **"Control"** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of an entity, whether through ownership of voting securities, by contract or otherwise.

(c) **"GE SPE"** shall mean an entity (i) which is a single purpose, bankruptcy remote entity meeting the requirements of Sections 4.3 and 5.9 hereof, (ii) which is Controlled by GE Sponsor and (iii) in which GE Sponsor owns at least a 51% direct or indirect equity ownership interest.

(d) "**GE Sponsor**" shall mean the General Electric Pension Trust, a New York common law trust.

(e) **"GE Sponsor Conditions"** shall be deemed satisfied to that extent that each of the following have been satisfied: (i) by the end of the Sponsor Cure Period, GE Sponsor shall have obtained Control over each Borrower, any SPE Component Entity and control over the day to day operation of the Property; (ii) Borrower shall have delivered to Lender two legal opinions (one from counsel licensed to practice law in the State of Hawaii and one form counsel licensed to practice law in the State of California) opining either (A) to the extent GE Sponsor does not elect to provide a new indemnity agreement as provided herein, that there has been no change in law from the date hereof that would materially and adversely effect the enforceability of the Indemnity Agreement (which such opinions shall be in form and substance and from counsel reasonably acceptable to Lender and acceptable to the Rating Agencies) or (B) as to the enforceability of the Indemnity Agreement or as to the new indemnity agreement provided by GE Sponsor, as applicable (which such opinions shall be in form and substance and from counsel reasonably acceptable to Lender and acceptable to the Rating Agencies); (iii) Borrower shall

have delivered evidence reasonably acceptable to Lender that (A) GE Sponsor owns 100% of the direct and/or indirect interest in GE Subsidiary and Controls GE Subsidiary, (B) by the end of the Sponsor Cure Period, GE Subsidiary shall own at least a 51% direct or indirect interest in each Borrower and shall Control each Borrower, and (C) GE Subsidiary has delivered either (aa) an indemnity agreement by GE Sponsor in favor of Lender in form and substance substantially identical to the Indemnity Agreement or (bb) (I) an indemnity agreement by GE Subsidiary in favor of Guarantor relating to Guarantor's obligations under the Indemnity Agreement (which such indemnity agreement shall be (i) substantially identical to the form provided to and approved by Lender as of the date hereof or (ii) reasonably acceptable to Lender in form and substance) and (II) a pledge agreement pledging GE Subsidiary's indirect equity interests in each Borrower as security for the aforesaid indemnity (which such pledge agreement shall (1) notwithstanding anything to the contrary contained herein, not be deemed to violate the provisions of this Article 8 and (2) be (i) substantially identical to the form provided to and approved by Lender as of the date hereof or (ii) reasonably acceptable to Lender in form and substance); (iv) Borrower shall have delivered such documents and/or instruments as may be reasonably required by Lender or required by the Rating Agencies in connection with the foregoing; and (v) Borrower shall have paid (I) Lender any fees, costs or expenses (including, without limitation, attorney's fees) incurred by Lender in connection with the foregoing and (II) the Rating Agencies any fees, costs or expenses (including, without limitation, attorney's fees) incurred by the Rating Agencies in connection with the foregoing. Notwithstanding the foregoing, to the extent that any SPE Component Entity exists with respect to any Borrower, in no event shall such SPE Component Entity's direct equity interest in any Borrower be the subject of the above-described pledge.

(f) **"GE Subsidiary"** shall mean Waikele JV PT Investor, LLC, a Delaware limited liability company.

(g) **"Parent Level Pledge"** shall mean the pledge of GE Sponsor's interests in any Restricted Party other than Borrower or any SPE Component Entity to secure any obligation of GE Sponsor, provided, that the repayment of such obligation is not specifically tied to the cash flow of the Property and provided further that the beneficiary of such pledge shall be a Qualified Equityholder or major financial institution with significant real estate experience involving properties similar to the Property. As a condition precedent to a Parent Level Pledge, Borrower shall give Lender written notice thereof within thirty (30) days after the consummation thereof. Notwithstanding the foregoing, Borrower acknowledges and agrees that any transfers made in connection with a Parent Level Pledge must comply with the requirements set forth in Section 8.3(B) through 8.3(E) above.

(h) **"Qualified Equityholder"** shall mean

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

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

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

(D) any entity (1) Controlled by any of the entities described in clauses (A), (B) or (C) above and (2) in which any of the entities described in clauses (A), (B) or (C) above own a 51% direct or indirect equity ownership interest;

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

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

Notwithstanding the foregoing, no person or entity shall be deemed to be a Qualified Equityholder if (y) such person or entity (or any other person or entity owned or Controlled by such person or entity or affiliated with such person or entity) has been, within the last ten (10) years, (I) subject to any material, uncured event of default in connection with a loan financing which resulted in litigation or an acceleration of an indebtedness held by Lender or any other secondary market or institutional lender or (II) the subject of any action or proceeding under applicable Insolvency Laws; or (z) any of the principals or entities which Control such person or entity or own a material direct or indirect equity interest in such person or entity have ever been convicted of a felony.

As used in the above definition of "Qualified Equityholder", the following terms shall have the following meanings:

(i) "**Eligibility Requirements**" shall mean, with respect to any person or entity, that such person or entity (A) has total assets (in name or under management) in excess of $750,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's equity of $500,000,000 and (B) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties.

(ii) **"Permitted Fund Manager"** shall mean any Person or entity that on the date of determination is (A) a nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (B) investing through a fund with committed capital of at least $500,000,000 and (C) not subject to any action or proceeding under any bankruptcy, insolvency, rehabilitation or other similar proceeding.

(iii) **"Qualified Trustee"** shall mean (A) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least $300,000,000 and subject to supervision or examination by federal or state authority, (B) an institution insured by the Federal Deposit Insurance Corporation or (C) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

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

(i) "**Rady Family Entity**" shall mean an entity (i) in which Ernest S. Rady or a spouse, siblings, children or grandchildren, nieces, nephews or cousins of Ernest S. Rady or trusts for the benefit of any such persons (collectively, the **"Rady Family Group"**) own at least a 51% direct or indirect equity interest, and (ii) which is Controlled by one or more members of the Rady Family Group having commercial real estate experience at least comparable to that of the current management of Guarantor.

(j) **"Rady SPE"** shall mean entity (i) which is a single purpose, bankruptcy remote entity meeting the requirements of Sections 4.3 and 5.9 hereof, (ii) which is Controlled by a Rady Family Entity and (iii) in which a Rady Family Entity owns at least a 51% direct or indirect equity ownership interest.

(k) "**Restricted Party**" shall mean Borrower, Guarantor, Sponsor, any SPE Component Entity, any Affiliated Manager, or any shareholder, partner, member, non-member manager or any direct or indirect legal or beneficial owner of any of the foregoing; provided, however, in no event shall GE Sponsor, any officer, director, trustee or other manager of GE Sponsor, or any holder of any direct or indirect legal or beneficial interest in GE Sponsor, constitute a "Restricted Party" for the purposes hereof.

(l) **"Sale or Pledge"** shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

(m) "**Sponsor"** shall mean (i) Guarantor, (ii) a Rady Family Entity, (iii) a Qualified Equityholder or (iv) GE Sponsor; provided, that, as conditions precedent to (A) any transfer of Guarantor's, the Rady Family Entity's or GE Sponsor's interest as "Sponsor" to a Qualified Equityholder, Lender shall have received a Ratings Confirmation in connection therewith and with respect to the (I) first such transfer, Borrower shall pay Lender a transfer fee equal to 0.125% of the outstanding principal balance of the Loan at the time of such transfer, (II) second such transfer, Borrower shall pay Lender a transfer fee equal to 0.375% of the outstanding principal balance of the Loan at the time of such transfer, (III) third such transfer, Borrower shall pay Lender a transfer fee equal to 0.75% of the outstanding principal balance of the Loan at the time of such transfer and (IV) fourth such transfer and each subsequent transfer thereafter, Borrower shall pay Lender a transfer fee equal to 1.0% of the outstanding principal balance of the Loan at the time of such transfer or (B) any transfer of Guarantor's or the Rady Family Entity's interest as "Sponsor" to GE Sponsor, the GE Sponsor Conditions shall have been satisfied. For purposes of clarification, any entity comprising the defined term "Sponsor" above shall not be deemed to be the "Sponsor" hereunder unless a state of facts exists that would require such entity to be the "Sponsor" hereunder in order to satisfy the conditions set forth in Sections 8.3(B) and 8.3(C) above, to the extent applicable in the particular context in which the term "Sponsor" is being used.

(n) **"Sponsor Cure Period"** shall mean, to the extent GE Sponsor has obtained Control over Venture, a period of time from the date such Control is obtained for either (i) a GE SPE to obtain West's fee interest in the Property or (ii) GE Sponsor to obtain Control over West and to obtain at least a 51% direct or indirect equity interest in West; provided, that, (A) in no event shall such Sponsor Cure Period exceed thirty (30) days (subject to GE Sponsor's and/or Venture's right to extend such thirty (30) day period for two additional periods of thirty (30) days each, which such extensions shall each be exercisable on five (5) days prior written notice to Lender) or such additional period as may be agreed to by Lender in its reasonable discretion and (B) such Sponsor Cure Period (as the same may be extended pursuant to clause (A) above) shall only be available hereunder to the extent that GE Sponsor and/or Venture is diligently and in good faith pursuing all available means to cause the events specified in clause (i) or clause (ii) above to occur as quickly as possible.

(o) **"TIC Assumption"** shall mean the transfer of the ownership interest in the Property currently held by one (or, in the case of a transfer to a Rady SPE or a GE SPE, both) of

the entities comprising the defined term "Borrower" hereunder to (i) the other party comprising the defined term "Borrower" hereunder, (ii) a Rady SPE or (iii) a GE SPE (each of the foregoing, an **"Assuming Borrower"**) and such Assuming Borrower's assumption of the Debt and the other obligations of the transferring Borrower hereunder and under the other Loan Documents in accordance with the terms and conditions set forth in Section 8.4 above; provided, that, no such TIC Assumption shall be permitted hereunder (A) if the same would result in (I) more than two (2) tenants-in-common owning the Property or (II) each such tenant-in-common Borrower not being 51% owned (directly or indirectly) and Controlled by the Sponsor and (B) more frequently than once in any calendar year (unless otherwise consented to in writing by Lender); provided, that, Borrower shall have the one time right to have a TIC Assumption occur twice in the same calendar year."

4. Representations, Warranties and Covenants. Borrower hereby affirms and remakes each of the representations, warranties and covenants contained in the Loan Documents as of the date hereof (including, without limitation, those related to ERISA).

5. Recordation. Borrower shall promptly cause this Agreement to be filed, registered, or recorded in such manner and in such places as may be required by law in order to publish notice of and fully to protect the lien of the Security Instrument upon, and the interest of Lender in, the Property and Borrower hereby agrees to pay all fees, charges, taxes, and costs associated with such recordation.

6. No Offsets, Counterclaims/Due Authority. Borrower represents, warrants, and covenants, that there are no offsets, counterclaims or defenses against the Debt or the Loan Documents (and the undersigned representative of Borrower, if any) has full power, authority, and legal right to execute this Agreement and to keep and observe all of the terms of this Agreement on Borrower's part to be observed or performed.

7. Conflicts. Except as expressly modified pursuant to this Agreement, all of the terms, covenants, and provisions of the Security Instrument shall continue in full force and effect. In the event of any conflict or ambiguity between the terms, covenants, and provisions of this Agreement and those of the Security Instrument, the terms, covenants, and provisions of this Agreement shall control.

8. No Waiver or Modification. The parties hereto agree that, except as specifically set forth herein, this Agreement does not amend, waive, satisfy, terminate, diminish or otherwise modify any of the terms, conditions, provisions and/or agreements contained in the Loan Documents, and Borrower hereby acknowledges and agrees that said Loan Documents are in full force and effect as amended hereby.

9. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State of California and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the state of California and applicable laws of the United States of America, except that at all times the provisions for the creation, perfection, and enforcement of the lien and security interest created pursuant hereto and pursuant to the other loan documents shall be governed by and construed according to the law of the State in which the Property is located, it being understood that, to the fullest extent permitted by the law of such state, the law of the State of California shall govern the construction, validity and enforceability of all loan documents and all of the obligations arising thereunder.

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

11. Liability; Successors and Assigns. If any party hereto consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns forever.

12. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

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

14. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

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

16. Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto and supercedes all prior agreements and understandings among the parties hereto relating to the subject matter hereof. Accordingly, this Agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties hereto. There are no unwritten or oral agreements between the parties hereto.

[NO FURTHER TEXT ON THIS PAGE]

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

LENDER:

BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation

By: /s/ Michael A. Forastiere
Name: Michael A. Forastiere
Title: Managing Director

WAIKELE RESERVE WEST HOLDINGS, LLC
a Delaware limited liability company

By: /s/ John Chamberlain
John Chamberlain, President

By: /s/ Robert Barton
Robert Barton, CFO

WAIKELE VENTURE HOLDINGS, LLC
a Delaware limited liability company

By: /s/ John Chamberlain
John Chamberlain, President

By: /s/ Robert Barton
Robert Barton, CFO

EXHIBIT A

LEGAL DESCRIPTION

(attached hereto)

EXHIBIT A

LEGAL DESCRIPTION – WAIKELE CENTER

PARCEL FIRST: (TMK: (1) 9-4-007-056)

All of that certain parcel of land situate at Waipio, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

Lot 13213-B, area 9.772 acre, more or less, as shown on Map 1005, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1000 of John Ii Estate, Limited.

TOGETHER WITH the following appurtenant easements:

(1) Crossings Numbers 3, 4, 5, 6 and 7 over Kamehameha Highway, and Crossing Number 28 over Government Main Road, as more particularly described in Exchange Deed between John Ii Estate, Limited, State of Hawaii and Oahu Sugar Company, Limited, dated June 13, 1934, recorded in the Bureau of Conveyances of the State of Hawaii in Book 1243 at Page 270, being certain of the easements mentioned in paragraph (7) of the list of appurtenant rights and easements in Certificate of Title No. 51,587.

(2) Easements over Lot 2-C more particularly described in Exchange Deed in favor of the State of Hawaii, being Document No. 64386, recorded in the Bureau of Conveyances of the State of Hawaii in Book 1708 at Page 468, noted on Original Certificate of Title No. 13,843, and on Transfer Certificate of Title No. 26,248 issued to the State of Hawaii.

Together also with non-exclusive rights of access appurtenant to Lot I3213, to be used in common with all others entitled thereto, over and across Roadway Lot 13813, as shown on Map 837, Roadway Lot 13193, as shown on Map 819, and Roadway Lots 13 and 14, as shown on File Plan No. 2057; provided, however, whenever any or all of said roadway lots are conveyed or dedicated to and accepted by the City and County of Honolulu or other governmental authority for use as public roadways or any part thereof shall be so dedicated and accepted, such rights of access over and across such roadway lots or part thereof so dedicated and accepted shall automatically terminate, reserving, however, unto Amfac Property Investment Corp., its successors and/or assigns, the right to so convey or dedicate such roadway lots to the City and County of Honolulu or other governmental authority for use as public roadways.

Being all of the property described in and covered by Transfer Certificate of Title No. 716,235 and _____.

PARCEL SECOND: (TMK (1) 9-4-007-054)

(Item A)

All of that certain parcel of land situate at Waipio, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

Lot 13211-B, area 12.686 acre, more or less, as shown on Map 1004, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No, 1000 of John Ii Estate, Limited.

TOGETHER WITH the following appurtenant easements:

(1) Crossings Numbers 3, 4, 5, 6 and 7 over Kamehameha Highway, and Crossing Number 28 over Government Main Road, as more particularly described in Exchange Deed between John Ii Estate, Limited, State of Hawaii and Oahu Sugar Company, Limited, dated June 13, 1934, recorded in the Bureau of Conveyances of the State of Hawaii in Book 1243 at Page 270, being certain of the easements mentioned in paragraph (7) in the list of appurtenant rights and easements in Certificate of Title No. 51,587.

(2) Easements over Lot 2-C more particularly described in Exchange Deed in favor of the State of Hawaii, being Document No. 64386, recorded in the Bureau of Conveyances of the State of Hawaii in Book 1708 at Page 468, noted on Original Certificate of Title No. 13,843, and on Transfer Certificate of Title No. 26,428 issued to the State of Hawaii.

Being all of the property described in and covered by Transfer Certificate of Title No. 716,235, and _____.

(Item B)

All of that certain parcel of land situate at Waikele, District of Ewa, City and County of Honolulu, State of Hawaii, being LOT 9, of the “WAIKELE DEVELOPMENT PHASE II”, as shown on File Plan No. 2057, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 19.179 acres, more or less.

AS TO PARCEL SECOND (Items A and B)

Together with non-exclusive rights of access to be used in common with all others entitled thereto, over and across Roadway Lot 13813, as shown on Map 837, Roadway Lot 13193, as shown on Map 819, and Roadway Lots 13 and 14, as shown on File Plan 2057, provided, however, whenever any or all of said roadway lots are conveyed or dedicated to and accepted by the City and County of Honolulu or other governmental authority for use as public roadways or any part thereof shall be so dedicated and accepted, such rights of access over and across such roadway lots or part thereof so dedicated and accepted shall automatically terminate, reserving, however, unto Amfac Property Investment Corp., its successors and/or assigns, the right to so convey or dedicate such roadway lots to the City and County of Honolulu or other governmental authority for use as public roadways.

NOTE: Lot 13211, as shown on Map 820, filed with Land Court Application No. 1000 of the John Ii Estate, Limited and Lot 9, as shown on File Plan No. 2057, shall not be sold separately, as set forth by Land Court Order No. 104945, filed December 9, 1991.

(Item C)

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 5732, Land Commission Award Number 8241 to Inone Ii) situate, lying and being at Waipio, District of Ewa, City and County of Honolulu, State of Hawaii, being REMAINDER PARCEL 14 of the "Interstate Highway" Federal Aid Project No. I-H-1(22), Kunia Interchange to Waiawa Interchange, being also a portion of Reservoir Lot, Exclusion 1 of Land Court Application 1000, and thus bounded and described:

Beginning at the southeast corner of this piece of land, being also the southwest corner of Lot 13,213, Map 820 of Land Court Application No. 1000, on the north side of Interstate Highway, Federal Aid Project No. I-H1-1(22), the coordinates of said point of beginning referred to "Hawaiian Plane Coordinate Grid System, Zone III" (Central Meridian 158 00' 00") being 85,628.69 feet north and 497,650.29 feet east, thence running by azimuths measured clockwise from true South:

1. 68º 52' 50" 10.86 feet along the north side of interstate Highway, Project no. I-H1-1(22)
2. 338º 52' 50" 20.00 feet along same

3.	68º	52’	50”	72.00	feet along same
4.	158º	52’	50”	20.00	feet along same
5.	68	52’	50”	20.00	
6.	172º	25’	37.7”	84.01	feet along Lot 13,211, map 820 of Land Court Application 1000
7.	262º	25’	37.7”	100.00	feet along same
8.	352º	25’	37.7”	59.92	feet along Lot 13,213, map 820 of Land Court Application 1000 to the point of beginning and containing an area of 8,686 square feet or 0.198 acre, more or less.

Exhibit 10.21

WAIKELE RESERVE WEST HOLDINGS, LLC
and **WAIKELE VENTURE HOLDINGS, LLC**
(collectively, as Borrower)

and

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,
as Lender

NOTE SEVERANCE
AND LOAN DOCUMENT MODIFICATION AGREEMENT

Dated: As of November 3, 2004

Lender's Counsel:

Dechert LLP
30 Rockefeller Plaza
New York, New York 10112

Attention: Gerard Keegan, Esq.

THIS NOTE SEVERANCE AND LOAN DOCUMENT MODIFICATION AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "**Agreement**") dated as of November 3, 2004 between **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 (together with its successors and assigns, "**Lender**") and **WAIKELE RESERVE WEST HOLDINGS, LLC,** a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**West**") and **WAIKELE VENTURE HOLDINGS, LLC,** a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**Venture**"; West and Venture are individually or collectively (as the context requires) referred to herein as **"Borrower"**).

W I T N E S S E T H

WHEREAS, Lender has made a loan to Borrower in the original aggregate principal amount of $140,700,000 (the **"Loan"**), which such Loan was secured by, among other things, that certain Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing dated as of October 28, 2004 (together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to herein as the "**Mortgage**");

WHEREAS, Lender is owner and holder of the following promissory notes evidencing the Loan: (i) that certain Promissory Note A-1 given by Venture to Lender dated as of the date hereof (the **"A-1 Note**"), (ii) that certain Promissory Note A-2 given by West to Lender dated as of the date hereof (the **"A-2 Note**")**,** (iii) that certain Promissory Note A-3 given by Venture to Lender dated as of the date hereof (the **"A-3 Note**") of even date herewith, (iv) that certain Promissory Note A-4 given by West to Lender dated as of the date hereof (the **"A-4 Note";** each of the A-1 Note, the A-2 Note, the A-3 Note and the A-4 Note shall collectively be referred to herein as the "**Original Notes**");

WHEREAS, there is now owing and unpaid on the Original Notes the aggregate principal sum of $140,700,000, together with interest thereon; and

WHEREAS, Lender and Borrower have agreed to split each Original Note into two (2) substitute notes and to effect such splitting as hereinafter provided;

NOW, THEREFORE, in consideration of the mutual agreements herein expressed, the parties hereto covenant and agree as follows:

1. Concurrently with the execution and delivery of this Agreement, Borrower agrees that it shall execute and deliver each of the following (collectively referred to as the **"Substitute Notes"**):

(a) a substitute note made by Venture to Lender in an amount equal to $30,721,845 ("**Substitute Note A-1**");

(b) a substitute note made by Venture to Lender in an amount equal to $30,721,845 ("**Substitute Note A-2**");

(c) a substitute note made by West to Lender in an amount equal to $7,970,655 ("**Substitute Note A-3**");

(d) a substitute note made by West to Lender in an amount equal to $7,970,655 ("**Substitute Note A-4**");

(e) a substitute note made by Venture to Lender in an amount equal to $25,136,055 ("**Substitute Note A-5**");

(f) a substitute note made by Venture to Lender in an amount equal to $25,136,055 ("**Substitute Note A-6**");

(g) a substitute note made by West to Lender in an amount equal to $6,521,445 ("**Substitute Note A-7**"); and

(h) a substitute note made by West to Lender in an amount equal to $6,521,445 ("**Substitute Note A-8**").

2. All accrued but unpaid interest on: (a) the A-1 Note as of the date hereof shall be allocated on a " 50/50" basis between Substitute Note A-1 and Substitute Note A-2; (b) the A-2 Note as of the date hereof shall be allocated on a " 50/50" basis between Substitute Note A-3 and Substitute Note A-4; (c) the A-3 Note as of the date hereof shall be allocated on a " 50/50" basis between Substitute Note A-5 and Substitute Note A-6; and (d) the A-4 Note as of the date hereof shall be allocated on a " 50/50 " basis between Substitute Note A-7 and Substitute Note A-8. Upon Borrower's delivery of duly executed original versions of each Substitute Note, Lender hereby agrees that it shall return to Borrower each Original Note marked "replaced and cancelled" or other similar notation evidencing the foregoing.

3. The parties hereto do hereby certify that the Mortgage will continue to secure, in the aggregate, the same principal indebtedness as is secured by the Mortgage immediately prior to the severance effected hereby, and that neither this Agreement nor the Substitute Notes creates or secures any new or further indebtedness or obligation other than the Debt or obligation secured by or which under any contingency may be secured by the Mortgage immediately prior to the severance effectuated hereby, and shall not be deemed to create or secure, or be construed as creating or securing, any new or further indebtedness.

4. The parties hereto hereby acknowledge and agree that the Loan Documents are hereby modified as follows:

(a) The first recital of the Mortgage is hereby deleted and replaced with the following:

"Borrower by (i) that certain Substitute Note A-1 given to Lender dated as of the date hereof (the **"A-1 Note**"), (ii) that certain Substitute Note A-2 given to Lender dated as of the date hereof (the **"A-2 Note**"), (iii) that certain Substitute Note A-3 given to Lender dated as of the date hereof (the **"A-3 Note**") of even date herewith, (iv) that certain Substitute Note A-4 given to Lender dated as of the date hereof (the **"A-4 Note"**), (v) that certain Substitute Note A-5 given to Lender dated as of the date hereof (the **"A-5 Note"**), (vi) that certain Substitute Note A-6 given to

Lender dated as of the date hereof (the **"A-6 Note"**), (vii) that certain Substitute Note A-7 given to Lender dated as of the date hereof (the **"A-7 Note"**) and (viii) that certain Substitute Note A-8 given to Lender dated as of the date hereof (the **"A-8 Note"**; each of the A-1 Note, the A-2 Note, the A-3 Note, the A-4 Note, the A-5 Note, the A-6 Note, the A-7 Note and the A-8 Note, together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to herein as the "**Note**") is indebted to Lender in the aggregate principal sum of $140,700,000 (the "**Loan**") in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note.".

(b) The second recital of that certain Liability Agreement between Borrower and Lender dated as of October 28, 2004 is hereby deleted and replaced with the following:

"WHEREAS, the Loan is (a) evidenced by (i) that certain Substitute Note A-1 given to Lender dated as of the date hereof (the **"A-1 Note**"), (ii) that certain Substitute Note A-2 given to Lender dated as of the date hereof (the **"A-2 Note**"**),** (iii) that certain Substitute Note A-3 given to Lender dated as of the date hereof (the **"A-3 Note**") of even date herewith, (iv) that certain Substitute Note A-4 given to Lender dated as of the date hereof (the **"A-4 Note"**), (v) that certain Substitute Note A-5 given to Lender dated as of the date hereof (the **"A-5 Note"),** (vi) that certain Substitute Note A-6 given to Lender dated as of the date hereof (the **"A-6 Note"**), (vii) that certain Substitute Note A-7 given to Lender dated as of the date hereof (the **"A-7 Note"**) and (viii) that certain Substitute Note A-8 given to Lender dated as of the date hereof (the **"A-8 Note"**; each of the A-1 Note, the A-2 Note, the A-3 Note, the A-4 Note, the A-5 Note, the A-6 Note, the A-7 Note and the A-8 Note, together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively or individually (as the context requires) be referred to as the "**Note**" or the **"Notes"**); and (b) secured by certain real property and other collateral mortgaged and pledged to Lender by Borrowers (such collateral, together with the liens secured thereby, the "**Collateral**") pursuant to a certain Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing dated as of the date hereof (the **"Security Instrument"**) encumbering the Collateral;".

5. Capitalized terms not defined herein shall have the meanings ascribed to them in the Mortgage.

6. Borrower represents, warrants and covenants that, as of the date hereof, there are, to Borrower's best knowledge, no offsets, counterclaims or defenses against the Debt, this Agreement or the other Loan Documents and that Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Agreement and to keep and observe all of the terms of this Agreement on Borrower's part to be observed or performed, and that the Loan Documents constitute valid and binding obligations of Borrower.

7. Except as expressly modified pursuant to this Agreement, all of the terms, covenants and provisions of the Loan Documents, including without limitation, all exculpation provisions, shall continue in full force and effect. In the event of any conflict or ambiguity between the terms, covenants and provisions of this Agreement and those of the other Loan Documents, the terms, covenants and provisions of this Agreement shall control.

8. This Agreement, and any provisions hereof, may not be modified, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

9. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns.

10. This Agreement may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

11. If any term, covenant or condition of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the applicable laws of the United States of America.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower and Lender have executed this Note Severance and Loan Document Modification Agreement as of the day and year first above written.

BORROWER:

WAIKELE RESERVE WEST HOLDINGS, LLC
a Delaware limited liability company

By: /s/ John Chamberlain
John Chamberlain, President

By: /s/ Robert Barton
Robert Barton, CFO

WAIKELE VENTURE HOLDINGS, LLC
a Delaware limited liability company

By: /s/ John Chamberlain
John Chamberlain, President

By: /s/ Robert Barton
Robert Barton, CFO

ACKNOWLEDGED AND AGREED:

AMERICAN ASSETS, INC., a California corporation

By: /s/ John Chamberlain
John Chamberlain, President

By: /s/ Robert Barton
Robert Barton, CFO

LENDER:

BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation

By: /s/ Richard A. Ruffer, Jr.
Name: Richard A. Ruffer, Jr.
Title: Managing Director

[NO FURTHER TEXT ON THIS PAGE]

Exhibit 10.22

SUBSTITUTE NOTE

$[_____]

San Diego, California
November [__], 2004

FOR VALUE RECEIVED, [_____]**,** a [_____], having an address at [_____] (**"Borrower"**), as maker, hereby unconditionally promises to pay to the order of **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 (together with its successors and assigns, **"Lender**") or at such other place as the holder hereof may from time to time designate in writing, the aggregate principal sum of [_____] DOLLARS ($[_____]), in lawful money of the United States of America, with interest thereon to be computed from October 28, 2004 (the **"Closing Date"**) at the Applicable Interest Rate (defined below), and to be paid in installments as follows:

ARTICLE 1: PAYMENT TERMS

(a) A payment on the Closing Date on account of all interest that will accrue on the principal amount of the Loan from and after the Closing Date through and including the last day of October, 2004;

(b) A payment (the "**Monthly Payment**") equal to the amount of interest which has accrued during the preceding Interest Accrual Period (defined below) computed at the Applicable Interest Rate (defined below) on the first (1st) day of December, 2004 and on the first (1st) day of each calendar month thereafter (each such date to be hereinafter referred to as a "**Monthly Payment Date**") up to and including the first (1st) day of October, 2014, with each Monthly Payment to be applied to the payment of interest which has accrued during the preceding Interest Accrual Period;

(c) The balance of the principal sum and all interest thereon shall be due and payable on November [__], 2014 (the "**Maturity Date**").

(d) Interest on the principal sum of this Note shall be calculated by multiplying the actual number of days elapsed in the period for which interest is being calculated by a daily rate based on a 360-day year.

(e) As used herein, the term "**Interest Accrual Period**" shall mean (i) for the first such period, the period beginning on the Closing Date and ending on (but including) the last day of October, 2004, and (ii) with respect subsequent period beginning with the period immediately following the period described in subsection (i) above, the period beginning on the first day of each calendar month during the term hereof and ending on (but including) the last day of such calendar month.

ARTICLE 2: INTEREST

The term "**Applicable Interest Rate**" for the purposes hereof and each other Loan Document shall mean an interest rate equal to 5.1452% per annum.

ARTICLE 3: DEFAULT AND ACCELERATION

(a) The whole of the principal sum of this Note and the Other Note (defined below), (b) interest, default interest, late charges and other sums, as provided in this Note, the Other Note, the Security Instrument or the Other Security Documents (defined below), (c) all other monies agreed or provided to be paid by Borrower in this Note, the Other Note, the Security Instrument or the Other Security Documents, (d) all sums advanced pursuant to the provisions of the Security Instrument to protect and preserve the Property (defined below) and the lien and the security interest created thereby, and (e) all reasonable sums advanced and costs and expenses incurred by Lender pursuant to the provisions of this Note, the Other Note, the Security Instrument or the Other Security Documents in connection with the Debt (defined below) or any part thereof, any renewal, extension or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender (all the sums referred to in (a) through (e) above shall collectively be referred to as the "**Debt**") shall without notice become immediately due and payable at the option of Lender if (i) any payment required in this Note or the Other Note is not paid on or before the date the same is due, or (ii) Borrower commits any other default, and fails to cure same prior to the expiration of any applicable notice and grace periods, herein or under the terms of the Security Instrument or any of the Other Security Documents (collectively, an "**Event of Default**").

ARTICLE 4: DEFAULT INTEREST

Borrower does hereby agree that upon the occurrence of an Event of Default, Lender shall be entitled to receive and Borrower shall pay interest on the entire unpaid principal sum at a rate equal to the lesser of (a) four percent (4%) plus the Applicable Interest Rate and (b) the maximum interest rate which Borrower may by law pay (the "**Default Rate**"). The Default Rate shall be computed from the occurrence of the Event of Default until the earlier of the date upon which the Event of Default is cured or waived or the date upon which the Debt is paid in full. Interest calculated at the Default Rate shall be added to the Debt, and shall be deemed secured by the Security Instrument. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default.

ARTICLE 5: PREPAYMENT; DEFEASANCE

Except as otherwise expressly permitted by this Article 5, no voluntary prepayments, whether in whole or in part, of the Loan or any other amount at any time due and owing under this Note or the Other Note can be made by Borrower or any other Person without the express written consent of Lender.

(a) Lockout Period. Borrower has no right to make, and Lender shall have no obligation to accept, any voluntary prepayment, whether in whole or in part, of the Loan during the Lockout Period (defined below). Notwithstanding the foregoing, if either (i) Lender, in its sole and absolute discretion, accepts a full or partial voluntary prepayment during the Lockout

Period or (ii) there is an involuntary prepayment during the Lockout Period, then, in either case, Borrower shall, in addition to any portion of the Loan prepaid (together with all interest accrued and unpaid thereon), pay to Lender a prepayment premium in an amount calculated in accordance with subsection (c) below. The term "**Lockout Period**" shall mean the period commencing on the Closing Date and ending on the Maturity Date.

(b) Defeasance.

(i) Notwithstanding any provisions of this Article 5 to the contrary, including, without limitation, subsection (a) of this Article 5, at any time other than during a REMIC Prohibition Period (defined below), Borrower may cause the release of the Property from the lien of the Security Instrument and the other Loan Documents (and, subject to Borrower's satisfaction of clause (iii) under this subsection (b), a release of Borrower and Indemnitor (as defined in that certain Indemnity Agreement dated as of the Closing Date among Borrower, American Assets, Inc. and Lender (the "**Indemnity Agreement**")) from any further liability or obligation under this Note, the Security Instrument or the Other Security Documents other than a liability or obligation (1) in connection with a provision of this Note, the Security Instrument or Other Security Document which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument or (2) which expressly survives pursuant to the Defeasance Assumption Agreement (defined below)) upon the satisfaction of the following conditions:

(A) no Event of Default shall exist under any of the Loan Documents;

(B) not less than sixty (60) (but not more than ninety (90)) days prior written notice shall be given to Lender specifying a date on which the Defeasance Collateral (as hereinafter defined) is to be delivered (the "**Release Date**"), such date being on a Monthly Payment Date; provided, however, that Borrower shall have the right (i) to cancel such notice by providing Lender with notice of cancellation ten (10) days prior to the scheduled Release Date, or (ii) to extend the scheduled Release Date until the next Monthly Payment Date; provided that in each case, Borrower shall pay all of Lender's costs and expenses incurred as a result of such cancellation or extension;

(C) all accrued and unpaid interest and all other sums due under this Note, the Other Note, the Security Instrument and under the Other Security Documents up to the Release Date, including, without limitation, all reasonable fees, costs and expenses incurred by Lender and its agents in connection with such release (including, without limitation, legal fees and expenses for the review and preparation of the Defeasance Security Agreement (as hereinafter defined) and of the other materials described in subsection (b)(i)(D) below and any related documentation, and any servicing fees, Rating Agency (as defined in the Security Instrument) fees or other reasonable costs related to such release), shall be paid in full on or prior to the Release Date;

(D) Borrower shall deliver to Lender on or prior to the Release Date:

(1) a pledge and security agreement, in form and substance satisfactory to a prudent lender, creating a first priority security interest in favor of Lender in the Defeasance Collateral (the "**Defeasance Security Agreement**"), which shall provide, among other things, that any excess amounts received by Lender from the Defeasance Collateral over the amounts payable by Borrower on a given Monthly Payment Date, which excess amounts are not required to cover all or any portion of amounts payable on a future Monthly Payment Date, shall be refunded to Borrower promptly after each such Monthly Payment Date;

(2) direct non-callable obligations of the United States of America or other obligations which are "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940 (to the extent the applicable Rating Agencies rating the Securities have confirmed in writing that the same will not cause a downgrade, withdrawal or qualification of the initial, or, if higher, then applicable ratings of the Securities) that provide for payments prior and as close as possible to (but in no event later than) all successive Monthly Payment Dates occurring after the Release Date, with each such payment being equal to or greater than the amount of the corresponding Monthly Payment required to be paid under this Note and the Other Note (including all amounts due on the Maturity Date) for the balance of the term hereof (the "**Defeasance Collateral**"), each of which shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance wholly satisfactory to Lender in its sole discretion (including, without limitation, such certificates, documents and instruments as may be required by the depository institution holding such securities or the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the Defeasance Security Agreement the first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing granting of such security interests;

(3) a certificate of Borrower certifying that all of the requirements set forth in this subsection (b)(i) have been satisfied;

(4) one or more opinions of counsel for Borrower in form and substance and delivered by counsel which would be satisfactory to a prudent lender stating, among other things, that (i) Lender has a perfected first priority security interest in the Defeasance Collateral and that the Defeasance Security Agreement is enforceable against Borrower in accordance with its terms, (ii) in the event of a bankruptcy proceeding or similar occurrence with respect to Borrower, none of the Defeasance Collateral nor any proceeds thereof will be property of Borrower's estate

under Section 541 of the U.S. Bankruptcy Code or any similar statute and the grant of security interest therein to Lender should not constitute an avoidable preference under Section 547 of the U.S. Bankruptcy Code or applicable state law, (iii) the release of the lien of the Security Instrument and the pledge of Defeasance Collateral will not directly or indirectly result in or cause any "real estate mortgage investment conduit" within the meaning of Section 860D of the Internal Revenue Code that holds this Note and the Other Note (a "**REMIC Trust**") to fail to maintain its status as a REMIC Trust and (iv) the defeasance will not cause any REMIC Trust to be an "investment company" under the Investment Company Act of 1940;

(5) a certificate in form and scope acceptable to Lender in its sole discretion from an Acceptable Accountant (defined below) certifying that the Defeasance Collateral will generate amounts sufficient to make all payments of principal and interest due under this Note and the Other Note (including the scheduled outstanding principal balance of the Loan due on the Maturity Date). The term "**Acceptable Accountant**" shall mean a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender; and

(6) such other certificates, documents and instruments as Lender may reasonably require; and

(E) in the event the Loan is held by a REMIC Trust, Lender has received written confirmation from each Rating Agency rating any Securities (as defined in the Security Instrument) that substitution of the Defeasance Collateral will not result in a downgrade, withdrawal, or qualification of the ratings then assigned to any of the Securities.

(ii) Upon compliance with the requirements of subsection (b)(i), the Property shall be released from the lien of the Security Instrument and the Other Security Documents, and the Defeasance Collateral shall constitute the sole collateral which shall secure this Note and the Other Note and all other obligations under the Loan Documents. Lender will, at Borrower's expense, execute and deliver any agreements reasonably requested by Borrower to release the lien of the Security Instrument and the Other Security Documents from the Property and will, subject to Borrower's satisfaction of clause (iii) under this subsection (b), cause a release of Borrower and Indemnitor from any further liability or obligation under this Note, the Security Instrument or the Other Security Documents other than a liability or obligation (1) in connection with a provision of this Note, the Security Instrument or Other Security Document which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument or (2) which expressly survives pursuant to the Defeasance Assumption Agreement.

(iii) Upon the release of the Property in accordance with this subsection (b), Borrower shall assign all its obligations and rights under this Note and the Other Note, together with the pledged Defeasance Collateral, to a successor entity designated and approved by Lender in its reasonable discretion ("**Successor Borrower**"). Successor Borrower shall execute an assignment and assumption agreement (the "**Defeasance Assumption Agreement**") in form and substance satisfactory to Lender in its sole and absolute discretion pursuant to which it shall assume Borrower's obligations under this Note, the Other Note and the Defeasance Security Agreement. As conditions to such assignment and assumption, Borrower shall (A) deliver to Lender one or more opinions of counsel in form and substance and delivered by counsel which would be satisfactory to a prudent Lender stating, among other things, that such Defeasance Assumption Agreement is enforceable against Borrower and the Successor Borrower in accordance with its terms and that this Note, the Other Note, the Defeasance Security Agreement and the other Loan Documents, as so assigned and assumed, are enforceable against the Successor Borrower in accordance with their respective terms, and opining to such other matters relating to Successor Borrower and its organizational structure as Lender may reasonably require, and (B) pay all fees, costs and expenses incurred by Lender or its agents in connection with such assignment and assumption (including, without limitation, legal fees and expenses and for the review of the proposed transferee and the preparation of the assignment and assumption agreement and related certificates, documents and instruments and any fees payable to any Rating Agencies and their counsel in connection with the issuance of the confirmation referred to in subsection (b)(i)(E) above). Upon such assignment and assumption, Borrower and Indemnitor shall be relieved of their obligations under this Note, under the Other Note, under the other Loan Documents and under the Defeasance Security Agreement, except for any liability or obligation (1) in connection with a provision of this Note, the Other Note, the Security Instrument or any Other Security Document which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument or (2) which expressly survives pursuant to the Defeasance Assumption Agreement.

(iv) For purposes of this Article 5, "**REMIC Prohibition Period**" means the period commencing on the Closing Date and ending on the earlier to occur of (i) the first Monthly Payment Date occurring after the second anniversary of the "startup day" within the meaning of Section 860G(a)(9) of the Code of any REMIC Trust that holds this Note and the Other Note and (ii) the first Monthly Payment date occurring after the fourth anniversary of the Closing Date. In no event shall Lender have any obligation to notify Borrower that a REMIC Prohibition Period is in effect with respect to the Loan, except that Lender shall notify Borrower if any REMIC Prohibition Period is in effect with respect to the Loan after receiving any notice described in subsection (b)(i)(B); provided, however, that the failure of Lender to so notify Borrower shall not impose any liability on Lender or grant Borrower any right to defease the Loan during any such REMIC Prohibition Period.

(c) Involuntary Prepayment During the Lockout Period. During the Lockout Period, in the event of any involuntary prepayment of the Loan or any other amount under this Note, whether in whole or in part, in connection with or following Lender's acceleration of this Note

and the Other Note or otherwise, and whether the Security Instrument is satisfied or released by foreclosure (whether by power of sale or judicial proceeding), deed in lieu of foreclosure or by any other means, including, without limitation, repayment of the Loan by Borrower or any other Person pursuant to any statutory or common law right of redemption, Borrower shall, in addition to any portion of the principal balance of the Loan prepaid (together with all interest accrued and unpaid thereon and in the event the prepayment is made on a date other than a Monthly Payment Date, a sum equal to the amount of interest which would have accrued under this Note and the Other Note on the amount of such prepayment if such prepayment had occurred on the next Monthly Payment Date), pay to Lender a prepayment premium in an amount equal to the Yield Maintenance Premium (hereafter defined). As used above, the term **"Yield Maintenance Premium"** shall mean an amount equal to the greater of (i) 1% of the principal amount of the Loan being prepaid and (ii) an amount equal to the excess, if any, of (A) the sum of the present values of a series of payments payable at the times and in the amounts equal to the debt service payments (including, but not limited to the principal and interest payable on the Maturity Date) which would have been scheduled to be payable relative to the principal amount of the Loan being prepaid after the date of such tender under the Loan had the Notes not been prepaid, with each such payment discounted to its present value at the date of such tender at the rate which when compounded monthly is equivalent to the Prepayment Rate (as hereinafter defined) when compounded semi-annually, over (B) the principal amount of the Loan being prepaid. The term "**Prepayment Rate**" shall mean the bond equivalent yield (in the secondary market) on the United States Treasury Security that as of the Prepayment Rate Determination Date (hereinafter defined) has a remaining term to maturity closest to, but not exceeding, the remaining term to the Maturity Date, as most recently published in the "Treasury Bonds, Notes and Bills" section in The Wall Street Journal as of the date of the related tender of payment. If more than one issue of United States Treasury Securities has the remaining term to the Maturity Date referred to above, the "**Prepayment Rate**" shall be the yield on the United States Treasury Security most recently issued as of such date. The term "**Prepayment Rate Determination Date**" shall mean the date which is five (5) Business Days prior to the prepayment date. The rate so published shall control absent manifest error. If the publication of the Prepayment Rate in The Wall Street Journal is discontinued, Lender shall determine the Prepayment Rate on the basis of "Statistical Release H.15 (519), Selected Interest Rates," or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Lender may reasonably select.

(d) Insurance and Condemnation Proceeds; Excess Interest. Notwithstanding any other provision herein to the contrary, and provided no Event of Default exists, Borrower shall not be required to pay any prepayment premium in connection with any prepayment occurring solely as a result of (i) the application of insurance proceeds or condemnation proceeds pursuant to the terms of the Loan Documents, (ii) the application of any interest in excess of the maximum rate permitted by applicable law to the reduction of the Loan, or (iii) the exercise by Lender of any other right under the Loan Documents to apply an amount received by Lender to the principal balance of this Note or the Other Note, other than any exercise in connection with an Event of Default, which shall be controlled by the preceding paragraph (c).

(e) Intentionally Omitted.

(f) Limitation on Partial Prepayments. In no event shall Lender have any obligation to accept a partial prepayment.

(g) Prepayment and Defeasance of this Note and the Other Note. Notwithstanding anything to the contrary contained herein, any defeasance or prepayment permitted hereunder and consummated in accordance with the terms and conditions contained herein must occur simultaneously with a defeasance or prepayment permitted by (and consummated in accordance with the applicable terms and conditions of) the Other Note. Lender shall have no obligation to accept any payment or defeasance of this Note in accordance with the terms and provisions of this Note unless the Other Note is simultaneously prepaid or defeased, as applicable, in accordance with the terms and conditions of the Other Note.

ARTICLE 6: SECURITY

This Note is secured by the Security Instrument and the Other Security Documents. The term "**Security Instrument**" as used in this Note and the Other Note shall mean the Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing dated as of the Closing Date given by Borrower (among others) to Lender covering the fee simple estate of Borrower in certain premises located in Honolulu County, State of Hawaii, and other property, as more particularly described therein (collectively, the "**Property**") and intended to be duly recorded in said County. The term "**Other Security Documents**" as used in this Note shall mean all and any of the documents other than this Note, the Other Note or the Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guarantee payment of this Note. Whenever used, the singular number shall include the plural, the plural number shall include the singular, and the words "Lender" and "Borrower" shall include their respective successors, assigns, heirs, executors and administrators. The term "**Other Note**" as used herein shall refer, individually or collectively (as the context requires), to each Individual Note (as defined in the Security Instrument) other than this Note. Lender by acceptance of this Note hereby agrees to pursue its remedies under each Note executed by Borrower jointly and in a manner which is not more detrimental to Borrower than if Borrower executed only one Note.

All of the terms, covenants and conditions contained in the Other Note, the Security Instrument and the Other Security Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein.

ARTICLE 7: SAVINGS CLAUSE

This Note is subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance due hereunder at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Note, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of such maximum rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums

paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

ARTICLE 8: LATE CHARGE

If any monthly installment of principal and interest payable under this Note is not paid on the date on which it was due, Borrower shall pay to Lender upon demand an amount equal to the lesser of two and one half percent (2.5%) of the unpaid sum or the maximum amount permitted by applicable law to defray the expenses incurred by Lender in handling and processing the delinquent payment and to compensate Lender for the loss of the use of the delinquent payment and the amount shall be secured by the Security Instrument and the Other Security Documents.

ARTICLE 9: NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 10: JOINT AND SEVERAL LIABILITY

If there is more than one Borrower, the obligations and liabilities of each such person or party shall be joint and several.

ARTICLE 11: WAIVERS

Except as otherwise provided herein, in the Other Note, in the Security Instrument, or in the Other Security Documents, Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof or the Other Note or any installment thereof, and no alteration, amendment or waiver of any provision of this Note, the Other Note, the Security Instrument or the Other Security Documents made by agreement between Lender or any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other person or entity who may become liable for the payment of all or any part of the Debt, under this Note, the Other Note, the Security Instrument or the Other Security Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Other Note, the Security Instrument or the Other Security Documents. If Borrower is a partnership, the agreements herein contained shall remain in force and applicable, notwithstanding any changes in the individuals comprising the partnership. If Borrower is a corporation, the agreements contained herein shall remain in full force and applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation. If Borrower is a limited liability company, the

agreements contained herein shall remain in full force and applicable notwithstanding any changes in the members comprising, or the managers, officers or agents relating to, the limited liability company. The term "Borrower", as used herein, shall include any alternate or successor partnership, corporation, limited liability company or other entity or person to the Borrower named herein, but any predecessor partnership (and their partners), corporation, limited liability company, other entity or person shall not thereby be released from any liability except as otherwise provided in the Security Instrument or Other Security Documents. Nothing in this Article 11 shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership which may be set forth in the Security Instrument or any Other Security Document.

ARTICLE 12: INTENTIONALLY OMITTED

ARTICLE 13: WAIVER OF TRIAL BY JURY

BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THIS NOTE AND THE OTHER NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THIS NOTE AND THE OTHER NOTE, THIS NOTE, THE OTHER NOTE THE SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

ARTICLE 14: EXCULPATION

(a) Notwithstanding any contrary provisions contained herein or in the Other Note, the Security Instrument or the Other Security Documents (other than a provision herein or therein which expressly states that it is intended to override any exculpatory provisions of this Note or the Other Note), Lender shall not enforce the liability and obligation of Borrower, to perform and observe the obligations contained in this Note, the Other Note, the Security Instrument or the Other Security Documents by any action or proceeding wherein a money judgment shall be sought against Borrower or any partner or member of Borrower, except that Lender may bring a foreclosure action (where no deficiency judgment is sought against Borrower or any partner or member of Borrower), an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon this Note, the Other Note, the Security Instrument, the Other Security Documents, and the interests in the Property; and any other collateral given to Lender pursuant to the Security Instrument and the Other Security Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall not be enforceable against Borrower (or any partner or member of Borrower) except to the extent of Borrower's interest in the Property and in any other collateral given to Lender as security, and Lender, by accepting this Note, the Security Instrument and the Other Security Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower (or any partner or member of Borrower) in any such action or proceeding, under or by reason of or in connection with this Note, the Other Note, the Security Instrument or the Other Security Documents. The provisions of this paragraph shall

not, however, (1) constitute a waiver, release or impairment of any obligation evidenced or secured by this Note, the Other Note, the Security Instrument or the Other Security Documents; (2) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument, where Lender is required to do so in order to properly pursue such action (and subject to the above-described prohibition on suing for, seeking or demanding any deficiency judgment); (3) affect the validity or enforceability of any guaranty or indemnity made in connection with this Note, the Other Note, the Security Instrument or the Other Security Documents; (4) impair the right of Lender to obtain the appointment of a receiver; (5) impair the enforcement of any assignment; or (6) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any losses suffered by Lender arising out of the following:

(i) fraud or intentional misrepresentation by Borrower in connection with this Note, the Other Note, the Security Instrument or the Other Security Documents;

(ii) any material inaccuracy, error or omission contained in the rent roll of the Property certified to by Borrower in that certain Borrower's Certification executed in connection with the Loan

(iii) the failure of Borrower or Sponsor to remedy (after thirty (30) days notice thereof from Lender referencing this provision) any failure to provide financial information when and as required by the Security Instrument;

(iv) Willful Misconduct (as defined in the Indemnity Agreement) of Borrower in connection with Borrower's operation of the Property;

(v) the breach of provisions in this Note, the Other Note, the Security Instrument or the Other Security Documents concerning Environmental Laws and Hazardous Substances and any indemnification of Lender with respect thereto in any document;

(vi) the removal or disposal of any portion of the Property by Borrower after the occurrence and during the continuance of an Event of Default under this Note, the Other Note, the Security Instrument or the Other Security Documents;

(vii) the misapplication or conversion by Borrower of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Property, (B) any awards or other amounts received in connection with the condemnation of all or a portion of the Property, or (C) any Rents (other than as permitted by the Cash Management Agreement) after the occurrence and during the continuance of an Event of Default under this Note, the Other Note, the Security Instrument or the Other Security Documents;

(viii) any security deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to such foreclosure or action in lieu thereof;

(ix) the violation by Borrower of the representations or covenants contained in Section 4.3 of the Security Instrument;

(x) any matters set forth in Section 13.4 of the Security Instrument; or

(xi) Borrower's failure to making any required deposit to the Escrow Fund as required pursuant to the Security Instrument.

(b) Notwithstanding anything to the contrary in this Note, the Other Note, the Security Instrument or the Other Security Documents, the agreement of Lender not to pursue recourse liability as set forth in subsection (a) above SHALL BECOME NULL AND VOID and shall be of no further force and effect and the Debt shall be fully recourse to Borrower in the event that: (A) the first full Monthly Payment is not paid when due; (B) a Prohibited Transfer (as defined in the Security Instrument) occurs in violation of Article 8 of the Security Instrument; (C) Intentionally Omitted; or (D) if (I) an involuntary petition (other than the collusive involuntary petitions described in the following clause (II)) is filed against Borrower under the U.S. Bankruptcy Code or any other federal or state bankruptcy or insolvency law (collectively, the "**Insolvency Laws**") and is not dismissed within ninety (90) days of the filing thereof, or (II) Borrower files or consents to the filing against Borrower of a petition, voluntary or involuntary, under applicable Insolvency Laws, or any partner, member or equivalent person of Borrower, or any person acting in concert with Borrower or any of the foregoing persons, files or joins in the filing against Borrower of an involuntary petition under applicable Insolvency Laws.

(c) Nothing herein shall be deemed to be a waiver of any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with this Note, the Security Instrument or the Other Security Documents.

ARTICLE 15: AUTHORITY

Borrower (and the undersigned representative of Borrower, if any) represents that Borrower has full power, authority and legal right to execute and deliver this Note, the Other Note, the Security Instrument and the Other Security Documents and that this Note, the Other Note, the Security Instrument and the Other Security Documents constitute valid and binding obligations of Borrower, except as may be limited by (i) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and (ii) general principles of equity.

ARTICLE 16: APPLICABLE LAW

This Note shall be deemed to be a contract entered into pursuant to the laws of the State of California and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of California and applicable laws of the United States of America.

ARTICLE 17: SERVICE OF PROCESS

(a) Borrower will maintain a place of business or an agent for service of process in San Diego, California and give prompt notice to Lender of the address of such place of business

and of the name and address of any new agent appointed by it, as appropriate. Borrower further agrees that the failure of its agent for service of process to give it notice of any service of process will not impair or affect the validity of such service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of Borrower available to be served, and if it at that time has no place of business in San Diego, California then Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to the first paragraph hereof.

(b) Borrower initially designates John W. Chamberlain, with offices on the date hereof at 11455 El Camino Real, Suite 200, San Diego, California 92130, to receive for and on behalf of Borrower service of process with respect to this Note and the other Loan Documents.

ARTICLE 18: COUNSEL FEES

In the event that it should become necessary to employ counsel to collect the Debt or to protect or foreclose the security therefor, Borrower also agrees to pay all reasonable fees and expenses of Lender, including, without limitation, reasonable attorney's fees for the services of such counsel whether or not suit be brought.

ARTICLE 19: NOTICES

All notices or other written communications to Borrower or Lender hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Borrower or Lender at their addresses set forth in the Security Instrument or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

ARTICLE 20: MISCELLANEOUS

Except as otherwise specified herein (or in the Other Note, the Security Instrument or the Other Security Documents), wherever pursuant to this Note (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the reasonable determination of Lender applied in good faith. All approvals of or waivers by Lender in respect of any of the terms, conditions or requirements of this Note must be in writing. No waiver with respect to any condition, breach or other matter shall extend to or be taken in any manner whatsoever to affect any other condition, breach or matter or affect Lender's rights resulting therefrom. Whenever any payment to be made hereunder or under any other Loan Document shall be stated to be due on a day which is not a Business Day, the due date thereof shall be deemed to be the immediately succeeding Business Day, provided, however, with respect to the balloon payment due hereunder on the Maturity Date, if the Maturity Date does not occur on a Business Day, the Maturity Date shall be deemed to occur on the immediately preceding Business Day.

ARTICLE 21: DEFINITIONS

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Security Instrument and the Other Security Documents.

ARTICLE 22: SUBSTITUTION OF ORIGINAL NOTE

Borrower, and, by its acceptance hereof, Lender agree that this Note is made by Borrower and accepted by Lender, together with that certain Substitute Note A-[__] by Borrower to Lender and dated the date hereof in the principal amount of $[_____] ("**Substitute Note A-[__]**"), in substitution and replacement of that certain Promissory Note in favor of Lender in the original principal amount of $[_____] dated October 28, 2004 (the "**Original Note A-[__]**"), on which Original Note A-[__] there is now outstanding the aggregate principal amount of $[_____], and Borrower and, by its acceptance hereof, Lender agree that this Note, together with Substitute Note A-[__], evidences the same indebtedness evidenced by the Original Note A-[__] and does not create or evidence any new or additional indebtedness. Borrower further acknowledges and agrees that this Note is not intended to, nor shall it be construed to, constitute a novation of the Original Note A-[__] or Substitute Note A-[__] or the obligations contained therein.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

BORROWER:

[_____]
a [_____]

By: _____
[_____]

ADDENDUM TO NOTE

BY SIGNING BELOW, BORROWER EXPRESSLY ACKNOWLEDGES AND UNDERSTANDS THAT, PURSUANT TO THE TERMS OF THIS NOTE, BORROWER HAS AGREED THAT IT HAS NO RIGHT TO PREPAY THIS NOTE PRIOR TO THE MATURITY DATE (EXCEPT AS EXPRESSLY SET FORTH TO THE CONTRARY HEREIN) OR IN THE SECURITY INSTRUMENT, AND THAT IT SHALL BE LIABLE FOR THE PAYMENT OF THE PREPAYMENT PREMIUM FOR PREPAYMENT OF THIS NOTE UPON ACCELERATION OF THIS NOTE IN ACCORDANCE WITH ITS TERMS EXCEPT AS EXPRESSLY SET FORTH IN THE HEREIN OR IN THE SECURITY INSTRUMENT. FURTHER, BY SIGNING BELOW, BORROWER WAIVES ANY RIGHTS IT MAY HAVE UNDER SECTION 2954.10 OF THE CALIFORNIA CIVIL CODE, OR ANY SUCCESSOR STATUTE, AND EXPRESSLY ACKNOWLEDGES AND UNDERSTANDS THAT LENDER HAS MADE THE LOAN IN RELIANCE ON THE AGREEMENTS AND WAIVER OF BORROWER AND THAT LENDER WOULD NOT HAVE MADE THE LOAN WITHOUT SUCH AGREEMENTS AND WAIVER OF BORROWER.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Addendum to Note as of the day and year first above written.

BORROWER:

[_____]
a [_____]

By: _____
[_____]

Exhibit 10.23

RECORDING REQUESTED BY AND UPON
RECORDATION RETURN TO:
Dechert LLP
30 Rockefeller Plaza
New York, New York 10112-2200
Attention: Ellen M. Goodwin, Esq.

MSMCI Loan No. 05-29452

LANDMARK VENTURE HOLDINGS, LLC,

and

LANDMARK FIREHILL HOLDINGS, LLC,

collectively, as trustor

(Borrower)

to

CHICAGO TITLE COMPANY, as trustee

(Trustee)

for the benefit of

MORGAN STANLEY MORTGAGE CAPITAL INC., as beneficiary

(Lender)

DEED OF TRUST AND SECURITY AGREEMENT

Dated: June 13, 2005

THIS DEED OF TRUST AND SECURITY AGREEMENT (this **"Security Instrument"**) is made as of the 13th day of June, 2005, by **LANDMARK VENTURE HOLDINGS, LLC,** a Delaware limited liability company, having an address at c/o American Assets, Inc., 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**Venture**") and **LANDMARK FIREHILL HOLDINGS, LLC**, a Delaware limited liability company, having an address at c/o American Assets, Inc., 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**Firehill**"; Venture and Firehill are individually or collectively (as the context requires) referred to herein as **"Borrower"**), as trustor, in favor of **CHICAGO TITLE COMPANY,** a California corporation, having an office at One Kaiser Plaza Suite 745, Oakland, Ca. 94612 (**"Trustee"**), as trustee, for the benefit of **MORGAN STANLEY MORTGAGE CAPITAL INC.**, a New York corporation, having an address at 1221 Avenue of the Americas, New York, New York 10020 (together with its successors and assigns, **"Lender"**), as beneficiary.

RECITALS:

Borrower by (i) that certain Promissory Note A-1 given to Lender dated as of the date hereof (the **"A-1 Note"**) and (ii) that certain Promissory Note A-2 given to Lender dated as of the date hereof (the **"A-2 Note"**; each of the A-1 Note and the A-2 Note, together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to herein as the **"Note"**) is indebted to Lender in the aggregate principal sum of $133,000,000 (the **"Loan"**) in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note.

Borrower desires to secure the payment of the Debt (as defined in Article 2) and the performance of all of the Other Obligations (as defined in Article 2).

Article 1. GRANTS OF SECURITY

Section 1.1. PROPERTY GRANTED. For the purpose of securing payment and performance of the Obligations (as defined in Article 2), Borrower, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration in hand paid, the receipt of which hereby is acknowledged, and the further consideration, uses, purposes and trusts herein set forth and declared, has granted, deeded, sold, bargained, transferred, assigned, set-over and conveyed and by these presents does grant, deed, bargain, sell, transfer, assign, set-over and convey unto Trustee, and unto his or its successors in the trust hereby created and his or its assigns, forever, and grant a security interest in (each for the benefit of Lender and its successors and assigns) all of Borrower's right, title and interest in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the **"Property"**):

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

(b) Annex Sublease. That certain (i) Agreement of Lease (together with the following documents and any other amendments, modifications, supplements, restatements or replacements of such Agreement of Lease, collectively, the **"Annex Sublease"**) dated August 7, 1975 between Southern Pacific Land Company (as predecessor-in-interest to Borrower) and One

Market Plaza (as predecessor-in-interest to EOP-One Market, L.L.C.) (collectively, together with its successors and assigns, the **"Annex SL"**), as such Annex Sublease was (A) referenced of record by that certain (I) Memorandum of Lease dated March 24, 1998 and recorded April 15, 1998 in the Official Records of the City and County of San Francisco (the **"Recorder's Office"**) as instrument number 98-335037 and (II) Amended and Restated Memorandum of Lease dated as of May 5, 2000 and recorded on November 28, 2000 in the Recorder's Office as Document # 2000-G868967-00 in the Official Records and (B) amended by that certain (I) Amendment No. 1 dated June 29, 1976, (II) Commencement Date Agreement dated June 30, 1976, (III) Amendment No. 2 dated October 1, 1977, (IV) Assignment and Assumption of Lease dated September 28, 1988, (V) Consent to Assignment dated March 13, 1989, (VI) Third Amendment dated November 27, 1995, (VII) Assignment and Assumption of Lease dated April 15, 1998 and recorded on April 15, 1998 in the Recorder's Office as instrument number 98-335038, (VIII) Consent to Assignment dated March 24, 1998, (IX) Fourth Amendment dated March 5, 2000, (X) Agreement of Subordination, Non-Disturbance and Attornment dated May 5, 2000 and recorded in the Recorder's Office on August 18, 2000 in Reel H704 at Image 208 in Series 2000-G815489, (XI) Fifth Amendment dated and intended to be recorded on or about the date hereof, and (XII) Sixth Amendment dated and intended to be recorded on or about the date hereof (such agreement, together with any amendments, restatements, replacements (including, without limitation, any new agreements provided in connection with a new lender of the Prime Lessor (as defined below) and/or Annex SL) or other modifications thereof, collectively, the **"Annex SNDA"**); and (ii) leasehold estate created by the Annex Sublease (the **"Leasehold Estate"**);

(c) Assignments/Modifications. All assignments, modifications, extensions and renewals of the Annex Sublease and all credits, deposits, options, privileges and rights of Borrower as subtenant under the Annex Sublease, including, but not limited to, rights of first refusal, if any, and the right, if any, to renew or extend the Annex Sublease for a succeeding term or terms, and also including all the right, title, claim or demand whatsoever of Borrower either in law or in equity, in possession or expectancy, of, in and to Lender's right, as subtenant under the Annex Sublease, to elect under Section 365(h)(1) of the Bankruptcy Code (defined below) to terminate or treat the Annex Sublease as terminated in the event (i) of the bankruptcy, reorganization or insolvency of Annex SL, and (ii) the rejection of the Annex Sublease by Annex SL, as debtor in possession, or by a trustee for Annex SL, pursuant to Section 365 of 11 U.S.C. §101 et seq., as the same may be amended from time to time (the **"Bankruptcy Code"**);

(d) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument (including, without limitation, the fee interest in the land currently subject to the Annex Sublease);

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

(f) Easements. All easements, rights of way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties,

servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

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

(h) Leases and Rents. All leases and other agreements (other than the Master Lease (defined below) and the Annex Sublease) affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into(with the term "leases", as used in this subsection and elsewhere herein, being deemed to be inclusive of any subleases, sub-subleases or similar derivative estates to the extent that the parties thereto are (or are deemed to be) in contractual privity with Borrower) and any guaranty of any of the foregoing leases (each, a **"Lease"** or, collectively, the **"Leases"**) and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements (the **"Rents"**), subject to the license to collect and use such Rents pursuant to the provisions of Section 3.7 below, and all proceeds from the sale or other disposition of the Leases;

(i) Master Lease. That certain Lease, Sublease and Agreement (the "**Master Lease**") between Borrower, as landlord, and Landmark-SF, Inc., a Delaware corporation, as tenant (the "**Master Lessee**") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder, if any, to secure the performance by Master Lessee of its obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements (the "**Master Lease Rents**"), subject to the license to collect and use the same pursuant to the provisions of Section 3.7 below, and all proceeds from the sale or other disposition of the Master Lease, if any;

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

(k) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property (whether or not Borrower is required to carry such insurance by Lender hereunder), including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property, subject to the provisions hereof;

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

(m) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof (including, without limitation, that certain Inter-Building Operational Agreement dated as of January 12, 1993 and recorded in the Recorder's Office on January 25, 1993 in Reel F801, Image 267 and Series No. F278390, as amended by that certain First Amendment to Inter-Building Operational Agreement dated as of September 15, 1999 (such agreement, as amended as described and as the same may be further amended, restated, replaced or otherwise modified, collectively, the **"Inter-Building Operational Agreement"**)) and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

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

(p) Letter of Credit Rights. All letter of credit rights (whether or not the letter of credit is evidenced by a writing) Borrower now has or hereafter acquires relating to the properties, rights, titles and interest referred to in this Section 1.1;

(q) Tort Claims. All commercial tort claims Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(r) Borrower Accounts. All payments for goods or property sold or leased or for services rendered arising from the operation of the Land and the Improvements, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper;

(s) Reserve Accounts. All reserves, escrows and deposit accounts required under the Loan Documents and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(t) TIC Agreement. Borrower's contract rights under that certain Amended and Restated Tenancy-in-Common Agreement executed by and among Venture and Firehill and dated on or about the date hereof (such agreements, together with all amendments, restatements, memoranda or other modifications thereof (including, without limitation, the Amended TIC Agreement (defined below)), collectively and as applicable, the **"TIC Agreement"**);

(u) Assignments/Modifications of TIC Agreement. Borrower's contract rights under all assignments, modifications, extensions and renewals of the TIC Agreement and all credits, deposits, options, privileges and rights of Venture and/or Firehill under the TIC Agreement, including, but not limited to, any rights of first refusal relating thereto arising under Section 363(i) of the Bankruptcy Code;

(v) Proceeds. All proceeds of any of the foregoing items set forth in subsections (a) through (r); and

(w) Other Rights. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (t) above.

Section 1.2. ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents and the Master Lease and Master Lease Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Notwithstanding the foregoing or anything to the contrary contained herein (including, without limitation, Section 3.7 and Article 11 hereof), until the earlier of (i) such time as Lender obtains a judicial order authorizing foreclosure of the Land pursuant to the provisions hereof or (ii) recordation of a Notice of Sale establishing the date of a trustee's sale of the Land pursuant to which the Trustee will exercise the power of sale granted herein (such event being herein referred to as a **"Foreclosure Trigger"**), all Rents and Master Lease Rents shall be deposited, held and applied pursuant to that certain Restricted Account Agreement by and among Borrower and Lender (among others) (the **"Restricted Account Agreement"**) and that certain Cash Management Agreement dated as of the date hereof between Borrower and Lender (the **"Cash Management Agreement"**).

Section 1.3. SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations, a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code. To the extent permitted by law, Borrower and Lender agree that with respect to all items of Personal Property, which are or will become fixtures on the Land, this Security Instrument, upon recording or registration in the real estate records of the

proper office, shall constitute a “fixture filing” within the meaning of the applicable provisions of the Uniform Commercial Code of the State of California. Borrower is the record owner of the Land.

Section 1.4. PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies belonging to Borrower which are now or hereafter held by Lender, and which are (i) deposited in the Escrow Fund (as defined in Section 3.5), (ii) Net Proceeds (as defined in Section 4.4), and/or (iii) condemnation awards or payments described in Section 3.6, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto Trustee, as trustee for the benefit of Lender, to its successor in the trust created by this Security Instrument, and to its or their respective assigns forever, in trust, however, upon the terms and conditions set forth herein;

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

PROVIDED, HOWEVER, these presents are upon the express condition that, when all of the Obligations have been paid in full, Beneficiary shall request Trustee in writing to reconvey the Property, and shall surrender this Security Instrument and all notes and instruments evidencing the Obligations to Trustee.

Article 2. PAYMENTS

Section 2.1. DEBT AND OBLIGATIONS SECURED. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the **“Debt”**): (a) the payment of the indebtedness evidenced by the Note in lawful money of the United States of America; (b) the payment of interest, prepayment premiums, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the Other Security Documents (defined below); (c) the payment of all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument or the Other Security Documents (collectively sometimes referred to herein as the **“Loan Documents”**); (d) the payment of all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; (e) the payment of all sums reasonably advanced and costs and expenses reasonably incurred (including unpaid or unreimbursed servicing and special servicing fees) by Lender in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of all other obligations of Borrower contained herein and the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any

part of this Security Instrument, the Note, or the Other Security Documents (collectively, the **"Other Obligations"**). Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the **"Obligations**.**"**

Section 2.2. PAYMENTS. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall not cure any then-existing Event of Default (defined below).

Article 3. BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1. PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

Section 3.2. INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Note (the **"Other Security Documents"**), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3. INSURANCE.

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall obtain and maintain, or cause to be maintained, during the entire term of this Security Instrument policies of insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk insurance (**"Special Form"**) including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Loan; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of Twenty-Five Thousand and No/100 Dollars

($25,000.00) for all such insurance coverage and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the Full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such lesser amount as Lender shall require; and (z) earthquake insurance in amounts and in form and substance reasonably satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance required to be maintained pursuant to clauses (y) and (z) above shall be on terms consistent with the Special Form policy required pursuant to this subsection (i). Notwithstanding anything to the contrary in this Security Instrument, the insurance coverage described in the foregoing subparagraphs (y) and (z) shall be required (1) as of the date hereof only if determined to be necessary by Lender based upon its reasonable evaluation of third party reports, and (2) at any time hereafter in the event subsequent third party reports indicate a change in the condition of or circumstances surrounding the Property;

(ii) rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an annual aggregate amount equal to 100% of all rents or estimated gross revenues from the operation of the Property (as reduced to reflect actual vacancies and expenses not incurred during a period of Restoration) and covering rental losses for a period of at least twelve (12) months, after the date of the casualty, and notwithstanding that the Policy may expire prior to the end of such period; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the Personal Property has been repaired, the continued loss of income will be insured until such income returns to the same level it was prior to the loss, or the expiration of six (6) months from the date of the completion of the Restoration, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such rental loss insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Property for the succeeding twelve (12) month period and a reasonable vacancy factor acceptable to Lender. All proceeds payable to Lender pursuant to this subsection (the **"Rent Loss Proceeds"**) shall be disbursed by Lender to Borrower immediately following Lender's receipt thereof, provided no Event of Default is then in existence; provided, however, (i) if a Cash Management Period (as defined in the Cash Management Agreement) then exists, such proceeds shall be deposited into the Cash Management Account (as defined in the Cash Management Agreement) and disbursed in accordance with the applicable terms and conditions of the Cash Management Agreement (provided, further, that in the event such Rent Loss Proceeds are paid in a lump sum in advance, Lender shall hold such Rent Loss Proceeds in a segregated interest-bearing escrow account and Lender shall estimate the number of months required for Borrower to restore the damage caused by the applicable casualty, shall divide the applicable aggregate Rent Loss Proceeds by such number of months and shall disburse such monthly installment of Rent Loss Proceeds from such escrow account into the Cash Management Account each month during the performance of such Restoration), and (ii) that nothing herein

contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form referenced in subsection (i), above, does not otherwise apply, (A) owner's contingent or protective liability insurance, otherwise known as Owner Contractor's Protective Liability, covering claims not covered by or under the terms or provisions of the commercial general liability insurance policy in (v) below; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(iv) comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(v) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars ($2,000,000.00) in the aggregate and One Million and No/100 Dollars ($1,000,000.00) per occurrence; (B) to continue at not less than the aforesaid limit until reasonably required to be changed by Lender as provided in subsection 3.3(b) below; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability and (5) contractual liability covering the indemnities contained in Section 13.1 to the extent the same is available;

(vi) automobile liability coverage for all owned and non-owned vehicles, if any, used by Borrower in the operation of the Property, including rented and leased vehicles containing minimum limits per occurrence of One Million and No/100 Dollars ($1,000,000.00);

(vii) umbrella liability insurance in an amount not less than Ten Million and No/100 Dollars ($10,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above, including, but not limited to, supplemental coverage for workers' compensation and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (vi) above;

(viii) so-called "dramshop" insurance, if applicable, or other liability insurance required in connection with the sale of alcoholic beverages; and

(ix) upon sixty (60) days' written notice, such other reasonable insurance such as sinkhole or land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 3.3(a) shall be obtained under valid and enforceable policies (collectively, the **"Policies"** or in the singular, the **"Policy"**), and (i) shall be issued by financially sound and responsible insurance companies reasonably approved by Lender, and authorized or licensed to do business in the state where the Property is located, with claims paying ability/financial strength ratings of "AA" or better by S&P (as defined in the Cash Management Agreement) and Fitch (as defined in the Cash Management Agreement) and "Aa2" or better by Moody's (as defined in the Cash Management Agreement) and general policy ratings of A or better and financial classes of X or better by A.M. Best Company, Inc.; (ii) shall name Borrower as the insured and Lender as an additional insured, as its interests may appear; (iii) in the case of property damage, boiler and machinery and, if required pursuant to the provisions hereof, flood and earthquake insurance, shall contain a so called New York Non Contributory Standard Mortgagee Clause and (other than those strictly limited to liability protection) a Lender's Loss Payable Endorsement (Form 438 BFU NS), or their equivalents, naming Lender as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Lender; (v) shall be maintained throughout the term of this Security Instrument without cost to Lender; (vi) shall be assigned and, if requested in writing by Lender, the originals (or duplicate originals certified to be true and correct by the applicable insurer or its agent) delivered to Lender; (vii) shall contain such provisions, consistent with the provisions hereof, as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements or clauses providing that (I) neither Borrower, Lender nor any other party shall be a co insurer under said Policies, (II) that Lender shall receive at least ten (10) days prior written notice of any modification, reduction or cancellation of any Policy, (III) no act or negligence of Borrower, or anyone acting for Borrower, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned, (IV) Lender shall not be liable for any Insurance Premiums (defined below) thereon or subject to any assessments thereunder, and (V) such Policies do not exclude coverage for acts of terror or similar acts of sabotage. Any blanket Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 3.3(a) and (viii) shall, to the extent applicable, provide coverage for the Annex Restoration Work. Borrower shall pay the premiums for such Policies (the **"Insurance Premiums"**) as the same become due and payable and shall furnish to Lender evidence of the renewal of each of the new Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided that such Insurance Premiums have not been paid to Lender or Lender's servicing agent pursuant to Section 3.5 hereof). If Borrower does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any apparently expiring Policy, then Lender may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Borrower agrees to reimburse Lender for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like;

provided, however, such increased coverages shall not be requested more frequently than once every three years, and shall only be requested if such coverage is commercially available at commercially reasonable rates and such rates are consistent with those paid in respect of comparable properties in comparable locations, and Lender also reasonably determines that either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including without limitation, investment banks) to such owners are generally requiring that such owners maintain such insurance.

(c) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be approved by Lender (the **"Restoration"**) and otherwise in accordance with Section 4.4 of this Security Instrument; provided, however, after the occurrence of an Annex Lease Event occurring as a result of Annex SL's election to exercise its unilateral right under Section 17.01 and/or 17.02 of the Annex Sublease to terminate the Annex Sublease after a casualty (the **"Permitted Annex Termination (Casualty)"**), Borrower's sole Restoration obligations with respect to the Annex Premises (defined below) shall be to satisfy the Annex Restoration Conditions (defined below). Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. In case of loss covered by Policies, Lender may either (1) settle and adjust any claim, or (2) allow Borrower to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that (A) provided no Event of Default shall have occurred and be continuing, Borrower may adjust losses aggregating not in excess of the Threshold Amount (defined below) if such adjustment is carried out in a competent and timely manner and (B) if no Event of Default shall have occurred and be continuing, Lender shall not settle or adjust any such claim under clause (1), above, without the consent of Borrower, which consent shall not be unreasonably withheld or delayed. In any case Lender shall and is hereby authorized to collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Borrower to Lender upon demand.

Section 3.4. PAYMENT OF TAXES, ETC. (a) Subject to the provisions of Sections 3.4(b) and 3.5 hereof, Borrower shall pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the **"Taxes"**), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the **"Other Charges"**), and all charges for utility services provided to the Property prior to the same becoming delinquent. Borrower will deliver to Lender, promptly upon Lender's written request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge against the Property arising out of such Taxes, Other Charges and utility service charges. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish to Lender, promptly upon Lender's written request, paid receipts for the payment of the Taxes and Other Charges.

(b) Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the Other Security Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, and (vii) Borrower shall have furnished the security as may be required in the proceeding to insure the payment of any contested Taxes, together with all interest and penalties thereon.

Section 3.5. ESCROW FUND. Except as provided below, Borrower shall pay to Lender on the first day of each calendar month (a) one twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months and (b) one twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the amounts in (a) and (b) above shall be called the **"Escrow Fund"**). Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has obtained knowledge and authorizes Lender or its agent to obtain the bills for Taxes and Other Charges directly from the appropriate taxing authority. The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Lender will timely apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3.3 and 3.4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 3.3 and 3.4 hereof, Lender shall promptly return any excess to Borrower. In disbursing such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Escrow Fund shall be payable to Borrower. Notwithstanding the foregoing, Borrower shall not be required to make deposits to the Escrow Fund for Taxes or Insurance Premiums pursuant to this Section 3.5 so long as (i) no Event of Default occurs and is continuing hereunder, (ii) Borrower pays all Taxes and Insurance Premiums by no later than ten (10) Business Days (defined below) prior to the delinquency thereof, and (iii) Borrower provides Lender paid receipts for the payment of the Taxes and Insurance Premiums by no later than one (1) Business Day prior to the delinquency thereof. Upon the occurrence of a failure of any of the conditions specified in clauses (i) through (iii) above, Borrower shall, upon Lender's demand

therefor, commence making the deposits to the Escrow Fund required pursuant to this Section 3.5 commencing with the next Monthly Payment Date (as defined in the Note), which payments shall continue until Borrower corrects each such failure.

Section 3.6. CONDEMNATION. Borrower shall (a) promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting the Land and/or the Improvements, (b) deliver to Lender copies of any and all papers served in connection with such proceedings and (c) shall promptly commence and diligently prosecute the Restoration of the Property in accordance with Section 4.4 hereof; provided, however, after the occurrence of an Annex Lease Event occurring as a result of a termination of the Annex Sublease pursuant to Section 18.01 thereof (the "**Permitted Annex Termination (Condemnation)";** together with the Permitted Annex Termination (Casualty), collectively or individually (as the context requires) the **"Permitted Annex Termination"**), Borrower's sole Restoration obligations with respect to the Annex Premises shall be to satisfy the Annex Restoration Conditions. Lender is hereby irrevocably appointed as Borrower's attorney in fact coupled with an interest, with exclusive powers to collect, receive and apply to the Debt (or provide to Borrower to pay for Restoration) any award or payment for any taking accomplished through a condemnation or eminent domain proceeding and, at any time during which an Event of Default has occurred and is continuing, to make any compromise or settlement in connection therewith. All condemnation awards or proceeds shall be either (i) paid to Lender for application against the Debt or (ii) applied to Restoration of the Property in accordance with Section 4.4 hereof. Notwithstanding any taking by any public or quasi public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. Any award or payment to be applied to the reduction or discharge of the Debt or any portion thereof may be so applied whether or not the Debt or such portion thereof is then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been or may be sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the unpaid portion of the Debt.

Notwithstanding anything contained in this Section 3.6 or this Security Instrument to the contrary, but subject to the provisions of Section 4.4, below, Lender may elect to (y) apply the net proceeds of any condemnation award (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) in reduction of the Debt in such order and manner as Lender may elect, whether due or not, or (z) make the proceeds available to Borrower for the restoration or repair of the Property. Any implied covenant in this Security Instrument restricting the right of Lender to make such an election is waived by Borrower. In addition, Borrower hereby waives the provisions of any law prohibiting Lender from making such an election.

Section 3.7. LEASES AND RENTS. (a) Borrower does hereby absolutely and unconditionally assign to Lender, Borrower's right, title and interest in the Master Lease and the Master Lease Rents and in all current and future Leases and Rents, it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Lender shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Lender. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereafter be requested by Lender to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section 3.7, Lender grants to Borrower a revocable license (revocable only as provided herein) to operate and manage the Property and to collect, retain, and enjoy the Rents and the Master Lease Rents pursuant to (and as such license may be limited by) the terms and conditions contained in the Restricted Account Agreement and the Cash Management Agreement. Furthermore, notwithstanding anything to contrary contained herein and notwithstanding the rights granted to Lender pursuant to this Section 3.7, all Rents and Master Lease Rents shall be deposited, held and applied pursuant to the provisions of the Restricted Account Agreement and the Cash Management Agreement. Upon the occurrence of a Foreclosure Trigger, the license granted to Borrower herein shall automatically be revoked (subject to automatic reinstatement upon Borrower's cure of the applicable Event of Default), and Lender shall, subject to the provisions of the Other Security Documents, immediately be entitled to possession of all Rents and Master Lease Rents, whether or not Lender enters upon or takes control of the Property. Subject to the provisions of the Other Security Documents, Lender is hereby granted by Borrower the right, at its option, during any period of revocation of the license granted herein, to enter upon the Property in person, by agent or by court appointed receiver to collect the Rents. Any Rents and/or Master Lease Rents collected during the revocation of the license shall, subject to any contrary provision of the Other Security Documents, be applied by Lender against the Debt, in such order and priority as it may determine. Notwithstanding the foregoing, in the event of any conflict or inconsistency between the terms and provisions of this Section 3.7(a) and those contained in that certain Assignment of Leases and Rents executed by Borrower in connection with the Loan (the **"ALR"**), the terms and conditions of the ALR shall control and govern (other than with respect to the provisions of this Section 3.7(a) that relate to the Master Lease and Master Lease Rents).

(b) All Leases entered into after the date hereof shall be written on (i) the standard form of lease which has been approved by Lender (the **"Standard Form"**) or (ii) an Acceptable Chain Tenant Form (defined below). Commercially reasonable changes may be made to the Lender-approved standard lease or an Acceptable Chain Tenant Form without the prior written consent of Lender in the ordinary course of Borrower's business. All Leases (including any Acceptable Chain Tenant Form) shall provide that they are subordinate to this Security Instrument (subject to Lender's agreement (by Lender's acceptance of this Security Instrument hereby given) not to disturb such tenant's tenancy while they are in compliance with the terms of their Lease) and that the tenant thereunder agrees to attorn to Lender. As used herein, the term **"Acceptable Chain Tenant Form"** shall mean the form of lease promulgated by a prospective national or regional chain tenant that generally insists, on a programmatic or institutional basis (although an occasional exception to such requirement shall not cause this provision to fail), on using its own form of lease; provided, that, the provisions contained in such form of lease (i) are commercially reasonably for properties similar to the Property, (ii) do not contain any rights,

options (including, without limitation, rights to purchase the Property or any interest therein) or obligations that would be unacceptable to a prudent secondary market lender substantially similar to Lender and (iii) do not have a Material Adverse Effect (defined below). As used herein, the term **"Material Adverse Effect"** shall mean a material adverse effect on (i) the Property, (ii) the business, profits, prospects, management, operations or condition (financial or otherwise) of Borrower, Guarantor or the Property, (iii) the enforceability, validity, perfection or priority of the lien of this Security Instrument or the other Loan Documents, or (iv) the ability of Borrower to perform its obligations under this Security Instrument or the other Loan Documents.

(c) Borrower (i) shall observe and perform all material obligations imposed upon the lessor under the Leases under the Master Lease and shall not do or permit to be done anything to impair the value of the Leases or the Master Lease as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall receive thereunder; (iii) shall not collect any of the Rents or Master Lease Rents more than one (1) month in advance (other than security deposits and prepaid first and last month's rent collected in the ordinary course of Borrower's business); and (iv) shall not execute any other assignment of the lessor's interest in the Leases or the Rents or in the Master Lease or the Master Lease Rents (provided, however, that the assignment of rights and the delegation of duties contained in the Master Lease shall not be deemed a violation of the foregoing proscription on assignments). Borrower (A) shall enforce all material terms, covenants and conditions contained in the Leases and the Master Lease upon the part of the lessees thereunder to be observed or performed, short of termination thereof and short instituting litigation (provided, that, Borrower shall be obligated to so institute litigation if the failure to do so would have a Material Adverse Effect); (B) may alter, modify or change the terms of the Leases in any material respect without the prior written consent of Lender, provided that such alterations, modifications or changes are commercially reasonable alterations, modifications or changes agreed to in the ordinary course of Borrower's business; (C) shall not, without Lender's consent, convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights, or a termination or diminution of the obligations of, tenants under the Leases; and (D) may approve or consent to any assignment of or subletting under the Leases in accordance with the terms of such Leases, without the prior written consent of Lender.

(d) Borrower, as the lessor thereunder, may enter into proposed lease renewals and new leases without the prior written consent of Lender, provided each such proposed lease: (i) shall provide for rental rates and terms agreed to in an arm's length transaction; (ii) shall be to a tenant which Borrower reasonably determines to be capable and reputable; and (iii) shall comply with the provisions of subsection (b) above (except that any lease renewals may be on the same form as the original lease). Borrower may enter into a proposed lease which does not satisfy all of the conditions set forth in clauses (i) through (iii) immediately above, provided Lender consents in writing to such proposed lease, such consent not to be unreasonably withheld or delayed. Borrower expressly understands that any and all proposed leases are included in the definition of "Lease" or "Leases" as such terms may be used throughout this Security Instrument, the Note and the Other Security Documents. Borrower shall furnish Lender with executed copies of all Leases and any amendments or other agreements pertaining thereto.

(e) Notwithstanding anything to the contrary contained herein or in any other Loan Document, Borrower shall not, without the prior written consent of Lender, enter into, renew

(other than in accordance with its express terms), extend (other than in accordance with its express terms), terminate (for reasons other than non-payment of rent), reduce rents under, permit an assignment or subleasing of (other than, in each case, in accordance with its express terms) or otherwise amend, modify or waive any material or economic provisions of, accept a surrender of space under, or shorten the term of, any Major Lease or any instrument guaranteeing or providing credit support for any Major Lease; provided, that, the foregoing shall not be deemed to prohibit the Master Lease Termination (defined below). As used herein, the term **"Major Lease"** shall mean (i) the Master Lease, (ii) any Lease which, individually or when aggregated with all other Leases at the Property with the same tenant or any Affiliate (defined below) of such tenant, demises 8% or more of the Property's net rentable square footage, (iii) any Lease which contains any option, offer, right of first refusal or other similar entitlement to purchase all or any portion of the Property (which such rights shall be deemed to be exclusive of any rights under any Lease to extend the term thereof or to lease additional space at the Property) or (iv) any instrument guaranteeing or providing credit support for any Lease meeting the requirements of (ii) or (iii) above. As used above, the term **"Affiliate"** shall mean, with respect to any tenant under any Lease at the Property, any affiliate of such tenant, unless such affiliate (i) operates under a separate trade name and under a separate corporate or other similar division from such tenant and (ii) is otherwise treated as a separate tenant under a separate Lease by Borrower.

(f) Notwithstanding anything to the contrary contained herein, to the extent Lender's prior approval is required for any leasing matters set forth in this Section, Lender shall have ten (10) Business Days from receipt of written request and all required information and documentation relating thereto in which to approve or disapprove such matter, provided that such request to Lender is marked in bold lettering with the following language: "LENDER'S RESPONSE IS REQUIRED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF A DEED OF TRUST BETWEEN THE UNDERSIGNED AND LENDER". In the event that Lender fails to respond to the leasing matter in question within such time, Lender's approval shall be deemed given for all purposes. Borrower shall provide Lender with such information and documentation as may be reasonably required by Lender, including, without limitation, lease comparables and other market information as reasonably required by Lender. Lender shall not be entitled to any fee or reimbursement in connection with any such review and approval process in excess of the reasonable fees or reimbursements customarily charged by lenders or servicers of secondary market loans similar to the Loan for actions similar to the foregoing. Further, in no event will Borrower be responsible for any attorneys' fees in connection with such review and approval process except to the extent that any such attorney is engaged to (i) negotiate modifications to such proposed Lease required in order to make such Lease acceptable to Lender or (ii) review material deviations in such Lease from the Standard Form.

(g) Notwithstanding the foregoing, (I) any Lease executed on or after the date hereof and prior to the Master Lease Termination shall expressly provide that in the event the Master Lease is terminated, the Tenant under such Lease shall automatically attorn to Borrower as Landlord thereunder, and (II) Borrower shall, within five (5) days of the consummation of the 1031 Exchange Transfer (hereafter defined), (i) cause the landlord's interest in each of the Leases at the Property (excluding the Master Lease) to be transferred to each of Venture and Firehill (in their capacity as tenants-in-common and fee owners of the Property), to the extent not

already held by them, in a manner which is enforceable under Applicable Law, (ii) cause the portion of the name of each of the Accounts (as defined in the Cash Management Agreement) relating to the Master Lessee to be changed to the name of Borrower, (iii) cause the Master Lessee's interest in the Management Agreement to be transferred to Borrower (to the extent such transfer does not automatically occur pursuant to the express terms and conditions of the Management Agreement), (iv) after the transfer in clause (i) above is consummated, terminate the Master Lease and (v) concurrently with the termination of the Master Lease, provide written notice of such termination to Lender together with all documents or other instruments evidencing such termination and the consummation of the conditions contained in (i) through (iv) above (satisfaction of (i) through (v) above is collectively herein referred to as the "**Master Lease Termination**").

(h) Notwithstanding anything to the contrary contained herein or in any other Loan Document, prior to the Master Lease Termination, any warranties, covenants or obligations of Borrower herein or in any Loan Document relating to the use or operation of the Property or any other provisions relating to items which, by virtue of the Master Lease, are wholly or partially within the Master Lessee's control, then each such warranty, covenant or obligation shall be deemed to impose an obligation upon Borrower to cause Master Lessee to comply with the applicable term or provision hereof or of the other Loan Documents and Borrower shall not be deemed to be relieved of any such warranty, covenant or obligation by virtue of the Master Lease.

(i) Within ten (10) Business Days after receipt of written request therefore and a copy of the executed corresponding Lease, Lender shall execute and deliver to Borrower a subordination, non-disturbance and attornment agreement (an **"SNDA"**) with respect to such Lease and any other Leases with Tenants appearing on the rent roll of the Property as of the date hereof. If the form of the SNDA shall be prescribed by the Lease in question, and Lender shall have approved (or been deemed to have approved (it being understood that all of the Leases on the rent roll of the Property as of the date hereof are deemed approved)) such Lease, Lender shall execute and deliver the SNDA in the form prescribed by such Lease. In the case of any other Lease or any Lease as to which Lender's approval is not required pursuant to the terms hereof where such tenant thereunder requests an SNDA, the SNDA to be executed and delivered by Lender shall be in substantially the form attached hereto as Exhibit B, as such form may be modified to reflect reasonable changes thereto negotiated by Lender and such tenant. Lender agrees to negotiate in good faith the terms of the SNDA with any tenant under any Lease. All reasonable attorneys' fees and disbursements incurred by Lender in connection with the negotiation of changes to such SNDA shall be payable by Borrower within ten (10) Business Days after Lender's written request therefore, whether or not the SNDA is ultimately executed and/or recorded. No attorney's fees will be charged for merely conforming such SNDA to the terms of the Lease in question (as opposed to material changes to the substantive content thereof).

(j) Notwithstanding anything to the contrary contained herein or in any other Loan Document, all Leases and renewals of Leases executed after the Anticipated Maturity Date shall be subject to Lender's prior approval, which approval may be granted or withheld in Lender's reasonable discretion.

Section 3.8. MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof which may have a Material Adverse Effect. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or abandoned without the express written consent of Lender.

Section 3.9. WASTE. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.10. COMPLIANCE WITH LAWS. Borrower shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted to affect the Property, or the use thereof (**"Applicable Laws"**). Borrower shall from time to time, upon Lender's request, based on Lender's belief, in the exercise of Lender's reasonable judgment, that the Property is in violation of any Applicable Law, provide Lender with evidence satisfactory to Lender that the Property complies with the Applicable Laws which Lender believes the Property is in violation of or is exempt from compliance with such Applicable Laws. Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

Section 3.11. BOOKS AND RECORDS. (a) Borrower shall keep adequate books and records of account in accordance with Borrower's current methods (which such methods are tax basis accounting) or such other method as may be acceptable to Lender in its reasonable discretion, in each case consistently applied (each or any of the foregoing, the **"Approved Accounting Method"**) and furnish to Lender:

(i) quarterly rent rolls signed, dated and certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) to be true and complete to the best knowledge of such person, detailing the names of all tenants of the Improvements, the portion of Improvements occupied by each tenant, the base rent and any other charges payable

under each Lease and the term of each Lease, including the expiration date, and any other information as is reasonably required by Lender, within thirty (30) days after the end of each calendar quarter;

(ii) a quarterly operating statement of the Property certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) to be true and complete to the best knowledge of such person, detailing the total revenues received, total expenses incurred, total capital expenditures (including, but not limited to, all capital improvements (including, but not limited to, tenant improvements)), leasing commissions and other leasing costs, total debt service and total cash flow, and if available, any quarterly operating statement prepared by an independent certified public accountant, within thirty (30) days after the close of each calendar quarter; and

(iii) an annual balance sheet and profit and loss statement of Borrower, prepared and certified by Borrower, and, if available, any financial statements prepared by an independent certified public accountant within ninety (90) days after the close of each fiscal year of Borrower.

(b)

(i) Upon request from Lender, Borrower and its affiliates shall furnish to Lender: (1) an accounting of all security deposits held in connection with any Lease of any part of the Property; and (2) an annual operating budget presented on a monthly basis consistent with the annual operating statement described above for the Property and all proposed capital replacements and improvements.

(ii) Beginning with the Fiscal Year (defined below) in which the Anticipated Maturity Date occurs, Lender shall have the right to approve each annual operating budget for the Property, which such budget shall set forth in reasonable detail budgeted monthly operating income and monthly budgeted operating capital and other expenses for the Property. Borrower shall submit to Lender (a) a draft operating budget in form and substance reasonably acceptable to Lender (i) for the Fiscal Year (defined below) in which the Anticipated Maturity Date occurs, no later than ten (10) days prior to the Anticipated Maturity Date, and (ii) for each Fiscal Year thereafter, no later than thirty (30) days prior to the commencement of such Fiscal Year; and (b) a final operating budget in form and substance reasonably acceptable to Lender (i) for the Fiscal Year in which the Anticipated Maturity Date occurs, by no later than the Anticipated Maturity Date, and (ii) for each Fiscal Year thereafter, no later than fifteen (15) days prior to the commencement of such Fiscal Year. In no event shall Lender be required to make any disbursements from the Borrower Expense Account (defined below) until Lender has received the Approved Annual Budget (defined below) for the applicable Fiscal Year. Prior to Lender's approval of a draft operating budget, the most recent Approved Annual Budget shall apply. Any annual operating budget approved by Lender in accordance with the terms hereof shall be referred to as an **"Approved Annual Budget"**.

(c) Borrower and its affiliates shall furnish Lender with such other additional financial or management information as may, from time to time, be reasonably required by Lender.

(d) Borrower shall provide Lender with the following financial statements if requested by Lender (it being understood that Lender shall request (i) full financial statements only if it anticipates that the principal amount of the Loan at the time of Securitization may, or if the principal amount of the Loan at any time during which the Loan is included in a Securitization does, equals or exceeds 20% of the aggregate principal amount of all mortgage loans included in the Securitization and (ii) summaries of such financial statements only if the principal amount of the Loan at any such time equals or exceeds 10% of such aggregate principal amount):

(i) As of the date of the closing of the Loan (the **"Closing Date"**), a balance sheet with respect to the Property for the two most recent fiscal years of Borrower or Sponsor (each such year, a **"Fiscal Year"**), meeting the requirements of Section 210.3-01 of Regulation S-X of the Securities Act (defined below) and statements of income and statements of cash flows with respect to the Property for the three most recent Fiscal Years, meeting the requirements of Section 210.3-02 of Regulation S-X, and, to the extent that such balance sheet is more than 135 days old as of the Closing Date, interim financial statements of the Property meeting the requirements of Section 210.3-01 and 210.3-02 of Regulation S-X (all of such financial statements, collectively, the **"Standard Statements"**); provided, however, to the extent the Property that has been acquired by Borrower from an unaffiliated third party (an **"Acquired Property"**) and as to which the other conditions set forth in Section 210.3-14 of Regulation S-X for the provision of financial statements in accordance with such Section have been met (other than any Property that is a hotel, nursing home or other property that would be deemed to constitute a business and not real estate under Regulation S-X and as to which the other conditions set forth in Section 210.3-05 of Regulation S-X for provision of financial statements in accordance with such Section have been met (a **"Business Property"**)), in lieu of the Standard Statements otherwise required by this Section, Borrower shall instead provide the financial statements required by such Section 210.3-14 of Regulation S-X ; provided, further, however, with respect to any Business Property which is an Acquired Property, Borrower shall instead provide the financial statements required by Section 210.3-05 (such Section 210.3-14 or Section 210.3-05 financial statements referred to herein as (**"Acquired Property Statements"**)).

(ii) Not later than 30 days after the end of each fiscal quarter following the Closing Date, a balance sheet of the Property as of the end of such fiscal quarter, meeting the requirements of Section 210.3-01 of Regulation S-X, and statements of income and statements of cash flows of the Property for the period commencing on the day following the last day of the most recent Fiscal Year and ending on the date of such balance sheet and for the corresponding period of the most recent Fiscal Year, meeting the requirements of Section 210.3-02 of Regulation S-X (provided, that if for such corresponding period of the most recent Fiscal Year Acquired Property Statements were permitted to be provided hereunder pursuant to paragraph (i) above, Borrower shall instead provide Acquired Property Statements for such corresponding period). If requested by Lender, Borrower shall also provide "summarized financial information," as defined in Section 210.1-02(bb) of Regulation S-X, with respect to such quarterly financial statements.

(iii) Not later than 60 days after the end of each Fiscal Year following the Closing Date, a balance sheet of the Property as of the end of such Fiscal Year, meeting the requirements of Section 210.3-01 of Regulation S-X, and statements of income and statements of

cash flows of the Property for such Fiscal Year, meeting the requirements of Section 210.3-02 of Regulation S-X. If requested by Lender, Borrower shall provide summarized financial information with respect to such annual financial statements.

(iv) Within ten (10) Business Days after notice from Lender in connection with the Securitization of this Loan, such additional financial statements, such that, as of the date (each a **"Disclosure Document Date"**) of each Disclosure Document (defined below), Borrower shall have provided Lender with all financial statements as described in paragraph (i) above; provided that the Fiscal Year and interim periods for which such financial statements shall be provided shall be determined as of such Disclosure Document Date.

(v) In the event Lender determines, in connection with a Securitization, that the financial statements required in order to comply with Regulation S-X or Applicable Laws are other than as provided herein, then notwithstanding the provisions of this Section, Lender may request, and Borrower shall promptly provide, such combination of Acquired Property Statements and/or Standard Statements as may be necessary for such compliance.

(vi) Any other or additional financial statements, or financial, statistical or operating information, as shall be required pursuant to Regulation S-X or other Applicable Laws in connection with any Disclosure Document or any filing under or pursuant to the Exchange Act in connection with or relating to a Securitization (hereinafter an **"Exchange Act Filing"**) or as shall otherwise be reasonably requested by Lender to meet disclosure, Rating Agency or marketing requirements.

(vii) All financial statements provided by Borrower pursuant to this Section 3.11(d) shall be prepared in accordance with GAAP, and shall meet the requirements of Regulation S-X and other Applicable Laws. If required in order to comply with Regulation S-X (given the size of the Loan as described in the introductory paragraph of this Section 3.11(d)), all financial statements relating to a Fiscal Year shall be audited by the independent accountants in accordance with generally accepted auditing standards, Regulation S-X and all other Applicable Laws, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation S-X and all other Applicable Laws, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as "experts" in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided. All other financial statements shall be certified by the chief financial officer of Borrower, which certification shall state that such financial statements meet the requirements set forth in the first sentence of this paragraph.

Section 3.12. PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist (subject to Borrower's right to contest any such matter as described below) beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the

security interests hereof. Nothing contained herein shall, however, affect or impair Borrower's ability to diligently and in good faith contest any lien or bill for labor or materials, provided that any lien placed upon the Property must be fully and irrevocably discharged (by bond or otherwise) at least 30 days prior to the date such lien could otherwise be foreclosed upon pursuant to Applicable Law.

Section 3.13. PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing an obligation secured hereby and any amendments, modifications or changes thereto.

Section 3.14. PROPERTY MANAGEMENT.

(a) Borrower shall (i) promptly perform and observe all of the covenants required to be performed and observed by it under the agreement between Manager and Borrower pursuant to which the manager of the Property (the **"Manager"**) is employed to perform management services for the Property (the **"Management Agreement"**) and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of any notice of default or other material notice received by Borrower under the Management Agreement; (iv) promptly give notice to Lender of any notice or information that Borrower receives which indicates that Manager is terminating the Management Agreement or that Manager is otherwise discontinuing its management of the Property; and (v) promptly enforce the performance and observance of all of the material covenants required to be performed and observed by Manager under the Management Agreement. Except in connection with a replacement of the Management Agreement with that certain Amended and Restated Management Agreement approved by Lender in connection the closing of the Loan (the **"Amended Management Agreement"**) (with Borrower and Lender hereby agreeing that after the Amended Management Agreement is put into place, all references herein and in the other Loan Documents to the "Management Agreement" shall be deemed to refer to the Amended Management Agreement), Borrower shall not, without the prior written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed): (I) surrender, terminate or cancel the Management Agreement or otherwise replace Manager or enter into any other management agreement with respect to the Property; (II) reduce or consent to the reduction of the term of the Management Agreement; (III) increase or consent to the increase of the amount of any charges under the Management Agreement; or (III) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. In the event that Borrower replaces Manager at any time during the term of Loan, such Manager shall be a Qualified Manager (defined below).

(b) During the existence of a Manager Termination Event (defined below), Borrower shall, at Lender's direction, immediately terminate the Management Agreement and enter into a new property management agreement reasonably acceptable to Lender with a management company reasonably acceptable to Lender, which such new property management company must (i) be a Qualified Manager, (ii) not be an affiliate of, or controlled by, Lender, and (iii) have not provided (nor agreed to provide) Lender (or its affiliates) with any compensation for being so

named. In the event Lender directs Borrower to engage a professional third party property manager, then Borrower shall engage such a property manager pursuant to an agreement reasonably acceptable to Lender, and Borrower and such manager shall execute an agreement acceptable to Lender conditionally assigning Borrower's interest in such management agreement to Lender and subordinating manager's right to receive fees and expenses under such agreement while the Debt remains outstanding. In no event shall Lender or Borrower be liable for any termination, severance or other fees to Manager or others resulting from any termination of any property management agreement (including, without limitation the Management Agreement).

(c) As used herein, (1) the term **"Qualified Manager"** shall mean (I) American Assets, Inc., CB Richard Ellis, Cushman and Wakefield or Cornish and Carey (unless such entity (A) is the entity being replaced as property manager or (B) (other than American Assets, Inc.) has suffered a material adverse change in its general business standing or reputation from that as exists as of the date hereof (as reasonably determined by Lender)), or (II) a reputable and experienced professional management organization (a) which manages, together with its affiliates, at least 2,000,000 square feet of gross leasable area (including all anchor space), exclusive of the Property and (b) approved by Lender, which approval shall not have been unreasonably withheld and for which Lender shall have received (i) written confirmation from the Rating Agencies (as defined in the Cash Management Agreement) that the employment of such manager will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization, and (ii) with respect to any Affiliated Manager (defined below), a New Non-Consolidation Opinion (defined below) and (2) the term **"Manager Termination Event"** shall be an event occurring upon (i) the occurrence of an Event of Default (which such Manager Termination Event shall continue until Borrower's cure, if applicable, of the applicable Event of Default and Lender's acceptance of such cure (whether voluntarily or required by law)), (ii) Manager becoming insolvent or a debtor in a proceeding under any applicable Insolvency Laws (as defined in the Note), (iii) the occurrence and continuance of a material default under the Management Agreement by Manager beyond any applicable grace, notice or cure periods or (iv) the occurrence of the Anticipated Maturity Date (as defined in the Note) without the Debt being repaid in full.

Article 4. SPECIAL COVENANTS

Borrower covenants and agrees that:

Section 4.1. PROPERTY USE. The Property shall (I) be used only as (a) an office building (with ground floor retail uses and deli/café, mail copy business and similar appurtenant office service uses permitted) and (b) upon the prior written consent of Lender (which consent shall not be unreasonably withheld) related uses typical of a property such as the Property allowed by the Property's zoning classification and all agreements pertaining to the Property and (II) be used for no other use without the prior written consent of Lender, which consent may be withheld in Lender's reasonable discretion.

Section 4.2. ERISA. (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Security Instrument and the Other Security Documents) to be a non exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended (**"ERISA"**).

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Security Instrument, as requested by Lender in its reasonable discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended (the **"Code"**), or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

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

(B) Less than 25 percent of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R.§ 2510.3 101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R § 2510.3 101(c) (any of the foregoing, a **"REOC"**)or (e) or an investment company registered under The Investment Company Act of 1940.

Section 4.3. SINGLE PURPOSE ENTITY.

(a) Borrower has not and shall not:

(i) Own any asset or property other than (A) the Property, and (B) incidental personal property necessary for the ownership or operation of the Property.

(ii) Engage in any business other than the ownership, management and operation of the Property or fail to conduct and operate its business as presently conducted and operated.

(iii) Enter into any contract or agreement with any affiliate of Borrower, any constituent party of Borrower or any affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(iv) Incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Refinanced Loan (defined below) and the Debt, (B) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on

commercially reasonable terms and conditions, and (4) due not more than sixty (60) days past the date incurred and paid on or prior to such date, and/or (C) financing leases and purchase money indebtedness incurred in the ordinary course of business relating to personal property on commercially reasonable terms and conditions; provided however, the aggregate amount of the indebtedness described in (B) and (C) shall not exceed at any time three percent (3%) of the outstanding principal amount of the Debt. No Indebtedness other than the Debt may be secured (subordinate or pari passu) by the Property. As used above, the **"Refinanced Loan"** shall mean that certain loan made by Credit Suisse First Boston Mortgage Capital LLC and assumed by Borrower. With respect to the Refinanced Loan, Borrower hereby represents and warrants that (i) the Refinanced Loan was repaid in full with the proceeds of the Loan, and (ii) none of Borrower, American Assets, Inc. (**"Guarantor"**) or any constituent party of Borrower has any remaining liabilities or obligations in connection with the Refinanced Loan (other than environmental and other limited and customary indemnity obligations).

(v) Make any loans or advances to any third party (including any affiliate or constituent party) or acquire obligations or securities of its affiliates.

(vi) Fail to remain solvent or fail to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(vii) Fail to do or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, or permit any constituent party to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of Borrower or such constituent party without the prior consent of Lender in any manner that (i) violates the single purpose covenants set forth in this Section, or (ii) amends, modifies or otherwise changes any provision thereof that by its terms cannot be modified at any time when the Loan is outstanding or by its terms cannot be modified without Lender's consent.

(viii) Except as is specifically contemplated by the Management Agreement, fail to maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party. Borrower's assets have not been and will not be listed as assets on the financial statement of any other person or entity, provided, however, that Borrower's assets may be included in a consolidated financial statement of its affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such affiliates or any other person or entity and (ii) such assets shall be listed on Borrower's own separate balance sheet. Borrower will file its own tax returns (to the extent Borrower is required to file any such tax returns) and will not file a consolidated federal income tax return with any other person or entity. Borrower shall maintain its books, records, resolutions and agreements as official records.

(ix) Fail to be, or fail to hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Borrower or any constituent party of Borrower), fail to correct any known misunderstanding regarding its status as a separate entity, fail to conduct business in its own name, identify itself or any of its affiliates as a division or part

of the other, fail to allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an affiliate) among the persons or entities sharing such expenses or fail to maintain and utilize separate stationery, invoices and checks bearing its own name.

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

(xi) Seek or effect the liquidation, dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of Borrower (provided, that, Borrower shall not be deemed to have violated the foregoing in connection with a transfer of interests in the Property (whether in connection with an enforcement of its rights under the TIC Agreement or otherwise) to the extent such transfer is expressly and specifically permitted by (and consummated in accordance with) the relevant provisions of Article 8 hereof).

(xii) Except as is specifically contemplated by the Management Agreement, commingle the funds and other assets of Borrower with those of any affiliate or constituent party or any other person or entity or fail to hold all of its assets in its own name. Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party or any other person or entity.

(xiii) Guarantee or become obligated for the debts of any other person or entity or hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other person or entity.

(xiv) Fail to conduct its business so that the assumptions made with respect to Borrower in that certain non-consolidation opinion delivered by Solomon Ward Seidenwurm & Smith, LLP in connection with the closing of the Loan (together with any subsequently delivered confirmations or amendments thereto or any subsequent substantive non-consolidation opinions, collectively, the "**Non-Consolidation Opinion**") shall fail to be true and correct in all respects.

(xv) Except as is specifically contemplated by the Management Agreement in place for the Property as of the date hereof, permit any affiliate or constituent party independent access to its bank accounts.

(xvi) Fail to pay the salaries of its own employees (if any) from its own funds or fail to maintain a sufficient number of employees (if any) in light of its contemplated business operations.

(xvii) Fail to compensate each of its consultants and agents from its funds for services provided to it or fail to pay from its own assets all obligations of any kind incurred.

(xviii) If Borrower is an Acceptable Delaware LLC, fail to observe all Delaware limited liability company required formalities.

(xix) own any subsidiary, or make any investment in, any person or entity.

(xx) if Borrower is a partnership or limited liability company, without the unanimous written consent of all of its partners or members, as applicable, and the written consent of 100% of the board of directors or managers of Borrower (if Borrower is an Acceptable Delaware LLC or a corporation) or each SPE Component Entity (defined below) (if Borrower is an entity other than an Acceptable Delaware LLC or a corporation), including, without limitation, the Independent Director (defined below), (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable Insolvency Laws, (b) seek or consent to the appointment of a receiver, liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, or (d) make an assignment for the benefit of creditors.

(b) If Borrower is a partnership or limited liability company (other than an Acceptable Delaware LLC), each general partner in the case of a general partnership, each general partner in the case of a limited partnership, or the managing member in the case of a limited liability company (each an "**SPE Component Entity**") of Borrower, as applicable, shall be a corporation or an Acceptable Delaware LLC whose sole asset is its interest in Borrower. Each SPE Component Entity (i) will own at least a 0.5% direct equity interest in Borrower, (ii) will at all times comply with each of the covenants, terms and provisions contained in Section 4.3(a) above, to the extent applicable, as if such representation, warranty or covenant was made directly by such SPE Component Entity; (iii) will not engage in any business or activity other than owning an interest in Borrower; (iv) will not acquire or own any assets other than its partnership, membership, or other equity interest in Borrower; (v) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (vi) will cause Borrower to comply with the provisions of Section 4.3. Prior to the withdrawal or the disassociation of any SPE Component Entity from Borrower, Borrower shall immediately appoint a new general partner or managing member whose articles of incorporation are substantially similar to those of such SPE Component Entity and deliver a New Non-Consolidation Opinion to Lender and the Rating Agencies with respect to the new SPE Component Entity and its equity owners. Notwithstanding the foregoing, to the extent Venture or Firehill is (1) a single member Delaware limited liability company, or (2) a multiple member Delaware limited liability company whose organization documents contain springing member provisions satisfying the requirements of the Delaware Limited Liability Company Act and are otherwise acceptable to Lender (hereinafter referred to as an "**Acceptable Delaware LLC**"), so long as Venture or Firehill (as applicable) maintains such formation status, no SPE Component Entity shall be required.

(c) (i) The organizational documents of each SPE Component Entity (if any) or Borrower (to the extent Borrower is an Acceptable Delaware LLC or a corporation) shall provide that at all times there shall be, and Borrower shall cause there to be, at least one duly appointed member of the board of directors or managers (an "**Independent Director**") of such SPE Component Entity or Borrower (as applicable) reasonably satisfactory to Lender each of whom are not at the time of such individual's initial appointment, and shall not have been at any time during the preceding five (5) years, and shall not be at any time while serving as a director of such SPE Component Entity or Borrower (as applicable), either (i) a shareholder (or other equity owner) of, or an officer, director (other than serving as the Independent Director of any of Venture, Firehill or any SPE Component Entity), partner, manager, member (other than as a Special Member in the case of an Acceptable Delaware LLC), employee (other than serving as

the Independent Director of any of Venture, Firehill or any SPE Component Entity), attorney or counsel of, Borrower, such SPE Component Entity or any of their respective shareholders, partners, members, subsidiaries or affiliates; (ii) a customer or creditor of, or supplier to, Borrower or any of its respective shareholders, partners, members, subsidiaries or affiliates who derives any of its purchases or revenue from its activities with Borrower or such SPE Component Entity or any affiliate of any of them (other than in such person's employment as the Independent Director of any of Venture, Firehill or any SPE Component Entity); (iii) a Person who Controls (defined below) or is under common Control with any such shareholder, officer, director, partner, manager, member, employee, supplier, creditor or customer; or (iv) a member of the immediate family of any such shareholder, officer, director, partner, manager, member, employee, supplier, creditor or customer. Notwithstanding the foregoing, a person who serves as an independent director for affiliates of Borrower may serve as an Independent Director so long as (A) such person is appointed by a nationally recognized provider of independent directors (such as CT Corporation) or (B) such person derives less than 5% of their total annual income from their service as independent director for Borrower and each applicable affiliate of Borrower.

(ii) The organizational documents of each SPE Component Entity (if any) or Borrower (as applicable) shall provide that the board of directors or board of managers of such SPE Component Entity or Borrower (as applicable) shall not take any action which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to any common stock, requires an unanimous vote of the board of directors or managers of such SPE Component Entity or Borrower (as applicable) unless at the time of such action there shall be at least one member of the board of directors or managers who is an Independent Director. Such SPE Component Entity or Borrower (as applicable) will not, without the unanimous written consent of its board of directors or managers including each Independent Director, on behalf of itself or Borrower, (i) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable Insolvency Laws; (ii) seek or consent to the appointment of a receiver, liquidator or any similar official; (iii) take any action that might cause such entity to become insolvent; or (iv) make an assignment for the benefit of creditors.

(d) (i) In the event Borrower or any SPE Component Entity is an Acceptable Delaware LLC, the limited liability company agreement of Borrower or such SPE Component Entity (as applicable) (the "**LLC Agreement**") shall provide that (i) upon the occurrence of any event that causes the sole member of Borrower or such SPE Component Entity (as applicable) ("**Member**") to cease to be the member of Borrower or such SPE Component Entity (as applicable) (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower or such SPE Component Entity (as applicable) and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower or such SPE Component Entity (as applicable) in accordance with the terms of the Loan Documents and the LLC Agreement), any person acting as Independent Director of Borrower or such SPE Component Entity (as applicable) shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower or such SPE Component Entity (as applicable), automatically be admitted to Borrower or such SPE Component Entity (as applicable) ("**Special Member**") and shall continue Borrower or such SPE Component Entity (as applicable) without dissolution and (ii) Special Member may not resign from Borrower or such

SPE Component Entity (as applicable) or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower or such SPE Component Entity (as applicable) as Special Member in accordance with requirements of Delaware law and (B) such successor Special Member has also accepted its appointment as an Independent Director. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower or such SPE Component Entity (as applicable) upon the admission to Borrower or such SPE Component Entity (as applicable) of a substitute Member, (ii) Special Member shall be a member of Borrower or such SPE Component Entity (as applicable) that has no interest in the profits, losses and capital of Borrower or such SPE Component Entity (as applicable) and has no right to receive any distributions of Borrower or such SPE Component Entity (as applicable) assets, (iii) pursuant to Section 18-301 of the Delaware Limited Liability Company Act (the "**Act**"), Special Member shall not be required to make any capital contributions to Borrower or such SPE Component Entity (as applicable) and shall not receive a limited liability company interest in Borrower or such SPE Component Entity (as applicable), (iv) Special Member, in its capacity as Special Member, may not bind Borrower or such SPE Component Entity (as applicable) and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower or such SPE Component Entity (as applicable), including, without limitation, the merger, consolidation or conversion of Borrower or such SPE Component Entity (as applicable); provided, however, such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Director, to vote on such matters required by the Loan Documents or the LLC Agreement. In order to implement the admission to Borrower or such SPE Component Entity (as applicable) of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower or such SPE Component Entity (as applicable) as Special Member, Special Member shall not be a member of Borrower or such SPE Component Entity (as applicable).

(ii) Upon the occurrence of any event that causes the Member to cease to be a member of Borrower or such SPE Component Entity (as applicable), to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower or such SPE Component Entity (as applicable), agree in writing (i) to continue Borrower or such SPE Component Entity (as applicable) and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower or such SPE Component Entity (as applicable), effective as of the occurrence of the event that terminated the continued membership of Member of Borrower or such SPE Component Entity (as applicable) in Borrower or such SPE Component Entity (as applicable). Any action initiated by or brought against Member or Special Member under any applicable Insolvency Laws shall not cause Member or Special Member to cease to be a member of Borrower or such SPE Component Entity (as applicable) and upon the occurrence of such an event, the business of Borrower or such SPE Component Entity (as applicable) shall continue without dissolution. The LLC Agreement shall provide that each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower or such SPE Component Entity (as applicable) upon the occurrence of any action initiated by or brought against Member or Special Member under any applicable Insolvency Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower or such SPE Component Entity (as applicable).

(e) Borrower shall not change or permit to be changed (a) Borrower's name, (b) Borrower's identity (including its trade name or names), (c) Borrower's principal place of business set forth on the first page of this Security Instrument, (d) the corporate, partnership or other organizational structure of Borrower, each SPE Component Entity (if any), or Guarantor, (e) Borrower's state of organization, or (f) Borrower's organizational identification number, without in each case notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender. In addition, Borrower shall not change or permit to be changed any organizational documents of Borrower or any SPE Component Entity (if any) if such change would adversely impact the covenants set forth in this Section 4.3. Borrower authorizes Lender to file any financing statement or financing statement amendment required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property. If Borrower does not now have an organizational identification number and later obtains one, or if the organizational identification number assigned to Borrower subsequently changes, Borrower shall promptly notify Lender of such organizational identification number or change.

(f) Notwithstanding the foregoing, nothing contained in this Section 4.3 shall be deemed to limit Borrower's ability to own, manage and operate the Property in conjunction with the other entities comprising Borrower or in accordance with the Master Lease (prior to the Master Lease Termination), including, without limitation, the right to operate the Property under a fictitious business name co-owned by Borrowers (or some of them) and, prior to the Master Lease Termination, Master Lessee, to maintain all books and records relating to the Property on a consolidated basis with the other entities comprising Borrower and, prior to the Master Lease Termination, Master Lessee, and to commingle the Rents and profits generated by the Property with the other entities comprising Borrower and, prior to the Master Lease Termination, Master Lessee. Furthermore, any act with respect to the Property which is permitted to be taken by "Borrower" may be taken by any of the entities comprising Borrower or, prior to the Master Lease Termination, Master Lessee in conjunction with the other entities comprising Borrower or, prior to the Master Lease Termination, Master Lessee.

(g) The representations, warranties and covenants contained in Section 4.3(a) through (e) above are hereby restated and remade as if all references to "Borrower" therein were instead deemed to be references to Master Lessee; provided, that, (i) any reference therein to the "Property" shall be deemed to refer to Master Lessee's leasehold interest in the Property under the Master Lease, and (ii) notwithstanding anything to the contrary contained therein, Master Lessee has not and shall not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation). Notwithstanding the foregoing, (I) it is hereby acknowledged that Master Lessee has, since its formation, acted as "master lessee" on other loan financing transactions with Lender (with Borrower hereby representing that the obligations and liabilities of Master Lessee in connection therewith are of no further force or effect and that there are no contingent liabilities of Master Lessee in connection therewith) and that the same shall not be deemed to be a breach of this Section 4.3 and (II) this Section 4.3 shall cease to apply to Master Lessee after the Master Lease Termination.

(h) Notwithstanding anything to the contrary contained herein, upon written notice from Lender following the occurrence and during the continuance of an Additional Director Trigger Event (hereafter defined), Borrower shall amend its own (or any SPE Component Entity's (as applicable)) organizational documents to require the appointment and maintenance of no less than two (2) Independent Directors for Borrower or such SPE Component Entity (as applicable) for the remaining term of the Loan. Thereafter and during the continuance of an Independent Director Trigger Event, any provision herein relating to any Independent Director shall be deemed to relate to both Independent Directors (for example (and by way of illustration only), any provision herein (i) requiring that an Independent Director be in place for any vote to be effective shall require that both Independent Directors be in place for such vote to be effective or (ii) requiring the vote of the Independent Director shall require the vote of both Independent Directors). Borrower shall cause its (or the applicable SPE Component Entity's) organizational documents to be amended to be consistent with the foregoing. Borrower's compliance with the foregoing shall be at Borrower's sole cost and expense. Failure of Borrower to comply with this subsection shall, at Lender's option, constitute an immediate Event of Default. As used herein, the term "**Additional Director Trigger Event**" shall mean an event (i) occurring upon the Debt Service Coverage Ratio falling below 1.15 to 1.00 and (ii) ending upon the Debt Service Coverage Ratio being in excess of 1.15 to 1.00 for four (4) consecutive calendar quarters. For the purposes hereof, the Debt Service Coverage Ratio shall be calculated monthly as of the first day of each calendar month.

Section 4.4. RESTORATION AFTER CASUALTY/CONDEMNATION. In the event of a casualty or a taking by eminent domain, the following provisions shall apply in connection with the Restoration of the Property:

(a) If the Net Proceeds (defined below) shall be less than the amount equal to seven percent (7%) of the original aggregate principal amount of the Loan (the "**Threshold Amount**") and the costs of completing the Restoration shall be less than the Threshold Amount, the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Subsection 4.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Security Instrument.

(b) If the Net Proceeds are equal to or greater than the Threshold Amount or the costs of completing the Restoration is equal to or greater than the Threshold Amount, Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Subsection 4.4(b). The term "**Net Proceeds**" for purposes of this Section 4.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Subsection 3.3(a)(i), (iii), (iv) and (x) of this Security Instrument as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same or (ii) the net amount of all awards and payments received by Lender with respect to a taking referenced in Section 3.6 of this Security Instrument, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same, whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for the Restoration provided that each of the following conditions are met: (A) no Event of Default shall have

occurred and be continuing under the Note, this Security Instrument or any of the Other Security Documents or an event which after the passage of time or the giving of notice would constitute an Event of Default; (B) Borrower shall deliver or cause to be delivered to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, reasonably satisfactory to Lender; (C) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's reasonable discretion to cover the cost of the Restoration; (D) Borrower shall deliver to Lender the proceeds of the insurance described in Subsection 3.3(a)(iii) hereof (which such proceeds shall be held and disbursed in accordance with Subsection 3.3(a)(iii) hereof); (E) Borrower shall commence the Restoration as soon as reasonably practicable and shall diligently pursue the same to satisfactory completion; (F) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note at the Applicable Interest Rate (as defined in the Note), which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Subsection 3.3(a)(ii), if applicable, or (3) by other funds of Borrower which are deposited with Lender prior to the commencement of the Restoration; (G) Lender shall be satisfied that, upon the completion of the Restoration and following a rent-up period from the time such Restoration is complete through the date which is three (3) months prior to the expiration of the rental loss insurance coverage maintained by Borrower pursuant to Section 3.3(a)(ii) above, the (1) fair market value of the Property, as reasonably determined by Lender, is equal to or greater than the fair market value of the Property immediately prior to the casualty or condemnation, and (2) gross cash flow and the net cash flow of the Property will be restored to a level sufficient to cover all carrying costs and operating expenses of the Property, including, without limitation, a Debt Service Coverage Ratio (as defined on Schedule 1 hereto) of at least 1.00 to 1.00; (H) Lender shall be reasonably satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Anticipated Maturity Date (as defined in the Note), (2) one (1) year after the occurrence of such fire or other casualty or taking, whichever the case may be, or (3) such time as may be required under applicable zoning law, ordinance, rule or regulation in order to repair and restore the Property to the condition it was in immediately prior to such fire or other casualty or to as nearly as possible the condition it was in immediately prior to such taking, as applicable; (I) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable zoning laws, ordinances, rules and regulations; (J) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable governmental laws, rules and regulations (including, without limitation, all applicable Environmental Laws (defined below)); (K) such fire or other casualty or taking, as applicable, does not result in the loss of access to the Property or the Improvements; (L) (1) in the event the Net Proceeds are insurance proceeds, less than thirty-five percent (35%) of each of (i) fair market value of the Property as reasonably determined by Lender, and (ii) rentable area of the Property has been damaged, destroyed or rendered unusable as a result of a casualty or (2) in the event the Net Proceeds are condemnation proceeds, less than fifteen percent (15%) of each of (i) the fair market value of the Property as reasonably determined by Lender and (ii) rentable area of the Property is taken and such land is located along the perimeter or periphery of the Property; and (M) the Required Leases (defined below) shall remain in full force and effect during and after the completion of the Restoration. Lender agrees to use due diligence and good faith efforts to process its determination of Borrower's compliance with the

requirements of this Paragraph 4.4(b)(i) as promptly as possible, recognizing the need for a quick determination in order to avoid delay in Restoration of the Property. As used above, the term "**Required Leases**" shall mean (i) unless the Permitted Annex Termination shall have occurred, the Prime Annex Lease (defined below) and Annex Sublease and (ii) other Leases encumbering, in the aggregate, 65% of the rentable square footage at the Property.

(ii) The Net Proceeds shall be held by Lender, and until disbursed in accordance with the provisions of this Subsection 4.4(b), shall constitute additional security for the Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower on a monthly basis during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Lender that (A) all materials installed and work and labor performed to date (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialmen's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the reasonable satisfaction of Lender and discharged of record or in the alternative fully insured to the reasonable satisfaction of Lender by the title company insuring the lien of this Security Instrument.

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior reasonable review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "**Casualty Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior reasonable review and acceptance by Lender and the Casualty Consultant. All reasonable costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, the Casualty Consultant's fees, shall be paid by Borrower. Lender shall not require Borrower to pay attorney's fees and expenses in connection therewith unless such process involves unusual circumstances that cannot reasonably be handled by Lender (or its Servicer) in-house and which otherwise reasonably justify the need for counsel.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "**Casualty Retainage**" as used in this Subsection 4.4(b) shall mean an amount equal to 10% of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until such time as the Casualty Consultant certifies to Lender that 50% of the required Restoration has been completed. There shall be no Casualty Retainage with respect to costs actually incurred by Borrower for work in place in completing the last 50% of the required Restoration. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Subsection 4.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b) and that all approvals necessary for the re occupancy and use

of the Property have been obtained from all appropriate governmental and quasi governmental authorities, and Lender receives evidence reasonably satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage, provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, and the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company insuring the lien of this Security Instrument. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**") with Lender in an interest-bearing account before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Subsection 4.4(b) shall constitute additional security for the Obligations.

(vii) With respect to Restorations related to casualties, the excess, if any, of the Net Proceeds, and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b), and the receipt by Lender of evidence reasonably satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Security Instrument or any of the Other Security Documents.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection 4.4(b)(vii) may, at Lender's election, be retained and applied by Lender toward the payment of the principal balance of the Debt whether or not then due and payable, either in whole or in part, or disbursed to Borrower. If Lender shall receive and retain Net Proceeds, as permitted above, the lien of this Security Instrument shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt. Notwithstanding the foregoing, if Lender does not make the Net Proceeds available for Restoration, Lender shall allow Borrower to prepay the Debt in whole (but not in part) without penalty, provided, that, (i) such prepayment is made by Borrower by no later than the date which is six (6) months prior to the expiration of the rental loss insurance coverage maintained by Borrower pursuant to Section 3.3(a)(ii) above and (ii) no Event of Default has otherwise occurred and is continuing.

Section 4.5. COVENANTS RELATING TO 1031 EXCHANGE TRANSFER. Within one hundred eighty (180) days of the date hereof, Borrower shall cause the following events to occur (the consummation of each of the following, the "**1031 Exchange Transfer**"):

(a) 100% of the direct equity interest in Firehill shall have been transferred to (I) Pacific Firecreek Holdings, LLC ("**Firehill Member**") (provided that, at the time of such transfer, Sponsor Controls Firehill Member and owns at least a 51% direct or indirect interest in Firehill Member) or (II) an entity which is Controlled by Sponsor and in which Sponsor owns at least a 51% direct or indirect equity interest, each of which such transfers shall have been made in accordance with the applicable terms and conditions of Section 8.3 hereof (any such transfer, the "**1031 Equity Transfer**"),

(b) the Junior Loan (as defined in that certain Subordination and Standstill Agreement executed by and among Lender and Guarantor in connection with the Loan (the "**Standstill Agreement**")) shall have been forgiven or indefeasibly satisfied in full from a source other than the assets of Borrower or Master Lessee or the other income generated by the Property and the Junior Loan Documents (as defined in each Standstill Agreement) shall have been terminated and released of record (if applicable); and

(c) Lender shall have received (i) copies of all documentation relating to the 1031 Exchange Transfer evidencing the consummation thereof, and (ii) a written certification (executed by a responsible officer of Borrower and Guarantor) attesting that (1) the requirements of this Section 4.5 and the applicable requirements of Section 8.3 hereof have each been satisfied, and (2) that there exists no litigation (pending or threatened) or other controversy relating to the 1031 Exchange Transfer between Borrower and Junior Borrower (as defined in the Standstill Agreement) or any other person or entity involved therewith.

Section 4.6. TIC AGREEMENT COVENANTS. Until such time as this Security Instrument is released or re-conveyed in connection with the repayment of the Debt or such time as the Loan is defeased in full in accordance with the applicable terms and conditions of the Note or such time as Borrowers cease to be tenants-in-common pursuant to a transfer permitted by this Security Instrument, each of Venture and Firehill hereby covenant and agree that:

(a) they shall each pay all sums required to be paid under the TIC Agreement pursuant to the provisions thereof;

(b) they shall each diligently perform and observe all of the terms, covenants and conditions of the TIC Agreement;

(c) except in connection with (I) a replacement of the TIC Agreement with that certain Second Amended and Restated Tenancy In Common Agreement approved by Lender in connection the closing of the Loan (the **"Amended TIC Agreement"**) (with Borrower and Lender hereby agreeing that after the Amended TIC Agreement is put into place, all references herein to the "TIC Agreement" shall be deemed to refer to the Amended TIC Agreement) or (II) a transfer of interests in the Property that is not prohibited by (and that is consummated in

accordance with) the relevant provisions of Article 8 hereof (provided that such transfer either (i) does not terminate, cancel, amend, modify, change, supplement or alter the TIC Agreement in any material respect or (ii) results in one entity directly owning 100% of the fee interest in the Property and provided further that if GE Sponsor has obtained Control over Venture, it shall have until the end of the Sponsor Cure Period to cause the fee interest in the Property to be so owned (capitalized terms used in this parenthetical provision which have not been previously defined are defined in Article 8 below)), they shall not, without the prior consent of Lender, surrender the interest in the Property created by the TIC Agreement or terminate or cancel the TIC Agreement or modify, change, supplement, alter or amend the TIC Agreement (either orally or in writing) in any material respect;

(d) neither Venture nor Firehill shall institute or prosecute (nor shall Venture or Firehill permit any other person or entity to institute or prosecute) an Action for Partition (defined below);

(e) each of Venture and Firehill hereby waive each of their respective rights to an Action for Partition under the TIC Agreement and under Applicable Law;

(f) notwithstanding (but in no way abrogating or otherwise waiving) the foregoing, if any Action for Partition is brought by either Venture or Firehill, the other party shall purchase Venture's or Firehill's (as applicable) tenancy in common interest in the Property at fair market value;

(g) in the event that the purchase described in subclause (f) shall fail to occur within fifteen (15) Business Days of the occurrence of the aforesaid Action for Partition (or such shorter time period as may be required for this subsection (g) to become effective immediately prior to the consummation of such Action for Partition), Sponsor (through an entity which Sponsor Controls, owns at least a 51% direct or indirect equity interest and which satisfies the criteria set forth in Section 4.3 hereof for single purpose, bankruptcy remote entities) shall purchase such interest at fair market value;

(h) in the event that the purchase described in subclauses (f) or (g) shall occur, the purchasing entity shall execute any documents or instruments reasonably requested by Lender (and shall provide such opinions, title endorsements or other documents or instruments reasonably requested by Lender) to affirm and/or assume the Loan and such entity's respective obligations thereunder;

(i) (1) any lien rights, indemnity rights, rights of subrogation or rights of first offer, first refusal or other rights to purchase or other similar rights inuring to Venture, Firehill, Manager or any other person or entity under the TIC Agreement or Applicable Law are subject and subordinate to the Loan and the Loan Documents and Lender's rights thereunder and (2) with respect to the aforesaid rights (other than rights to payment from the cash flow of the Property), each applicable person or entity (including, without limitation, Venture and/or Firehill) agrees to waive the same or "standstill" with respect to the enforcement of the same until such time as this Security Instrument is released or reconveyed in connection with the repayment of the Debt or such time as the Loan is defeased in full in accordance with the applicable terms and conditions of the Note; and

(j) the sale or issuance of any tenancy in common interests pursuant to the TIC Agreement will not violate any applicable provisions of the Securities Act or the Exchange Act or any other Applicable Law.

With respect to the foregoing covenants, Lender hereby acknowledges and agrees that the same are (i) restrictions customarily imposed by Lender in connection with commercial loans similar to the Loan and (ii) are intended to be restrictions which are "consistent with customary commercial lending practices" within the meaning of the applicable provisions of Revenue Procedure 2002-22. The foregoing covenants shall only be deemed to apply to Venture and Firehill so long as they are parties to the TIC Agreement and such covenants shall cease to bind Venture and/or Firehill (as applicable) at such time as Venture or Firehill ceases to be a party to the TIC Agreement as a result of a transfer permitted under Section 8.4 below.

Section 4.7. INTER-BUILDING OPERATIONAL AGREEMENT COVENANTS. With respect to the Inter-Building Operational Agreement, Borrower hereby covenants and agrees that: (a) Borrower shall not, without the prior consent of Lender (which such consent shall not be unreasonably withheld, conditioned or delayed), execute any amendments or modifications to the Inter-Building Operational Agreement if the same would have a Material Adverse Effect; (b) Borrower shall enforce, shall comply with, and shall use commercially reasonable efforts to cause each of the parties to the Inter-Building Operational Agreement to comply with all of the terms and conditions contained therein; and (c) Borrower shall deliver to Lender copies of all material notices sent by or delivered to Borrower pursuant to or otherwise in connection with the Inter-Building Operational Agreement.

Article 5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1. WARRANTY OF TITLE. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same, and that Borrower possesses (i) an unencumbered fee simple absolute in the Land and the Improvements (other than those portions of the Land and Improvements which are included within the Leasehold Estate) and (ii) an unencumbered leasehold interest in the Leasehold Estate, and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions (other than standard printed exceptions) shown in the title insurance policy insuring the lien of this Security Instrument (the "**Permitted Exceptions**"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever. Borrower hereby represents and warrants that none of the Permitted Exceptions will materially and adversely affect the ability of the Borrower to pay in full the Loan, the use of the Property for the use currently being made thereof, the operation of the Property or the value thereof.

Section 5.2. AUTHORITY. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

Section 5.3. LEGAL STATUS AND AUTHORITY. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the State where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted and proposed to be conducted. Borrower now has and shall continue to have the full right, power and authority to operate and lease the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Note, this Security Instrument and the Other Security Documents. Borrower's exact legal name and Borrower's organization identification number assigned by its state of formation, if any, is correctly set forth on the first page of this Security Instrument.

Section 5.4. VALIDITY OF DOCUMENTS. The execution, delivery and performance of the Note, this Security Instrument and the Other Security Documents and the borrowing evidenced by the Note (i) are within the corporate/partnership/limited liability company (as the case may be) power of Borrower; (ii) have been authorized by all requisite corporate/partnership/limited liability company (as the case may be) action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by laws, partnership, trust or operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby).

Section 5.5. LITIGATION. There is no action, suit or proceeding (including any condemnation or similar proceeding), or any governmental investigation or any arbitration, in each case pending or, to the knowledge of Borrower, threatened against Borrower or the Property before any governmental or administrative body, agency or official which (i) challenges the validity of this Security Instrument, the Note or any of the Other Security Documents or the authority of Borrower to enter into this Security Instrument, the Note or any of the Other Security Documents or to perform the transactions contemplated hereby or thereby or (ii) if adversely determined would have a material adverse effect on the occupancy of the Property or the business, financial condition or results of operations of Borrower or the Property.

Section 5.6. STATUS OF PROPERTY.

(a) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood

hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.3 hereof, if required under the terms of that section.

(b) Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(c) The Property and the present and contemplated use and occupancy thereof are in compliance in all material respects with all applicable zoning ordinances, building codes, land use and environmental laws and other similar laws.

(d) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all weather and are physically and legally open for use by the public.

(f) The Property is served by public water and sewer systems.

(g) The Property is free from damage caused by fire or other casualty.

(h) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.

(i) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(j) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.

Section 5.7. NO FOREIGN PERSON. Borrower is not a "foreign person" within the meaning of Sections 1445(f)(3) of the Code and the related Treasury Department regulations, including temporary regulations.

Section 5.8. SEPARATE TAX LOT. Other than the Annex Premises, the remainder of the Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof (other than with respect to the Annex Premises).

Section 5.9. ERISA COMPLIANCE. (a) As of the date hereof and throughout the term of this Security Instrument, (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the Code, and (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA or Section 4975 of the Code; and

(a) As of the date hereof and throughout the term of this Security Instrument (i) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA and (ii) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

Section 5.10. LEASES. (a) Borrower is the sole owner of the entire lessor's interest in the Leases and the Master Lease; (b) the Leases and the Master Lease are valid and enforceable; (c) the terms of all alterations, modifications and amendments to the Leases are reflected in the certified rent roll delivered to and approved by Lender; (d) none of the Rents reserved in the Leases or the Master Lease Rents have been assigned or otherwise pledged or hypothecated; (e) none of the Rents or Master Lease Rents have been collected for more than one (1) month in advance (other than typical first and last months' rent); (f) the premises demised under the Leases have been completed for the tenants who have accepted and have taken possession of the same on a rent paying basis; (g) to the best of Borrower's knowledge (which for purposes hereof will mean the actual knowledge of John Chamberlain and Jim Durfey), there exist no offsets or defenses to the payment of any portion of the Rents or Master Lease Rents; and (h) the number and type of parking spaces available at the Property as of the date hereof satisfy any applicable requirements relating thereto contained in the Leases.

Section 5.11. FINANCIAL CONDITION. (a) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated, and (b) Borrower has received reasonably equivalent value for the granting of this Security Instrument. Borrower has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditors.

Section 5.12. BUSINESS PURPOSES. The loan evidenced by the Note is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 5.13. TAXES. Borrower has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Borrower does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.14. MAILING ADDRESSES. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

Section 5.15. NO CHANGE IN FACTS OR CIRCUMSTANCES. All information submitted to Lender in connection with any request by Borrower for the loan evidenced by the Note and/or any letter of application, preliminary commitment letter, final commitment letter or other application or letter of intent (including, but not limited to, all financial statements, rent rolls, reports and certificates) were accurate, complete and correct in all respects when delivered. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading.

Section 5.16. DISCLOSURE. To the best of Borrower's knowledge (which for purposes hereof will mean the actual knowledge of John Chamberlain and Jim Durfey) Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 5.17. LETTER-OF-CREDIT RIGHTS. If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 of this Security Instrument now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall, pursuant to an agreement in form and substance satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing in each case that upon an Event of Default, the proceeds of any drawing under the letter of credit are to be applied as provided in Section 11.2 of this Security Agreement.

Section 5.18. AUTHORIZATION TO FILE FINANCING STATEMENTS, POWER OF ATTORNEY. Borrower hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of Borrower as authorized by Applicable Law, as applicable to all or part of the fixtures or Personal Property. For purposes of such filings, Borrower agrees to furnish any information requested by Lender promptly upon request by Lender. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Borrower or in Borrower's own name to execute in Borrower's name any documents and otherwise to carry out the purposes of this Section 5.18, to the extent that Borrower authorization above is not sufficient. To the extent permitted by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

Section 5.19. MASTER LEASE REPRESENTATIONS. (a) The Master Lease is in full force and effect and has not been modified or amended in any manner whatsoever, (b) there are no material defaults under the Master Lease by Master Lessee or Borrower, and, to the best of Borrower's knowledge, no event has occurred which but for the passage of time, or notice, or both would constitute a material default under the Master Lease, (c) all rents, additional rents and other sums due and payable under the Master Lease as of the date hereof have been paid in full, and (d) neither Master Lessee nor Borrower has commenced any action or given or received any notice for the purpose of terminating the Master Lease.

Section 5.20. TIC AGREEMENT REPRESENTATIONS. (a) The TIC Agreement is in full force and effect and has not been modified or amended in any manner whatsoever; (b) there are no material defaults under the TIC Agreement and no event has occurred which but for the passage of time, or notice, or both would constitute a material default under the TIC Agreement, (c) all sums due and payable (if any) under the TIC Agreement as of the date hereof have been paid in full; and (d) neither Venture nor Firehill (nor, to the knowledge of Venture and/or Firehill, any other person or entity) has (i) commenced any action or given or received any notice for the purpose of terminating the TIC Agreement, or (ii) instituted or prosecuted any action for partition of the Property (or any portion thereof or interest therein) or any similar action pursuant to the TIC Agreement or any other contractual agreement or instrument or under Applicable Law (including, without limitation, common law) (any such action, the "**Action for Partition**").

Section 5.21. INTER-BUILDING OPERATIONAL AGREEMENT REPRESENTATIONS. With respect to the Inter-Building Operational Agreement, Borrower hereby represents and warrants that, to the best of Borrower's knowledge (which, for purposes hereof, shall mean the actual knowledge of John Chamberlain and Jim Durfey) (a) neither Borrower nor any other party is currently in default (nor has any notice been given or received by Borrower with respect to an alleged or current default) under any of the terms and conditions of the Inter-Building Operational Agreement; (b) the Inter-Building Operational Agreement represent the entire understanding of the parties thereto with respect to the subject matter set forth therein; (c) the Inter-Building Operational Agreement remains unmodified and in full force and effect; and (d) the aggregate estimated cost to move and replace the portion of the Inter-Building Systems (defined below) located outside of the Fee Portion (defined below) with items of the same type and quality to locations within the Fee Portion is $500,000. As used above, the term (i) **"Fee Portion"** shall mean that portion of the Property which is exclusive of the space demised under the Annex Sublease and (ii) **"Inter-Building Systems"** shall mean those physical plant and other similar building systems which are the subject of the Inter-Building Operational Agreement.

Article 6. OBLIGATIONS AND RELIANCES

Section 6.1. RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, this Security Instrument and the Other Security Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 6.2. NO RELIANCE ON LENDER. The general partners, shareholders, members, principals or other beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 6.3. NO LENDER OBLIGATIONS. (a) Notwithstanding any of the provisions of this Security Instrument (including, but not limited to, the provisions of Subsections 1.1(f) and (l), Section 1.2 or Section 3.7), Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

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

Section 6.4. RELIANCE. Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument and the Other Security Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 5 without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Note, this Security Instrument and the Other Security Documents; and that Lender would not be willing to make the loan evidenced by the Note, this Security Instrument and the Other Security Documents and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 5.

Article 7. FURTHER ASSURANCES

Section 7.1. RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses (the "**Expenses**") incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the Other Security Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law to do so.

Section 7.2. FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender pursuant to this Section 7.2.

Section 7.3. CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS. (a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable.

(a) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

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

Section 7.4. ESTOPPEL CERTIFICATES. (a) After request by Lender, Borrower, within ten (10) Business Days, shall furnish Lender or any proposed assignee or Investor (as defined in Section 19.1) with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Loan, (ii) the unpaid principal amount of each individual promissory note comprising the defined term "Note" hereunder (each such promissory note, an "**Individual Note**"), (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of each Individual Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, Borrower has no actual knowledge of

any defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under the Note or the Security Instrument, (vii) that the Note and this Security Instrument are valid, legal and binding obligations (except as may be limited by (A) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and (B) general principles of equity) and have not been modified or if modified, giving particulars of such modification, (viii) whether, to Borrower's actual knowledge, any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect, (x) the date to which the Rents thereunder have been paid pursuant to the Leases and, to the extent the Master Lease Termination has yet occurred, the date to which the Master Lease Rents have been paid under the Master Lease, (xi) whether or not, to the actual knowledge of Borrower, any of the lessees under the Leases are in default under the Leases or (to the extent the Master Lease Termination has not yet occurred) the Master Lessee is in default under the Master Lease, and, if any of the aforesaid lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other factual matters reasonably requested by Lender and reasonably related to the Leases or (to the extent the Master Lease Termination has not yet occurred) the Master Lease, the obligations secured hereby, the Property or this Security Instrument.

(b) Borrower shall use its commercially reasonable best efforts to deliver to Lender, promptly upon request (provided such request is not made more than once in any calendar year other than any request by Lender made in connection with the securitization of the Loan or following an Event of Default), duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding the Lease as Lender may require, including but not limited to attestations that each Lease covered thereby is in full force and effect (and to the best of lessee's knowledge) with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) Lender, by its acceptance of this Security Instrument, agrees to deliver to Borrower (without material cost (other than in extraordinary circumstances)) promptly upon Borrower's request therefor (provided such request is not made more than twice in any calendar year) a written statement setting forth the unpaid principal amount of the Note, the accrued and unpaid interest thereon, the date on which an installment of interest and/or principal were last paid thereunder and whether there are any Events of Default which currently exist and are actually known to Lender.

(d) Borrower shall use its commercially reasonable best efforts to deliver to Lender, upon request, (i) an estoppel certificate from Prime Lessor (defined below) under the Prime Annex Lease, (ii) the Master Lessee under the Master Lease and/or (ii) Annex SL under the Annex Sublease; provided that Borrower shall not be required to attempt to deliver any such estoppel certificate more frequently than once in any calendar year (other than in connection with an Event of Default or a Securitization).

Section 7.5. FLOOD INSURANCE. After Lender's request, Borrower shall deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally

designated “special flood hazard area.” or, if any of the Improvements are located within any such area Borrower will obtain and maintain the insurance required prescribed in Section 3.3 hereof, if required under the terms of that section.

Section 7.6. SPLITTING OF SECURITY INSTRUMENT. This Security Instrument and each Individual Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender and at Lender’s sole cost and expense, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of this Security Instrument, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be reasonably required by Lender. Borrower’s obligations hereunder are conditioned upon Lender’s agreement, as evidenced by its acceptance hereof, that such splitting or division shall not result in any decrease of any rights of Borrower or any Indemnitor (as defined in the Indemnity Agreement (defined below)) hereunder or under any other Loan Document or any additional cost or potential liability to Borrower or any Indemnitor that exceeds that which exists hereunder prior to such splitting or division.

Section 7.7. REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of any Individual Note or any other Loan Document which is not of public record: (i) with respect to any Loan Document other than any Individual Note, Borrower will issue, in lieu thereof, a replacement of such other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Loan Document in the same principal amount thereof and otherwise of like tenor and (ii) with respect to any Individual Note, (a) Borrower will execute a reaffirmation of the portion of the Debt as evidenced by such Individual Note acknowledging that Lender has informed Borrower that such Individual Note was lost, stolen destroyed or mutilated and that such portion of the Debt continues to be an obligation and liability of the Borrower as set forth in such Individual Note, a copy of which shall be attached to such reaffirmation or (b) if requested by Lender, Borrower will execute a replacement note, provided, that Lender or Lender’s custodian (at Lender’s option) shall provide to Borrower Lender’s (or Lender’s custodian’s) then standard form of lost note affidavit and indemnity, which such form shall be reasonably acceptable to Borrower.

Article 8. DUE ON SALE/ENCUMBRANCE

Section 8.1 LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the loan secured hereby, and will continue to rely on Borrower’s ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 8.2 NO SALE/ENCUMBRANCE.

(a) Except as provided in this Security Instrument, Borrower shall not cause or permit a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein nor permit a Sale or Pledge of an interest in any Restricted Party (in each case, a "**Prohibited Transfer**"), other than pursuant to Leases of space at the Property to tenants in accordance with the applicable provisions hereof, without the prior written consent of Lender.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to (A) any Leases or any Rents (B) the Master Lease or the Master Lease Rents (to the extent the Master Lease Termination has not yet occurred) and/or (C) the Annex Sublease; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of transactions (other than as permitted pursuant to Section 8.3 below); (iv) any action for partition of the Property (or any portion thereof or interest therein) or any similar action instituted or prosecuted by any Borrower, as a tenant-in-common, or by any other person or entity, pursuant to any contractual agreement or other instrument or under Applicable Law (including, without limitation, common law); (v) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner (other than as permitted pursuant to Section 8.3 below) or any profits or proceeds relating to such partnership interests or the creation or issuance of new partnership interests; (vi) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of any member (other than as permitted pursuant to Section 8.3 below) or any profits or proceeds relating to such membership interest; (vii) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (viii) the removal or the resignation of Manager (including, without limitation, an Affiliated Manager) other than in accordance with the applicable terms and conditions hereof.

Section 8.3 PERMITTED EQUITY TRANSFERS. Notwithstanding anything to the contrary contained in this Article 8, the following transfers shall not be Prohibited Transfers and shall be permitted without Lender's consent: (a) a transfer (but not a pledge) by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party, (b) the transfer (but not the pledge (other than a Parent Level Pledge)) or Parent Level Pledge, in one or a series of transactions, of the stock, partnership interests or membership interests (as the case may be) in a Restricted Party, (c) the sale, transfer or issuance of shares of common stock in any Restricted Party that is a publicly traded entity, provided such shares of common stock are listed on the New York Stock Exchange or another nationally recognized stock exchange, (d) in addition to the transfers permitted by clause (b), any other transaction involving the direct and/or

indirect equity interests in a Restricted Party (other than a pledge) that would otherwise fit within the definition of Prohibited Transfer (including, without limitation, a transaction of the type described in clauses (iii), (v), (vi) or (vii) of Section 8.2(b) hereof) constituting a transfer of less than 10% of the direct and/or indirect equity ownership of any Borrower, Master Lessee (if the Master Lease Termination shall not have occurred), Guarantor, Sponsor any SPE Component Entity and/or Affiliated Manager and (e) the 1031 Equity Transfer; provided, however, with respect to the transfers listed in clauses (a), (b), (d) or (e) above, (A) Lender shall receive not less than five (5) days prior written notice thereof, (B) no such transfers shall result in a change in Control of Sponsor or Affiliated Manager (provided, however, a "change in Control" of Sponsor or Affiliated Manager shall not be deemed to have occurred for the purposes of this subsection (B) if any one of the persons or entities comprising the definition of "Sponsor" contained herein succeeds to the interest of the then current Sponsor and such successor Sponsor Controls the Affiliated Manager), (C) after giving effect to such transfers, any one of the entities comprising the defined term "Sponsor" shall, subject to subsection (H) below, (I) either (aa) own at least a 51% direct or indirect equity interest in each Borrower, Master Lessee (if the Master Lease Termination has not occurred) and any SPE Component Entity (it being understood that the requirement in this clause (aa) shall be deemed satisfied if such ownership is achieved by the end of the Sponsor Cure Period (defined below)), or (bb) own at least a (1) 1% direct or indirect equity interest in Venture and any SPE Component Entity applicable to Venture and GE Sponsor shall own at least a 50% direct or indirect equity interest in each of Venture and any SPE Component Entity applicable to Venture and (2) 51% direct or indirect equity interest in Firehill, any SPE Component Entity applicable to Firehill and Master Lessee (if the Master Lease Termination has not occurred), (II) Control each Borrower, Master Lessee (if the Master Lease Termination has not occurred) and each SPE Component Entity (if any) and (III) control the day-to-day operation of the Property, (D) the Property shall continue to be managed by Affiliated Manager or a Qualified Manager, (E) in the case of the transfer of any direct or indirect equity ownership interests in Borrower, Master Lessee (if the Master Lease Termination has not occurred) or in any SPE Component Entity, such transfers shall be conditioned upon continued compliance with the relevant provisions of Sections 4.2 and 4.3 hereof, (F) in the case of (1) the transfer of the management of the Property to a new Affiliated Manager in accordance with the applicable terms and conditions hereof, or (2) the transfer (in one or in a series of transactions) in excess of 49% (in the aggregate) of any equity ownership interests (I) directly in Borrower, Master Lessee (if the Master Lease Termination has not occurred) or in any SPE Component Entity, or (II) in any Restricted Party (other than any Restricted Party owning equity interest above the level of GE Sponsor) whose sole asset is a direct or indirect equity ownership interest in Borrower, Master Lessee (if the Master Lease Termination has not occurred) or in any SPE Component Entity, such transfers shall be conditioned upon delivery to Lender of a substantive non-consolidation opinion, which such opinion shall be provided by outside counsel acceptable to Lender and the Rating Agencies and shall otherwise be in form, scope and substance reasonably acceptable to Lender and acceptable to the Rating Agencies (such opinion, the **"New Non-Consolidation Opinion"**), (G) if consummated prior to the Permitted Annex Termination, such transfers shall not trigger any right of first refusal, option to purchase or default under the Annex Sublease, (H) in connection with any transfer of any direct or indirect interest in any Borrower, Master Lessee (if the Master Lease Termination has not occurred) and/or any SPE Component Entity to GE Sponsor, (1) GE Sponsor shall hold such interest indirectly through GE Subsidiary and (2) Borrower shall, at Lender's option and in connection with the first such

transfer of interest to GE Sponsor, deliver to Lender an Officer's Certificate remaking the representations contained in Section 5.9 hereof and representing that the foregoing transfer shall not cause Borrower to be in breach of the covenants contained in Section 4.2 hereof and (I) to the extent that GE Sponsor owns any interest in any Borrower, Master Lessee (if the Master Lease Termination has not occurred) and/or any SPE Component Entity, GE Sponsor shall continue to own 100% of the direct or indirect equity ownership interests in GE Subsidiary and to Control GE Subsidiary. For the purposes of the 1031 Equity Transfer, subsection (F) above shall be deemed satisfied to the extent that (i) the substantive non-consolidation opinion delivered in connection with the Loan by Solomon Ward Seidenwurm & Smith, LLP (the "**Closing Date Non-Consolidation Opinion**") contains a "pairing" between (1) Firehill and (A) the holder of the 100% direct equity interest in Firehill following the consummation of the 1031 Equity Transfer and (B) to the extent that any of the constituent parties of Firehill following the consummation of the 1031 Equity Transfer have, as their sole asset, a direct or indirect equity interest in Firehill aggregating, together with their affiliates, in excess of 49%, each such constituent party (the parties listed in sub-clauses (1)(A) and (1)(B) above, each a "**1031 Required Constituent Party**" and, collectively, the "**1031 Required Constituent Parties**") or (ii) to the extent that, as of the date of the consummation of the 1031 Equity Transfer, any 1031 Required Constituent Party has changed from the parties identified in the Closing Date Non-Consolidation Opinion, Lender is delivered an updated version of Closing Date Non-Consolidation Opinion revised to reflect a new "pairing" between Firehill and any such new 1031 Required Constituent Party. For the purposes of the anticipated post closing transfer of the 100% membership interests in Venture currently held by Landmark Assets, Inc. to Landmark Venture JV, LLC (the "**JV Transfer**"), subsection (F) above shall be deemed satisfied to the extent that (i) the Closing Date Non-Consolidation Opinion contains a "pairing" between (I) Venture and (A) the holder of the 100% direct equity interest in Venture following the consummation of the JV Transfer and (B) to the extent that any of the constituent parties of Venture following the consummation of the JV Transfer have, as their sole asset, a direct or indirect equity interest in Venture aggregating, together with their affiliates, in excess of 49%, each such constituent party (the parties listed in sub-clauses (I)(A) and (I)(B) above, each a "**JV Required Constituent Party**" and, collectively, the "**JV Required Constituent Parties**") or (II) to the extent that, as of the date of the consummation of the JV Transfer, any JV Required Constituent Party has changed from the parties identified in the Closing Date Non-Consolidation Opinion, Lender is delivered an updated version of Closing Date Non-Consolidation Opinion revised to reflect a new "pairing" between Venture and any such new JV Required Constituent Party.

Section 8.4 PERMITTED PROPERTY TRANSFERS (ASSUMPTION). Notwithstanding anything to the contrary contained in this Article 8 and in addition to the transfers permitted under Section 8.3, the following transfers shall not be Prohibited Transfers and Lender's consent to any TIC Assumption (defined below) shall not be required and Lender's consent to the first four (4) other transfers of the Property (at any time after the first (1st) anniversary of the closing of the Loan or at any time prior to such date if Lender determines that such assignment or transfer will not hinder, delay or prevent Lender from completing a Secondary Market Transaction (as defined in Section 19.3)) shall not be withheld; provided, that, in each case, Lender receives (I) sixty (60) days prior written notice (in the case of any transfer other than a TIC Assumption) or (II) thirty (30) days prior written notice (in the case of a TIC Assumption) of each such transfer hereunder and no Event of Default has occurred and is continuing, and further provided that, the following additional requirements are satisfied:

(a) With respect to (i) any TIC Assumption, no transfer fee shall be due, and (ii) other than in connection with a TIC Assumption, with respect to the (I) first such transfer, no transfer fee shall be due, (II) second such transfer, Borrower shall pay Lender a transfer fee equal to 0.5% of the outstanding principal balance of the Loan at the time of such transfer, (III) third such transfer, Borrower shall pay Lender a transfer fee equal to 1.0% of the outstanding principal balance of the Loan at the time of such transfer and (IV) fourth such transfer, Borrower shall pay Lender a transfer fee equal to 1.0% of the outstanding principal balance of the Loan at the time of such transfer (other than such assumption fees and the costs referenced in Section 8.4(b) below, Lender will not charge Borrower any additional fees or impose any additional conditions (other than as provided for in this Section 8.4) upon Borrower or the Transferee or Assuming Borrower (defined below) in connection with such transfer or TIC Assumption (as applicable));

(b) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with, as applicable, each TIC Assumption and the transfer of the Property (including, without limitation, Lender's reasonable counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and, other than with respect to any TIC Assumption, the fees and expenses of the Rating Agencies pursuant to clause (j) below);

(c) Other than in connection with a TIC Assumption, the proposed transferee (the "**Transferee**") or Transferee's Principals (hereinafter defined) must have demonstrated expertise in owning and operating properties similar in location, size and operation to the Property, which expertise shall be reasonably determined by Lender. The term "**Transferee's Principals**" shall include Transferee's (A) managing members, general partners or Controlling shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a 15% or greater interest in Transferee;

(d) Other than in connection with a TIC Assumption, Transferee's Principals shall, as of the date of such transfer, have an aggregate net worth and liquidity reasonably acceptable to Lender;

(e) Other than in connection with a TIC Assumption, Transferee, Transferee's Principals and all other entities which may be owned or controlled directly or indirectly by Transferee's Principals ("**Related Entities**") must not have been a party to any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed transfer of the Property;

(f) Transferee or Assuming Borrower (defined below) under a TIC Assumption, as applicable, shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance reasonably satisfactory to Lender;

(g) There shall be no material litigation or regulatory action pending or threatened against, as applicable, Transferee, Transferee's Principals or Related Entities or Assuming Borrower or Sponsor which is not reasonably acceptable to Lender;

(h) Other than in connection with a TIC Assumption, Transferee's Principals and Related Entities shall not have defaulted (beyond applicable notice and cure periods) under its or their obligations with respect to any other indebtedness in a manner which is not reasonably acceptable to Lender;

(i) Transferee or Assuming Borrower, as applicable, must be able to satisfy all the covenants set forth in Sections 4.3, and both Transferee and Transferee's Principals or both Assuming Borrower and Sponsor (as applicable) must be able to satisfy all the covenants set forth in Sections 4.3 and 5.9 hereof, no Event of Default or event which, with the giving of notice, passage of time or both, shall constitute an Event of Default, shall otherwise occur as a result of such transfer, and Transferee and Transferee's Principals or Assuming Borrower and Sponsor (as applicable) shall deliver (A) all organization documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender, and (B) all certificates, agreements and covenants reasonably required by Lender (including, without limitation, hazard insurance endorsements or certificates or other similar evidence that the Policies required hereunder have been obtained or maintained, as applicable);

(j) Other than in connection with a TIC Assumption, Transferee shall be approved by the Rating Agencies selected by Lender;

(k) Transferee or Assuming Borrower, as applicable, shall furnish (I) a New Non-Consolidation Opinion, and (II) an opinion of counsel reasonably satisfactory to Lender and its counsel (A) that the assumption of the Debt has been duly authorized, executed and delivered, and that the Note, this Security Instrument, the assumption agreement and the other Loan Documents are valid, binding and enforceable against Transferee or Assuming Borrower, as applicable, in accordance with their terms, and (B) that Transferee or Assuming Borrower, as applicable, and any entity which is a controlling stockholder, member or general partner of Transferee or Assuming Borrower, as applicable, have been duly organized, and are in existence and good standing;

(l) Borrower shall deliver, at its sole costs and expense, an endorsement to the existing title policy insuring the Security Instrument, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee or Assuming Borrower, as applicable, as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the title policy issued on the date hereof. Immediately upon a transfer of the Property to such Transferee or Assuming Borrower, as applicable, and the satisfaction of all of the above requirements, the named Borrower herein or, in the case of a TIC Assumption, any entity constituting the defined term "Borrower" hereunder other than the Assuming Borrower or any other Borrower that is not transferring its interest in the Property to the Assuming Borrower shall be released from all liability under this Security Instrument, the Note and the Other Security Documents accruing after such transfer, and, in the

case of a transfer hereunder other than a TIC Assumption, the Indemnitor under that certain Indemnity Agreement in favor of Lender relating hereto (the "**Indemnity Agreement**"), dated of even date herewith, shall be released from its obligations and liabilities thereunder accruing after such transfer provided that a new indemnitor approved by Lender, which approval shall be granted or withheld pursuant to Lender's customary underwriting procedures, enters into and delivers to Lender a new indemnity agreement in the form and content of the Indemnity Agreement. The foregoing release shall be effective upon the date of such transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower; and

(m) Other than in connection with a TIC Assumption, Borrower's obligations under the contract of sale pursuant to which the transfer is proposed to occur shall expressly be subject to the satisfaction of the terms and conditions of this Section.

Any transfer made pursuant to and in accordance with the terms and provisions of this Section 8.4 shall not be deemed to be a Prohibited Transfer. A consent by Lender with respect to a transfer of the Property in its entirety to, and the related assumption of the Loan by, a Transferee pursuant to this Section shall not be construed to be a waiver of the right of Lender to consent to any subsequent transfer of the Property.

Section 8.5 LENDER'S RIGHTS. Lender reserves the right to condition the consent to a Prohibited Transfer requested hereunder upon (a) a modification of the terms hereof and an assumption of the Note and the other Loan Documents as so modified by the proposed Prohibited Transfer, (b) receipt of payment of a transfer fee equal to one percent (1%) of the outstanding principal balance of the Loan and all of Lender's expenses incurred in connection with such Prohibited Transfer, (c) receipt of written confirmation from the Rating Agencies (a **"Rating Agency Confirmation"**) that the Prohibited Transfer will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization, (d) the proposed transferee's continued compliance with the covenants set forth in this Security Instrument (including, without limitation, the covenants in Sections 4.2 and 4.3) and the other Loan Documents, (e) a new manager for the Property and a new management agreement satisfactory to Lender, and (f) the satisfaction of such other conditions and/or legal opinions as Lender shall determine in its sole discretion to be in the interest of Lender. All expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Prohibited Transfer made without Lender's consent. This provision shall apply to each and every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer.

Section 8.6 DEFINITIONS. As used in this Article 8 (and elsewhere in this Security Instrument), the following terms shall have the following meanings:

(a) **"Affiliated Manager"** shall mean any managing agent of the Property in which Borrower, Master Lessee, Guarantor, Sponsor, any SPE Component Entity or any affiliate of such entities has, directly or indirectly, any legal, beneficial or economic interest.

(b) **"Control"** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of an entity, whether through ownership of voting securities, by contract or otherwise.

(c) **"GE SPE"** shall mean an entity (i) which is a single purpose, bankruptcy remote entity meeting the requirements of Sections 4.2, 4.3 and 5.9 hereof, (ii) which is Controlled by GE Sponsor and (iii) in which GE Subsidiary owns at least a 51% direct or indirect equity ownership interest.

(d) "**GE Sponsor**" shall mean the General Electric Pension Trust, a New York common law trust.

(e) **"GE Sponsor Conditions**" shall be deemed satisfied to that extent that each of the following have been satisfied: (i) by the end of the Sponsor Cure Period, GE Sponsor shall have obtained Control over each Borrower, any SPE Component Entity and control over the day to day operation of the Property; (ii) Borrower shall have delivered to Lender a legal opinion (from counsel licensed to practice law in the State of California) opining either (A) to the extent GE Sponsor does not elect to provide a new indemnity agreement as provided herein, that there has been no change in law from the date hereof that would materially and adversely effect the enforceability of the Indemnity Agreement (which such opinions shall be in form and substance and from counsel reasonably acceptable to Lender and acceptable to the Rating Agencies) or (B) as to the enforceability of the Indemnity Agreement or as to the new indemnity agreement provided by GE Sponsor, as applicable (which such opinions shall be in form and substance and from counsel reasonably acceptable to Lender and acceptable to the Rating Agencies); (iii) Borrower shall have delivered evidence reasonably acceptable to Lender that (A) GE Sponsor owns 100% of the direct and/or indirect interest in GE Subsidiary and Controls GE Subsidiary, (B) by the end of the Sponsor Cure Period, GE Subsidiary shall own at least a 51% direct or indirect interest in each Borrower and shall Control each Borrower, and (C) GE Subsidiary has delivered either (aa) an indemnity agreement by GE Sponsor in favor of Lender in form and substance substantially identical to the Indemnity Agreement or (bb) (I) an indemnity agreement by GE Subsidiary in favor of Guarantor relating to Guarantor's obligations under the Indemnity Agreement (which such indemnity agreement shall be (i) substantially identical to the form provided to and approved by Lender as of the date hereof or (ii) reasonably acceptable to Lender in form and substance) and (II) a pledge agreement pledging GE Subsidiary's indirect equity interests in each Borrower as security for the aforesaid indemnity (which such pledge agreement shall (1) notwithstanding anything to the contrary contained herein, not be deemed to violate the provisions of this Article 8 and (2) be (i) substantially identical to the form provided to and approved by Lender as of the date hereof or (ii) reasonably acceptable to Lender in form and substance); (iv) Borrower shall have delivered such documents and/or instruments as may be reasonably required by Lender or required by the Rating Agencies in connection with the foregoing; and (v) Borrower shall have paid (I) Lender any fees, costs or expenses (including, without limitation, attorney's fees) incurred by Lender in connection with the foregoing and (II) the Rating Agencies any fees, costs or expenses (including, without limitation, attorney's fees) incurred by the Rating Agencies in connection with the foregoing. Notwithstanding the foregoing, to the extent that any SPE Component Entity exists with respect to any Borrower, in no event shall such SPE Component Entity's direct equity interest in any Borrower be the subject of the above-described pledge.

(f) **"GE Subsidiary"** shall mean an entity which (i) is a REOC and whose organizational documents require that it act as a REOC so long as the Loan shall remain outstanding, (ii) will not cause Borrower to violate Sections 4.2 and 5.9 hereof, (iii) which is Controlled by GE Sponsor and (iv) in which GE Sponsor owns at least a 100% direct or indirect equity ownership interest.

(g) **"Parent Level Pledge"** shall mean the pledge of GE Sponsor's interests in any Restricted Party other than Borrower or any SPE Component Entity to secure any obligation of GE Sponsor, provided, that the repayment of such obligation is not specifically tied to the cash flow of the Property and provided further that the beneficiary of such pledge shall be a Qualified Equityholder or major financial institution with significant real estate experience involving properties similar to the Property. As a condition precedent to a Parent Level Pledge, Borrower shall give Lender written notice thereof within thirty (30) days after the consummation thereof. Notwithstanding the foregoing, Borrower acknowledges and agrees that any transfers made in connection with a Parent Level Pledge must comply with the requirements set forth in each of Section 8.3(B) through 8.3(E) and Section 8.3(G) through 8.3(I) above.

(h) **"Qualified Equityholder"** shall mean

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

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

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

(D) any entity (1) Controlled by any of the entities described in clauses (A), (B) or (C) above and (2) in which any of the entities described in clauses (A), (B) or (C) above own a 51% direct or indirect equity ownership interest;

(E) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations ("**CDO**") secured by or financing through an "owner trust" of, the Loan (collectively, "**Securitization Vehicles**"), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire "controlling class" of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise

Qualified Equityholders under clauses (A), (B), (C) or (D) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the "equity interest" in such Securitization Vehicle is owned by one or more entities that are Qualified Equityholders under clauses (A), (B), (C) or (D) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (E), such person or entity must be replaced by a Person or entity meeting the requirements of this clause (E) within thirty (30) days; or

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

Notwithstanding the foregoing, no person or entity shall be deemed to be a Qualified Equityholder if (y) such person or entity (or any other person or entity owned or Controlled by such person or entity or affiliated with such person or entity) has been, within the last ten (10) years, (I) subject to any material, uncured event of default in connection with a loan financing which resulted in litigation or an acceleration of an indebtedness held by Lender or any other secondary market or institutional lender or (II) the subject of any action or proceeding under applicable Insolvency Laws; or (z) any of the principals or entities which Control such person or entity or own a material direct or indirect equity interest in such person or entity have ever been convicted of a felony.

As used in the above definition of "Qualified Equityholder", the following terms shall have the following meanings:

(i) "**Eligibility Requirements**" shall mean, with respect to any person or entity, that such person or entity (A) has total assets (in name or under management) in excess of $750,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's equity of $500,000,000 and (B) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties.

(ii) **"Permitted Fund Manager"** shall mean any Person or entity that on the date of determination is (A) a nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (B) investing through a fund with committed capital of at least $500,000,000 and (C) not subject to any action or proceeding under any bankruptcy, insolvency, rehabilitation or other similar proceeding.

(iii) **"Qualified Trustee"** shall mean (A) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise

corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least $300,000,000 and subject to supervision or examination by federal or state authority, (B) an institution insured by the Federal Deposit Insurance Corporation or (C) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

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

(i) "**Rady Family Entity**" shall mean an entity (i) in which Ernest S. Rady or a spouse, siblings, children or grandchildren, nieces, nephews or cousins of Ernest S. Rady or trusts for the benefit of any such persons or any combination of such individuals and/or trusts (collectively, the **"Rady Family Group"**) own at least a 51% direct or indirect equity interest, and (ii) which is Controlled by one or more members of the Rady Family Group having commercial real estate experience at least comparable to that of the current management of Guarantor.

(j) **"Rady SPE"** shall mean entity (i) which is a single purpose, bankruptcy remote entity meeting the requirements of Sections 4.3 and 5.9 hereof, (ii) which is Controlled by a Rady Family Entity and/or a member (or members) of the Rady Family Group and (iii) in which a Rady Family Entity and/or or a member (or members) of the Rady Family Group owns at least a 51% direct or indirect equity ownership interest.

(k) "**Restricted Party**" shall mean Borrower, Master Lessee (if the Master Lease Termination has not yet occurred), Guarantor, Sponsor, any SPE Component Entity, any Affiliated Manager, or any shareholder, partner, member, non-member manager or any direct or indirect legal or beneficial owner of any of the foregoing; provided, however, in no event shall GE Sponsor, any officer, director, trustee or other manager of GE Sponsor, or any holder of any direct or indirect legal or beneficial interest in GE Sponsor, constitute a "Restricted Party" for the purposes hereof.

(l) **"Sale or Pledge"** shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

(m) "**Sponsor"** shall mean (i) Guarantor, (ii) a Rady Family Entity, (iii) a Qualified Equityholder or (iv) GE Sponsor; provided, that, as conditions precedent to (A) any transfer of Guarantor's, the Rady Family Entity's or GE Sponsor's interest as "Sponsor" to a Qualified Equityholder, Lender shall have received a Rating Agency Confirmation in connection therewith

and with respect to the (I) first such transfer, no transfer fee shall be due, (II) second such transfer, Borrower shall pay Lender a transfer fee equal to 0.5% of the outstanding principal balance of the Loan at the time of such transfer, (III) third such transfer, Borrower shall pay Lender a transfer fee equal to 1.0% of the outstanding principal balance of the Loan at the time of such transfer and (IV) fourth such transfer and each subsequent transfer thereafter, Borrower shall pay Lender a transfer fee equal to 1.0% of the outstanding principal balance of the Loan at the time of such transfer (provided that such amounts shall be in lieu of, and not in addition to, any other assumption fee provided above) or (B) any transfer of Guarantor's or the Rady Family Entity's interest as "Sponsor" to GE Sponsor, the GE Sponsor Conditions shall have been satisfied. For purposes of clarification, any entity comprising the defined term "Sponsor" above shall not be deemed to be the "Sponsor" hereunder unless a state of facts exists that would require such entity to be the "Sponsor" hereunder in order to satisfy the conditions set forth in Sections 8.3(B) and 8.3(C) above, to the extent applicable in the particular context in which the term "Sponsor" is being used.

(n) **"Sponsor Cure Period"** shall mean, to the extent GE Sponsor has obtained Control over Venture, a period of time from the date such Control is obtained for either (i) a GE SPE to obtain Firehill's fee interest in the Property or (ii) GE Sponsor to obtain Control over Firehill and to obtain at least a 51% direct or indirect equity interest in Firehill (which such equity interest shall be held indirectly through GE Subsidiary); provided, that, (A) in no event shall such Sponsor Cure Period exceed thirty (30) days (subject to GE Sponsor's and/or Venture's right to extend such thirty (30) day period for two additional periods of thirty (30) days each, which such extensions shall each be exercisable on five (5) days prior written notice to Lender) or such additional period as may be agreed to by Lender in its reasonable discretion and (B) such Sponsor Cure Period (as the same may be extended pursuant to clause (A) above) shall only be available hereunder to the extent that GE Sponsor and/or Venture is diligently and in good faith pursuing all available means to cause the events specified in clause (i) or clause (ii) above to occur as quickly as possible.

(o) **"TIC Assumption"** shall mean the transfer of the ownership interest in the Property currently held by one (or, in the case of a transfer to a Rady SPE or a GE SPE, both) of the entities comprising the defined term "Borrower" hereunder to (i) the other party comprising the defined term "Borrower" hereunder, (ii) a Rady SPE or (iii) a GE SPE (each of the foregoing, an **"Assuming Borrower"**) and such Assuming Borrower's assumption of the Debt and the other obligations of the transferring Borrower hereunder and under the other Loan Documents in accordance with the terms and conditions set forth in Section 8.4 above; provided, that, no such TIC Assumption shall be permitted hereunder (A) if the same would result in (I) more than two (2) tenants-in-common owning the Property or (II) each such tenant-in-common Borrower not being 51% owned (directly or indirectly) and Controlled by the same Sponsor and (B) more frequently than once in any calendar year (unless otherwise consented to in writing by Lender); provided, that, Borrower shall have the one time right to have a TIC Assumption occur twice in the same calendar year.

Section 8.7 EASEMENT AGREEMENTS. By acceptance hereof, Lender agrees that it shall execute and subordinate this Security Instrument and the other Loan Documents to (and Borrower shall be permitted to enter into without Lender's consent) reasonable easements, restrictions, covenants, reservations and rights of way in the ordinary course of Borrower's

business for traffic circulation, ingress, egress, parking, access, utilities lines or for other similar purposes; provided, that, in each case or taken as a whole, the same do not have a Material Adverse Effect.

Article 9. PREPAYMENT

Section 9.1. PREPAYMENT. The Debt may be prepaid only in strict accordance with the express terms and conditions of the Note and this Security Instrument including the payment (if applicable) of any prepayment consideration or premium due under the Note (whether due prior to or after the occurrence of an Event of Default).

Article 10. DEFAULT

Section 10.1. EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "**Event of Default**":

(a) if any portion of the Debt is not paid on the date the same is due or if the entire Debt is not paid on or before the Maturity Date; provided, however, Borrower shall not be in default so long as there is sufficient money in the Cash Management Account for payment of all amounts then due and payable (including any deposits into Reserve Accounts (as such term is defined in that certain Reserve Agreement by and among Borrower and Lender executed in connection with the Loan (the "**Reserve Agreement**"))) and Lender's access to such money has not been constrained or constricted in any manner;

(b) if any of the Taxes or Other Charges are not paid within ten (10) days following the date the same is due and payable except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument;

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender within ten (10) days of Lender's request;

(d) if the Property is subject to actual waste;

(e) if Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) violates or does not comply with any of the provisions of Sections 3.7 (and does not cure such failure within ten days of written notice) or 4.3 or Articles 8, 12 or 13;

(f) if any representation or warranty of Borrower or any person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument (including, without limitation, Guarantor) or any general partner, managing member, principal or beneficial owner of any of the foregoing, made herein or any guaranty or indemnity, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;

(g) if (i) Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) or any general partner or managing member of Borrower, Master Lessee (if the Master

Lease Termination has not yet occurred) or any SPE Component Entity shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) or any general partner or managing member of Borrower, Master Lessee (if the Master Lease Termination has not yet occurred) or any SPE Component Entity shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) or any general partner or managing member of Borrower, Master Lessee (if the Master Lease Termination has not yet occurred) or any SPE Component Entity any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of ninety (90) days; or (iii) there shall be commenced against Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) or any general partner or managing member of Borrower, Master Lessee (if the Master Lease Termination has not yet occurred) or any SPE Component Entity any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; or (iv) Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) or any general partner or managing member of Borrower, Master Lessee (if the Master Lease Termination has not yet occurred) or any SPE Component Entity shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower or Master Lessee (if the Master Lease Termination has not yet occurred) or any general partner of Borrower, Master Lessee (if the Master Lease Termination has not yet occurred) or any SPE Component Entity shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

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

(i) Subject to Borrower’s contest rights contained in Section 3.12 hereof, if the Property becomes subject to any mechanic’s, materialman’s or other lien (other than a lien for local real estate taxes and assessments not then due and payable) and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of ninety (90) days;

(j) if any federal tax lien is filed against Borrower, any general partner or managing member of Borrower, or the Property and same is not discharged of record within ninety (90) days after same is filed;

(k) if Borrower fails to cure any violations of Applicable Laws within ninety (90) days, of first having received notice thereof;

(l) if (i) Borrower fails to timely provide Lender with the written certification and evidence referred to in Section 4.2 hereof, or (ii) Borrower consummates a transaction which would cause the Security Instrument or Lender's exercise of its rights under this Security Instrument, the Note or the Other Security Documents to constitute a nonexempt prohibited transaction under ERISA or result in a violation of a state statute regulating governmental plans, subjecting Lender to liability for a violation of ERISA or a state statute;

(m) if Borrower shall fail to reimburse Lender on demand, with interest calculated at the Default Rate (defined below), for all Insurance Premiums or Taxes, together with interest and penalties imposed thereon, paid by Lender pursuant to this Security Instrument (other than amounts paid by Lender from the Escrow Fund prior to the occurrence and continuance of an Event of Default);

(n) if Borrower shall fail to timely deliver to Lender an estoppel certificate pursuant to the terms of Subsection 7.4(a);

(o) if Borrower shall fail to timely deliver to Lender, after request by Lender, the statements referred to in Section 3.11 in accordance with the terms thereof;

(p) if any default occurs in the performance of any guarantor's or indemnitor's (including, without limitation, Guarantor's) obligations under any guaranty or indemnity executed in connection herewith (including, without limitation, the Indemnity Agreement) and such default continues after the expiration of applicable grace periods set forth in such guaranty or indemnity, or if any representation or warranty of any guarantor or indemnitor thereunder shall be false or misleading in any material respect when made;

(q) if the 1031 Exchange Transfer shall fail to occur within one hundred eighty (180) days of the date hereof;

(r) if a default shall occur under the Master Lease or if the Master Lease Termination shall fail to occur within five (5) days of the consummation of the 1031 Exchange Transfer;

(s) if, prior to the Permitted Annex Termination, the leasehold estate created by the Prime Annex Lease shall be surrendered or the Prime Annex Lease shall be terminated or canceled for any reason or under any circumstances whatsoever and Borrower is not immediately granted a Replacement Lease (defined below);

(t) if, prior to the Permitted Annex Termination (A) Borrower shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by the Annex Sublease as and when such rent or other charge is payable (unless waived by Annex SL), (B) there shall occur any default (beyond any applicable notice and/or cure period) by Borrower under the Annex Sublease, in the observance or performance of any term, covenant or condition of the Annex Sublease on the part of Borrower, to be observed or performed, (C) any one or more of the events referred to in the Annex Sublease shall occur which would cause the Annex Sublease to terminate without notice or action by Annex SL or which would entitle Annex SL to

terminate the Annex Sublease and the term thereof by giving notice to Borrower (unless waived by Annex SL), (D) the leasehold estate created by the Annex Sublease shall be surrendered or the Annex Sublease shall be terminated or canceled for any reason or under any circumstances whatsoever (provided, that, the events described in the foregoing clause (D) shall not constitute an Event of Default hereunder if (I) Borrower is immediately granted a Replacement Lease or (II) the same shall have occurred due to events beyond the control of Borrower, Sponsor, Guarantor or any of their respective Affiliates and Borrower posts with Lender replacement security, which such replacement security shall be acceptable to Lender in all respects (including, without limitation, as to the type and amount of such security) and Borrower shall enter into such additional agreements and provide such additional opinions or other documents as may be reasonably requested by Lender in connection with the foregoing) or (E) except as otherwise permitted herein, any of the terms, covenants or conditions of the Annex Sublease and/or the Annex SNDA shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender;

(u) if for more than thirty (30) days after notice from Lender, Borrower shall continue to be in default under any other term, covenant or condition of the Note, this Security Instrument or the Other Security Documents in the case of any default which can be cured by the payment of a sum of money or for sixty (60) days after notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such sixty (60) day period and Borrower shall have commenced to cure such default within such sixty (60) day period and thereafter diligently and expeditiously proceeds to cure the same, such sixty (60) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days; or

(v) a default beyond applicable notice or cure periods (if any) shall occur under any Other Security Documents.

Section 10.2. LATE PAYMENT CHARGE. If any monthly installment of principal and interest is not paid on the date on which it was due, Borrower shall pay to Lender upon demand an amount equal to the lesser of two and one-half percent (2.5%) of such unpaid portion of the outstanding monthly installment of principal and interest then due or the maximum amount permitted by Applicable Law, to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment, and such amount shall be secured by this Security Instrument and the Other Security Documents.

Section 10.3. DEFAULT INTEREST. Borrower will pay, from the date of an Event of Default through the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal balance of the Note at a per annum rate equal to the lesser of (a) four percent (4%) plus the Applicable Interest Rate (as defined in the Note), and (b) the maximum interest rate which Borrower may by law pay or Lender may charge and collect (the "**Default Rate**").

Article 11. RIGHTS AND REMEDIES

Section 11.1. REMEDIES. Except as expressly and specifically limited hereby or by the Other Security Documents, upon the occurrence of any Event of Default, Borrower agrees that Trustee or Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Trustee or Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Trustee or Lender: (a) declare the entire unpaid Debt to be immediately due and payable; (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner; (c) with or without entry, to the extent permitted and pursuant to the procedures provided by Applicable Law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority; (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law; (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the Other Security Documents; (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents; (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower or of any person, firm or other entity liable for the payment of the Debt; (h) subject to Applicable Law, and following notice to Borrower, the license granted to Borrower under Section 1.2 shall be revoked (subject to reinstatement as provided herein) and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and, subject to the Cash Management Agreement, receive all Rents of the Property and every part thereof and the Master Lease Rent; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents and/or the Master Lease Rent, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the

receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; (i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower; (j) apply any sums then deposited in the Escrow Fund and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any Other Security Document to the payment of the following items in any order in its discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) any other items or expenses for which such escrow was established; or (iv) after a Foreclosure Trigger and prior to Borrower's cure, if applicable, of the Event of Default giving rise thereto and Lender's acceptance of such cure (whether voluntarily or required by law) (A) interest on the unpaid principal balance of the Note, (B) the unpaid principal balance of the Note; or (C) all other sums payable pursuant to the Note, this Security Instrument and the Other Security Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument; (k) after a Foreclosure Trigger and prior to Borrower's cure, if applicable, of the Event of Default giving rise thereto and Lender's acceptance of such cure (whether voluntarily or required by law), surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney in fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums (provided, that, the foregoing shall in no way limit Lender's rights to apply the Net Proceeds to the Debt under certain circumstances more particularly set forth herein (i.e., the existence or non-existence of a Foreclosure Trigger is irrelevant to Lender's ability to exercise the aforesaid rights)); (l) pursue such other remedies as Lender may have under Applicable Law; (m) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or (n) under the power of sale hereby granted, Lender shall have the discretionary right to cause some or all of the Property, including any Personal Property, to be sold or otherwise disposed of in any combination and in any manner permitted by Applicable Law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. In the event of a sale, by foreclosure, power of sale, or otherwise, Lender may bid for and acquire the Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the

sale, the cost of any enforcement proceeding hereunder and any other sums which Lender is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid. Notwithstanding the provisions of this Section 11.1 to the contrary, if any Event of Default as Subsection 10.1(g) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 11.2. APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender after the occurrence of an Event of Default pursuant to the Note, this Security Instrument or the Other Security Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Upon any foreclosure sale or sales of all or any portion of the Property under the power of sale herein granted (if any), Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

Section 11.3. RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 11.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 11.4. ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 11.5. RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 11.6. EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower and each other "Indemnitor" under the Indemnity Agreement delivered

in connection herewith which reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower or such other Indemnitor or where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower and such other Indemnitor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower and such other Indemnitor where the books and records are located.

Section 11.7. OTHER RIGHTS, ETC. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the Other Security Documents.

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

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

Section 11.8. RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 11.9. VIOLATION OF LAWS. If the Property is not in compliance with Applicable Laws, Lender may impose additional requirements upon Borrower in connection therewith including, without limitation, monetary reserves or financial equivalents.

Section 11.10. RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 11.11. EXCULPATION. All rights and remedies of Lender under this Security Instrument and the Other Security Documents are expressly made subject to the limitations and exculpations set forth in Article 15, below.

Article 12. ENVIRONMENTAL HAZARDS

Section 12.1. ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants, based upon an environmental assessment of the Property and information that Borrower knows (which for purposes hereof will mean the actual knowledge of John Chamberlain and Jim Durfey) that: (a) there are no Hazardous Substances (defined below) or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with, if required, Environmental Laws (defined below) and with permits issued pursuant thereto or (ii) fully disclosed to Lender by Borrower in writing or pursuant to the written reports resulting from the environmental assessments of the Property delivered to Lender, including, without limitation, that certain environmental report prepared by IVI International dated May 5, 2005 (the "**Environmental Report**"); (b) there are no past, present or threatened Releases (defined below) of Hazardous Substances in, on, under or from the Property except as described in the Environmental Report; (c) there is no likely threat of any Release of Hazardous Substances migrating to the Property except as described in the Environmental Report; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Report; (e) Borrower has not received, any written or oral notice from any person or entity (including but not limited to a governmental entity) relating to any unlawful accumulations of Hazardous Substances or Remediation (defined below) thereof on the Property, or of possible liability of any person or entity pursuant to violation of any Environmental Law in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to conditions in, on, under or from the Property that is known to Borrower (which for purposes hereof will mean the actual knowledge of John Chamberlain and Jim Durfey) and that is contained in Borrower's files and records, including but not limited to any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property.

"**Environmental Law**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local

statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right to Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. "Environmental Law" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law; conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property. "**Hazardous Substances**" include but are not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives provided, however, that "Hazardous Substances" shall not include cleaning materials, office supplies, cleaning supplies and other substances commonly used or sold by establishments similar to those leasing space at the Property in the ordinary course of their business and customarily used at properties similar to the Property, to the extent such materials are used, stored and disposed of in accordance with Environmental Laws.

"**Release**" of any Hazardous Substance means any unlawful release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

"**Remediation**" means any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in Article 12.

Section 12.2. ENVIRONMENTAL COVENANTS. Borrower covenants and agrees that so long as Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property: (a) all uses and operations on or of the Property shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances by Borrower, its agents or employees in, on, under or from the Property;

(c) Borrower shall not knowingly permit any Hazardous Substances in, on, or under the Property, except those that are in compliance with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required; (d) the Property shall be kept free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other person or entity (the "**Environmental Liens**"); (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 12.3 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any written request of Lender (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties (as defined herein) shall be entitled to rely on such reports and other results thereof provided, however, that no such request shall be made by Lender unless Lender has reasonable grounds to believe that a Release of Hazardous Substances or a violation of Environmental Law has occurred; (g) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate Remediation of any condition (including but not limited to a Release of a Hazardous Substance) in, on, under or from the Property; (ii) comply with any Environmental Law; (iii) comply with any directive from any governmental authority; and (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment; (h) Borrower shall not do or knowingly allow any tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; and (i) Borrower shall immediately notify Lender in writing of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property; (B) any non compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication which Borrower becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Substances or Remediation thereof affecting the Property, possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Article 12. Any failure of Borrower to perform its obligations pursuant to this Section 12.2 shall constitute bad faith waste with respect to the Property.

Section 12.3. LENDER'S RIGHTS. Subject to the rights of quiet enjoyment of tenants under existing Leases, Lender and any other person or entity designated by Lender, including but not limited to any receiver, any representative of a governmental entity, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing.

Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender. The costs and expenses of such assessments shall be borne by Lender except in instances where such report or assessment is performed due to Borrower's failure to comply with its obligations under Section 12.2(f), in which cases the costs and expenses of such assessments shall be paid for by Borrower.

Article 13. INDEMNIFICATION

Section 13.1. **GENERAL INDEMNIFICATION. BORROWER SHALL, AT ITS SOLE COST AND EXPENSE, PROTECT, DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LIABILITIES (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITIES), ACTIONS, PROCEEDINGS, OBLIGATIONS, DEBTS, DAMAGES, LOSSES, COSTS, EXPENSES, DIMINUTIONS IN VALUE, FINES, PENALTIES, CHARGES, FEES, EXPENSES, JUDGMENTS, AWARDS, AMOUNTS PAID IN SETTLEMENT, PUNITIVE DAMAGES, FORESEEABLE AND UNFORESEEABLE CONSEQUENTIAL DAMAGES, OF WHATEVER KIND OR NATURE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND OTHER COSTS OF DEFENSE) (THE "LOSSES") IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST ANY INDEMNIFIED PARTIES (DEFINED BELOW) AND DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY RELATING TO ANY ONE OR MORE OF THE FOLLOWING WHICH SHALL HAVE OCCURRED PRIOR TO THE FORECLOSURE OF THIS SECURITY INSTRUMENT (OR DELIVERY AND ACCEPTANCE OF A DEED IN LIEU OF SUCH FORECLOSURE), EXCEPT TO THE EXTENT ANY OF THE FOLLOWING ARE ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNIFIED PARTY: (A) ANY AND ALL LAWFUL ACTION THAT MAY BE TAKEN BY LENDER IN CONNECTION WITH THE ENFORCEMENT OF THE PROVISIONS OF THIS SECURITY INSTRUMENT OR THE NOTE OR ANY OF THE OTHER SECURITY DOCUMENTS, WHETHER OR NOT SUIT IS FILED IN CONNECTION WITH SAME, OR IN CONNECTION WITH BORROWER AND/OR ANY PARTNER, JOINT VENTURER OR SHAREHOLDER THEREOF BECOMING A PARTY TO A VOLUNTARY OR INVOLUNTARY FEDERAL OR STATE BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDING; (B) ANY ACCIDENT, INJURY TO OR DEATH OF PERSONS OR LOSS OF OR DAMAGE TO PROPERTY OCCURRING IN, ON OR ABOUT THE PROPERTY OR ANY PART THEREOF OR ON THE ADJOINING SIDEWALKS, CURBS, ADJACENT PROPERTY OR ADJACENT PARKING AREAS, STREETS OR WAYS; (C) ANY USE, NONUSE OR CONDITION IN, ON OR ABOUT THE PROPERTY OR ANY PART THEREOF OR ON THE ADJOINING SIDEWALKS, CURBS, ADJACENT PROPERTY OR ADJACENT PARKING AREAS, STREETS OR WAYS; (D) PERFORMANCE OF ANY LABOR OR SERVICES OR THE FURNISHING OF ANY MATERIALS OR OTHER PROPERTY IN RESPECT OF THE PROPERTY OR ANY PART THEREOF; (E) THE FAILURE OF ANY PERSON OTHER THAN AN INDEMNIFIED PARTY TO FILE TIMELY WITH THE INTERNAL REVENUE SERVICE AN ACCURATE FORM 1099 B, STATEMENT FOR RECIPIENTS OF PROCEEDS FROM REAL ESTATE, BROKER AND BARTER EXCHANGE TRANSACTIONS, WHICH MAY BE REQUIRED IN CONNECTION**

WITH THIS SECURITY INSTRUMENT, OR TO SUPPLY A COPY THEREOF IN A TIMELY FASHION TO THE RECIPIENT OF THE PROCEEDS OF THE TRANSACTION IN CONNECTION WITH WHICH THIS SECURITY INSTRUMENT IS MADE; (F) ANY FAILURE OF THE PROPERTY TO BE IN COMPLIANCE WITH ANY APPLICABLE LAWS; (G) THE ENFORCEMENT BY ANY INDEMNIFIED PARTY OF THE PROVISIONS OF THIS ARTICLE 13; (H) ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST LENDER BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY LEASE; (I) THE PAYMENT OF ANY COMMISSION, CHARGE OR BROKERAGE FEE TO ANYONE WHICH MAY BE PAYABLE IN CONNECTION WITH THE FUNDING OF THE LOAN EVIDENCED BY THE NOTE AND SECURED BY THIS SECURITY INSTRUMENT; OR (J) ANY MISREPRESENTATION MADE BY BORROWER IN THIS SECURITY INSTRUMENT OR ANY OTHER SECURITY DOCUMENT. ANY AMOUNTS PAYABLE TO LENDER BY REASON OF THE APPLICATION OF THIS SECTION 13.1 SHALL BECOME IMMEDIATELY DUE AND PAYABLE AND SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE LOSS OR DAMAGE IS SUSTAINED BY LENDER UNTIL PAID. AS USED HEREIN, THE TERM "INDEMNIFIED PARTIES" MEANS LENDER, TRUSTEE AND ANY PERSON OR ENTITY WHO IS OR WILL HAVE BEEN INVOLVED IN THE ORIGINATION OF THE LOAN EVIDENCED BY THE NOTE, ANY PERSON OR ENTITY WHO IS OR WILL HAVE BEEN INVOLVED IN THE SERVICING OF THE LOAN EVIDENCED BY THE NOTE, ANY PERSON OR ENTITY IN WHOSE NAME THE ENCUMBRANCE CREATED BY THIS SECURITY INSTRUMENT IS OR WILL HAVE BEEN RECORDED, PERSONS AND ENTITIES WHO MAY HOLD OR ACQUIRE OR WILL HAVE HELD A FULL OR PARTIAL INTEREST IN THE LOAN EVIDENCED BY THE NOTE (INCLUDING, BUT NOT LIMITED TO, INVESTORS (AS DEFINED HEREIN) OR PROSPECTIVE INVESTORS IN THE SECURITIES (AS DEFINED HEREIN), AS WELL AS CUSTODIANS, TRUSTEES AND OTHER FIDUCIARIES WHO HOLD OR HAVE HELD A FULL OR PARTIAL INTEREST IN THE LOAN EVIDENCED BY THE NOTE AS WELL AS THE RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, EMPLOYEES, AGENTS, SERVANTS, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, AFFILIATES, SUBSIDIARIES, PARTICIPANTS, SUCCESSORS AND ASSIGNS OF ANY AND ALL OF THE FOREGOING (INCLUDING BUT NOT LIMITED TO ANY OTHER PERSON OR ENTITY WHO HOLDS OR ACQUIRES OR WILL HAVE HELD A PARTICIPATION OR OTHER FULL OR PARTIAL INTEREST IN THE LOAN EVIDENCED BY THE NOTE OR THE PROPERTY, WHETHER DURING THE TERM OF THE LOAN EVIDENCED BY THE NOTE OR AS A PART OF OR FOLLOWING A FORECLOSURE OF THE LOAN EVIDENCED BY THE NOTE AND INCLUDING, BUT NOT LIMITED TO, ANY SUCCESSORS BY MERGER, CONSOLIDATION OR ACQUISITION OF ALL OR A SUBSTANTIAL PORTION OF LENDER'S ASSETS AND BUSINESS).

Section 13.2. MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any

Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the Other Security Document, except for income taxes and franchise taxes (imposed in lieu of income taxes) imposed on an Indemnified Party as a result of a present or former connection between the jurisdiction of the government or taxing authority imposing such tax and the Indemnified Party (excluding a connection arising solely from the Indemnified Party having executed, delivered, or performed its obligations or received a payment under, or enforced, this Security Instrument, the Note and the Other Security Documents) or any political subdivision or taxing authority thereof or therein.

Section 13.3. ERISA INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Sections 4.2 or 5.9.

Section 13.4. **ENVIRONMENTAL INDEMNIFICATION. BORROWER SHALL, AT ITS SOLE COST AND EXPENSE, PROTECT, DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL LOSSES AND COSTS OF REMEDIATION (WHETHER OR NOT PERFORMED VOLUNTARILY), ENGINEERS' FEES, ENVIRONMENTAL CONSULTANTS' FEES, AND COSTS OF INVESTIGATION (INCLUDING BUT NOT LIMITED TO SAMPLING, TESTING, AND ANALYSIS OF SOIL, WATER, AIR, BUILDING MATERIALS AND OTHER MATERIALS AND SUBSTANCES WHETHER SOLID, LIQUID OR GAS) IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST ANY INDEMNIFIED PARTIES, AND DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY RELATING TO ANY ONE OR MORE OF THE FOLLOWING (EXCEPT TO THE EXTENT THAT (I) ANY SUCH CLAIMS, LOSSES OR COSTS ARISE FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNIFIED PARTIES OR (II) THE SAME RELATE SOLELY TO HAZARDOUS SUBSTANCES FIRST INTRODUCED TO THE PROPERTY BY ANYONE OTHER THAN BORROWER, ITS AGENTS OR EMPLOYEES FOLLOWING THE FORECLOSURE OF THIS SECURITY INSTRUMENT (OR THE DELIVERY AND ACCEPTANCE OF A DEED IN LIEU OF SUCH FORECLOSURE), THE EXPIRATION OF ANY RIGHT OF REDEMPTION WITH RESPECT THERETO AND THE OBTAINING BY THE PURCHASER AT SUCH FORECLOSURE SALE OR GRANTEE UNDER SUCH DEED OF POSSESSION OF THE PROPERTY): (A) ANY PRESENCE OF ANY HAZARDOUS SUBSTANCES IN, ON, ABOVE, OR UNDER THE PROPERTY; (B) ANY PAST, PRESENT OR THREATENED RELEASE OF HAZARDOUS SUBSTANCES IN, ON, ABOVE, UNDER OR FROM THE PROPERTY; (C) ANY ACTIVITY BY BORROWER, ANY PERSON OR ENTITY AFFILIATED WITH BORROWER OR ANY TENANT OR OTHER USER OF THE PROPERTY IN CONNECTION WITH ANY ACTUAL, PROPOSED OR THREATENED USE, TREATMENT, STORAGE, HOLDING, EXISTENCE, DISPOSITION OR OTHER RELEASE, GENERATION, PRODUCTION, MANUFACTURING, PROCESSING,**

REFINING, CONTROL, MANAGEMENT, ABATEMENT, REMOVAL, HANDLING, TRANSFER OR TRANSPORTATION TO OR FROM THE PROPERTY OF ANY HAZARDOUS SUBSTANCES AT ANY TIME LOCATED IN, UNDER, ON OR ABOVE THE PROPERTY; (D) ANY ACTIVITY BY BORROWER, ANY PERSON OR ENTITY AFFILIATED WITH BORROWER OR ANY TENANT OR OTHER USER OF THE PROPERTY IN CONNECTION WITH ANY ACTUAL OR PROPOSED REMEDIATION OF ANY HAZARDOUS SUBSTANCES AT ANY TIME LOCATED IN, UNDER, ON OR ABOVE THE PROPERTY, WHETHER OR NOT SUCH REMEDIATION IS VOLUNTARY OR PURSUANT TO COURT OR ADMINISTRATIVE ORDER, INCLUDING BUT NOT LIMITED TO ANY REMOVAL, REMEDIAL OR CORRECTIVE ACTION; (E) ANY PAST, PRESENT OR THREATENED NON COMPLIANCE OR VIOLATIONS OF ANY ENVIRONMENTAL LAWS (OR PERMITS ISSUED PURSUANT TO ANY ENVIRONMENTAL LAW) IN CONNECTION WITH THE PROPERTY OR OPERATIONS THEREON, INCLUDING BUT NOT LIMITED TO ANY FAILURE BY BORROWER, ANY PERSON OR ENTITY AFFILIATED WITH BORROWER OR ANY TENANT OR OTHER USER OF THE PROPERTY TO COMPLY WITH ANY ORDER OF ANY GOVERNMENTAL AUTHORITY IN CONNECTION WITH ANY ENVIRONMENTAL LAWS; (F) THE IMPOSITION, RECORDING OR FILING OR THE THREATENED IMPOSITION, RECORDING OR FILING OF ANY ENVIRONMENTAL LIEN ENCUMBERING THE PROPERTY; (G) ANY ADMINISTRATIVE PROCESSES OR PROCEEDINGS OR JUDICIAL PROCEEDINGS IN ANY WAY CONNECTED WITH ANY MATTER ADDRESSED IN ARTICLE 12 AND THIS SECTION 13.4; (H) ANY PAST, PRESENT OR THREATENED INJURY TO, DESTRUCTION OF OR LOSS OF NATURAL RESOURCES IN ANY WAY CONNECTED WITH THE PROPERTY, INCLUDING BUT NOT LIMITED TO COSTS TO INVESTIGATE AND ASSESS SUCH INJURY, DESTRUCTION OR LOSS; (I) ANY ACTS OF BORROWER OR OTHER USERS OF THE PROPERTY IN ARRANGING FOR DISPOSAL OR TREATMENT, OR ARRANGING WITH A TRANSPORTER FOR TRANSPORT FOR DISPOSAL OR TREATMENT, OF HAZARDOUS SUBSTANCES OWNED OR POSSESSED BY SUCH BORROWER OR OTHER USERS, AT ANY FACILITY OR INCINERATION VESSEL OWNED OR OPERATED BY ANOTHER PERSON OR ENTITY AND CONTAINING SUCH OR SIMILAR HAZARDOUS MATERIALS; (J) ANY ACTS OF BORROWER OR OTHER USERS OF THE PROPERTY, IN ACCEPTING ANY HAZARDOUS SUBSTANCES FOR TRANSPORT TO DISPOSAL OR TREATMENT FACILITIES, INCINERATION VESSELS OR SITES SELECTED BY BORROWER OR SUCH OTHER USERS, FROM WHICH THERE IS A RELEASE, OR A THREATENED RELEASE OF ANY HAZARDOUS SUBSTANCE WHICH CAUSES THE INCURRENCE OF COSTS FOR REMEDIATION; (K) ANY PERSONAL INJURY, WRONGFUL DEATH, OR PROPERTY DAMAGE ARISING UNDER ANY STATUTORY OR COMMON LAW OR TORT LAW THEORY, INCLUDING BUT NOT LIMITED TO DAMAGES ASSESSED FOR THE MAINTENANCE OF A PRIVATE OR PUBLIC NUISANCE OR FOR THE CONDUCTING OF AN ABNORMALLY DANGEROUS ACTIVITY ON OR NEAR THE PROPERTY, AND ARISING OUT OF A RELEASE OF ANY HAZARDOUS SUBSTANCE ON, UNDER OR ABOUT THE PROPERTY; AND (L) ANY MISREPRESENTATION OR INACCURACY IN ANY

REPRESENTATION OR WARRANTY OR MATERIAL BREACH OR FAILURE TO PERFORM ANY COVENANTS OR OTHER OBLIGATIONS PURSUANT TO ARTICLE 12.

Section 13.5. DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, if they reasonably believe that their interests are not properly being represented by the counsel selected by Borrower, engage their own attorneys and other professionals to defend them. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Article 14. WAIVERS

Section 14.1. WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any of the Other Security Documents, or the Obligations. The foregoing shall not be deemed a waiver of Borrower's right to assert in a separate proceeding any claim against Lender which otherwise would constitute a defense, setoff, counterclaim or crossclaim of any nature arising from and after the date hereof.

Section 14.2. MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Applicable Law.

Section 14.3. WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Trustee or Lender except with respect to matters for which this Security Instrument, the Note, or the Other Security Documents specifically and expressly provides for the giving of notice by Trustee or Lender to Borrower and except with respect to matters for which Trustee or Lender is required by Applicable Law to give notice, and Borrower hereby expressly waives the right to receive any notice from Trustee or Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Trustee or Lender to Borrower or as required by law.

Section 14.4. DETERMINATIONS BY LENDER. Except as otherwise specifically set forth in the Note, this Security Instrument, or the Other Security Documents, wherever pursuant to this Security Instrument (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or

determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be in the reasonable determination of Lender applied in good faith. All approvals of or waivers by Lender in respect of any of the terms, conditions or requirements of this Security Instrument must be in writing. No waiver with respect to any condition, breach or other matter shall extend to or be taken in any manner whatsoever to affect any other condition, breach or matter or affect Lender's rights resulting therefrom.

Section 14.5. SURVIVAL. The indemnifications made pursuant to Sections 13.3 and 13.4 and the representations and warranties, covenants, and other obligations arising under Article 12, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Note or any of the Other Security Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Note or the Other Security Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto. Notwithstanding the foregoing, upon a transfer of Borrower's fee and leasehold interest in the Property permitted pursuant to Article 8 hereof, the transferring Borrower shall be released from any liability thereafter accruing under any such indemnification provision (other than as to matters which have already occurred).

Section 14.6. **WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

Article 15. EXCULPATION

Section 15.1. EXCULPATION. All rights and remedies of Lender under this Security Instrument and the Other Security Documents are expressly made subject to the limitations and exculpations set forth in Article 14 of the Note, the provisions of which are incorporated herein by this reference.

Article 16. NOTICES

Section 16.1. NOTICES. (a) All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt

acknowledged by the recipient thereof, (ii) one (l) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower:	Landmark Venture LLC Landmark Firehill, LLC c/o American Assets, Inc. 11455 El Camino Real, Suite 200 San Diego, California 92130 Attention: John W. Chamberlain and Robert Barton Facsimile No.: (619) 350-2620
If to Lender:	Morgan Stanley Mortgage Capital Inc. 1221 Avenue of the Americas 27th Floor New York, New York 10020 Attention: Stephen Holmes Facsimile No. (212) 762-9495
If to Trustee:	Chicago Title Company One Kaiser Plaza Suite 745 Oakland, California 94612 Attention: Kris Owens Facsimile No.: (510) 451-8888

or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Security Instrument, "**Business Day**" shall mean any day other than Saturday, Sunday or any other day on which banks are authorized or required to close in New York, New York.

Article 17. SERVICE OF PROCESS

Section 17.1. CONSENT TO SERVICE. (a) Borrower will maintain a place of business or an agent for service of process in San Diego County, California and give prompt notice to Lender of the address of such place of business and of the name and address of any new agent appointed by it, as appropriate. Borrower further agrees that the failure of its agent for service of process to give it notice of any service of process will not impair or affect the validity of such service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of Borrower available to be served, and if it at that time has no place of business in San Diego County, California, then Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to the first paragraph hereof.

Section 17.2. Borrower initially and irrevocably designates John W. Chamberlain with offices on the date hereof at 11455 El Camino Real, Suite 200, San Diego, California 92130, to receive for and on behalf of Borrower service of process with respect to this Security Instrument.

Article 18. APPLICABLE LAW

Section 18.1. **CHOICE OF LAW. THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF CALIFORNIA AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AND APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT TO THE EXTENT CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE SECURITY INTERESTS GRANTED HEREUNDER IS CONTROLLED BY THE LAW OF THE STATE IN WHICH THE COLLATERAL IS LOCATED.**

Section 18.2. USURY LAWS. This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by Applicable Law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

Section 18.3. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

Article 19. SECONDARY MARKET

Section 19.1. TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Note, this Security Instrument and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public

offering or private placement (the "**Securities**"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such Securities or any Rating Agency rating such Securities (collectively, the "**Investor**") and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt, Sponsor, Indemnitor and to Borrower, and the Property, whether furnished by Borrower, or otherwise, as Lender determines necessary or desirable. Borrower agrees to reasonably cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Security Instrument, including, without limitation, the delivery of an estoppel certificate in accordance therewith, and such other documents as may be reasonably requested by Lender. Borrower shall also furnish and Borrower consents to Lender furnishing to such Investors or such prospective Investors or Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower, Indemnitor or Sponsor as may be requested by Lender, any Investor or any prospective Investor or Rating Agency in connection with any sale, transfer or participation interest. Lender may retain or assign responsibility for servicing the Note, this Security Instrument, and the Other Security Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer; provided, however, in the event Lender exercises its right to split the Loan into parts as permitted hereunder and deposits such parts into more than one securitized pool, (I) Borrower shall only be required to deal with one primary servicer with respect to any consents, approvals, notices, required from, or to, Lender pursuant to the Loan Documents (it being understood that such primary servicer may need to consult with other persons that hold a portion of Lender's rights and obligations under the Loan or with the Rating Agencies in connection with any such consent, approval or notice), (II) the time periods for Lender approvals under the Loan Documents (to the extent applicable) shall not be increased and Borrower shall not be required to pay multiple fees and expenses if more than one servicer is consulted by the primary servicer and (III) other than Borrower's right to refuse to deal with multiple servicers and/or to pay the fees of multiple servicers in accordance with the foregoing, the failure of Lender or any servicer to comply with the provisions of this sentence shall not otherwise waive, abrogate or otherwise effect Borrower's other obligations hereunder or any of the other Loan Documents. Lender may make such assignment or delegation on behalf of the Investors if the Note is sold or this Security Instrument or the Other Security Documents are assigned. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

Section 19.2. CONVERSION TO REGISTERED FORM. At the request and the expense of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the "**Registrar**") reasonably acceptable to Lender which shall maintain, subject to such reasonable regulations as it shall provide, such books and records as are necessary for the registration and transfer of the Note in a manner that shall cause the Note to be considered to be in registered form for purposes of Section 163(f) of the Code. The option to convert the Note into registered form once exercised may not be revoked. Any agreement setting out the rights and obligation of the Registrar shall be subject to the reasonable approval of Lender. Borrower may revoke the appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Borrower or Lender or any other lender in respect of transfers of the Note and Security Instrument (other than Taxes and governmental charges and fees).

Section 19.3. COOPERATION. Borrower acknowledges that Lender and its successors and assigns may (a) sell this Security Instrument, the Note and Other Security Documents to one or more third parties as a whole loan, (b) participate the Loan secured by this Security Instrument to one or more third parties, (c) deposit, through one or a series of transactions, this Security Instrument, the Note and Other Security Documents with one or more trusts, which trusts may sell certificates to third parties evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to third parties (The transaction referred to in clauses (a), (b), (c) and (d) shall hereinafter be referred to collectively as "**Secondary Market Transactions**" and the transactions referred to in clause (c) shall hereinafter be referred to as a "**Securitization**". Any certificates, notes or other securities issued in connection with a Securitization are hereinafter referred to as "**Securities**"). Borrower shall cooperate in good faith (provided such cooperation will not result in expense or additional potential liability to Borrower) with Lender in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by any Rating Agency issuing any statistical rating in any Secondary Market Transaction or the requirements of potential investors in any Secondary Market Transaction. Borrower agrees to make upon Lender's written request, and at no material cost to Borrower, without limitation, all structural or other changes to the Loan (including delivery of one or more new component notes to replace any original Individual Note or modify any original Individual Note to reflect multiple components of the Loan and such new notes or modified note may have different interest rates and amortization schedules), modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to the Rating Agencies or potential investors and addressing such matters as the Rating Agencies or potential investors may require; provided, however, notwithstanding anything to the contrary in this Security Instrument, the Note, or the Other Security Documents, Borrower shall not be required to modify any documents evidencing or securing the Loan (or otherwise take any action) which would modify (i) the initial weighted average interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the aggregate amortization of principal of the Note, (iv) any other material economic term of the Loan, (v) decrease the time periods during which Borrower is permitted to perform its obligations under this Security Instrument or any of the Other Security Documents, or (vi) otherwise increase Borrower's or Indemnitor's obligations or decrease any of their rights under the Note, this Security Instrument or any of the other Security Documents except as otherwise expressly permitted herein. Borrower shall provide such information and documents relating to Borrower, Indemnitor, Sponsor, the Property and any tenants of the Improvements as Lender may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to prospective investors or Rating Agencies any information in its possession, including, without limitation, financial statements relating to Borrower, Sponsor, Indemnitor, the Property and any tenant of the Improvements. Borrower acknowledges that certain information regarding the Loan and the parties thereto, Sponsor and the Property may be included in disclosure documents in connection with the Securitization, including an offering circular, a prospectus, prospectus supplement, private placement memorandum or other offering document (each, an "**Disclosure Document**") and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), and may be made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization.

Article 20. COSTS

Section 20.1. PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Lender may, subject to any express limitations contained herein and in the other Loan Documents, impose certain reasonable administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of the Loan, (b) the release or substitution of collateral therefor, (c) if the servicer, in its reasonable determination, anticipates that there will occur an Event of Default and the Loan is transferred to a special servicer, (d) obtaining certain consents, waivers and approvals required hereunder, and/or (e) the review of any Major Lease, proposed Major Lease or any other Lease for which Lender's approval is required hereunder or the preparation or review of any subordination, non disturbance agreement. Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof required by law, regulation, any governmental or quasi governmental authority. Subject to the limitations on cost and expense in Section 19.3 above, Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such reasonable fees (as the same may be increased or decreased from time to time), and any additional reasonable fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event of Default. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all reasonable legal fees and disbursements of Lender, whether retained firms, the reimbursement for the expenses of in house staff or otherwise. Whenever it is provided herein or in any other Loan Document that a Rating Agency Confirmation (or similar approval) by any Rating Agency is required hereunder (or under any other Loan Document), Borrower shall be responsible for the reasonable fees and other charges imposed by any Rating Agency in connection therewith as well as Lender's reasonable costs and expenses incurred in connection therewith.

Section 20.2. ATTORNEYS' FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with the items set forth in Section 20.1 above, and (b) Borrower shall pay to Trustee or Lender on demand any and all expenses, including legal expenses and attorneys' fees, reasonably incurred or paid by Trustee or Lender in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Trustee or Lender until such expenses are paid by Borrower.

Article 21. DEFINITIONS

Section 21.1. GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower, each party comprising Borrower (if Borrower consists of more than one person or entity) and any subsequent owner or owners of the Property or any part thereof or any interest therein"; the word "Lender" shall mean "Lender and any subsequent holder of the Note"; the word "Note" shall mean "the Note and any other evidence of indebtedness secured by

this Security Instrument"; the word "person" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents, the Master Lease and the Master Lease Rents and enforcing its rights hereunder.

Article 22. MISCELLANEOUS PROVISIONS

Section 22.1. NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 22.2. LIABILITY. If there is more than one Borrower, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 22.3. INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

Section 22.4. HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 22.5. DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 22.6. NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 22.7. SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged

with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and the Other Security Documents and the performance and discharge of the Other Obligations.

Section 22.8. ENTIRE AGREEMENT. The Note, this Security Instrument and the Other Security Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, this Security Instrument and the Other Security Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, this Security Instrument and the Other Security Documents.

Section 22.9. TAX DISCLOSURE. Notwithstanding anything herein or in any other Loan Document to the contrary, except as reasonably necessary to comply with applicable securities laws, each party (and each employee, representative or other agent of each party) hereto may disclose to any and all Persons, without limitation of any kind, any information with respect to the United States federal income "tax treatment" and "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such parties (or their representatives) relating to such tax treatment and tax structure; provided, that with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transaction as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to the United States federal income tax treatment or tax structure of the transactions contemplated hereby.

Article 23. PRIME ANNEX LEASE AND ANNEX SUBLEASE PROVISIONS

Section 23.1. PRIME ANNEX LEASE AND ANNEX SUBLEASE REPRESENTATIONS. To the best of Borrower's knowledge (which, for the purposes hereof, means the actual knowledge of John Chamberlain and Jim Durfey):

(I)(a) That certain Lease Agreement dated as of April 16, 1973 between Southern Pacific Land Company (SPL) (predecessor-in-interest to EOP-One Market, L.L.C.) (together with its successors and assigns, "**Prime Lessor**"), as landlord thereunder, and Southern Pacific Land Company (predecessor-in-interest to Annex SL), as tenant thereunder, which such Lease Agreement was (i) amended pursuant to that certain (A) Assignment and Assumption of Tenant's Interest In Lease dated November 10, 18, 1994 and recorded on November 22, 1994 as Document Number 94-F716286 in Reel 6263 at Image 0204, and (B) Annex SNDA, and (ii) memorialized pursuant to a short form of the same dated April 16, 1973 and recorded in the Recorder's Office on April 24, 1973 as Document No. V71530 in Book B755 at Page 597 (such Lease Agreement, together with the amendments and other agreements set forth above and any other amendments, modifications, supplements, restatements or replacements of such Lease Agreement, collectively, the "**Prime Annex Lease**") is in full force and effect and has not been modified or amended in any manner whatsoever (except in the documentation making up the

defined term “Prime Annex Lease”), (b) there are no material defaults under the Prime Annex Lease by Annex SL, Prime Lessor or any other party, and no event has occurred which but for the passage of time, or notice, or both would constitute a material default under the Prime Annex Lease, (c) all rents, additional rents and other sums due and payable under the Prime Annex Lease have been paid in full, and (d) neither Annex SL nor Prime Lessor nor any other party has commenced any action or given or received any notice for the purpose of terminating the Prime Annex Lease.

(II)(a) the Annex Sublease is in full force and effect and has not been modified or amended in any manner whatsoever (except in the documentation making up the defined term “Annex Sublease”), (b) there are no material defaults under the Annex Sublease by Borrower, Annex SL or any other party, and no event has occurred which but for the passage of time, or notice, or both would constitute a material default under the Annex Sublease, (c) all rents, additional rents and other sums due and payable under the Annex Sublease have been paid in full, and (d) neither Borrower nor Annex SL nor any other party has commenced any action or given or received any notice for the purpose of terminating the Annex Sublease.

Section 23.2. PRIME ANNEX LEASE AND ANNEX SUBLEASE COVENANTS.

(a) Borrower shall (i) promptly notify Lender of the giving of any notice by Prime Lessor to Annex SL received by Borrower of any default by Annex SL and deliver to Lender a true copy of each such notice within five (5) Business Days of receipt, (ii) enforce all of its rights under the Annex SNDA (including, without limitation, the right to a Replacement Lease (defined below)) and (iii) promptly notify Lender of any bankruptcy, reorganization or insolvency of Prime Lessor or of any notice thereof, and deliver to Lender a true copy of such notice within five (5) Business Days of Borrower’s receipt. Borrower shall not, without the prior consent of Lender, itself or permit Annex SL to surrender the leasehold estate created by the Prime Annex Lease or terminate or cancel the Prime Annex Lease (unless Borrower is immediately granted a Replacement Lease) or modify, change, supplement, alter or amend the Prime Annex Lease or the Annex SNDA, either orally or in writing. Lender shall be permitted to exercise Borrower’s rights under the Annex SNDA with respect to the Prime Annex Lease in the event Borrower shall fail to promptly exercise such rights and Borrower hereby expressly authorizes and appoints Lender its attorney-in-fact to exercise any such rights in the name of and upon behalf of Borrower, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest. If Prime Lessor shall deliver to Lender a copy of any notice of default under the Prime Annex Lease and/or Annex SNDA, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender, in good faith, in reliance thereon.

(b) Borrower shall (i) pay (or cause to be paid) all rents, additional rents and other sums required to be paid by Borrower, as tenant under and pursuant to the provisions of the Annex Sublease, (ii) diligently perform and observe (or cause to be performed and observed) all of the terms, covenants and conditions of the Annex Sublease on the part of Borrower, as tenant thereunder, (iii) promptly notify Lender of the giving of any notice by Annex SL to Borrower of any default by Borrower and deliver to Lender a true copy of each such notice within five (5) Business Days of receipt and (iv) promptly notify Lender of any bankruptcy, reorganization or insolvency of Annex SL or of any notice thereof, and deliver to Lender a true copy of such notice within five (5) Business Days of Borrower’s receipt. Except as expressly and specifically

permitted hereunder, Borrower shall not, without the prior consent of Lender, surrender the leasehold estate created by the Annex Sublease (unless Borrower is immediately granted a Replacement Lease) or terminate or cancel the Annex Sublease or modify, change, supplement, alter or amend the Annex Sublease, either orally or in writing (unless such modification, change, supplement, alteration and/or amendment would not (I) have a Material Adverse Effect or (II) diminish any of Lender's rights thereunder) and if Borrower shall default in the performance or observance of any term, covenant or condition of the Annex Sublease on the part of Borrower and shall fail to cure the same prior to the expiration of any applicable cure period provided thereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Annex Sublease on the part of Borrower to be performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under the Annex Sublease shall be kept unimpaired and free from default. If Annex SL shall deliver to Lender a copy of any notice of default under the Annex Sublease, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender, in good faith, in reliance thereon. Borrower shall exercise each individual option, if any, to extend or renew the term of the Annex Sublease upon demand by Lender made at any time within thirty (30) days prior to the last day upon which any such option may be exercised, and Borrower hereby expressly authorizes and appoints Lender its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest.

(c) Notwithstanding anything contained in the Annex Sublease to the contrary, Borrower shall not, without prior written consent of Lender, sublet any portion of the Leasehold Estate except in accordance with the express terms and conditions hereof.

(d) Without limitation, modification, amendment, abrogation and/or waiver of any of the covenants contained herein, in the event that the Annex Sublease is terminated, rejected or otherwise cancelled (any of the foregoing, an **"Annex Lease Event"**), Borrower shall promptly restore the Fee Portion such that the same shall constitute a complete and whole architectural structure exclusive of the premises formerly demised under the Annex Sublease (the **"Annex Premises"**), which such restoration shall (i) be performed in a good, workman-like and lien free manner and otherwise in accordance with the terms, covenants and conditions contained in Section 4.4 hereof relating to any Restoration of the Property and (ii) be undertaken in a manner which would not permit any Tenant of the Fee Portion to terminate, or otherwise abate Rent under, its Lease (the foregoing restoration, the **"Annex Restoration Work"** and the foregoing conditions related thereto, the **"Annex Restoration Conditions"**). Any Net Proceeds realized in connection with the foregoing shall be held and applied in accordance with Section 4.4 hereof.

Section 23.3. NO MERGER OF FEE, LEASEHOLD AND SUBLEASEHOLD ESTATES; RELEASES. So long as any portion of the Debt shall remain unpaid, unless Lender shall otherwise consent, the fee title to the real property owned by Prime Lessor, Annex SL's interest in each of the Prime Annex Lease and Annex Sublease and Borrower's interest in the Annex Sublease and the Leasehold Estate shall each not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower or in any other Person by purchase, operation of law or otherwise. Lender reserves the right, at any time, to release portions of the Property, including, but not limited to, the Leasehold Estate, with or without

consideration, at Lender's election, without waiving or affecting any of its rights hereunder or under the Note or the other Loan Documents and any such release shall not affect Lender's rights in connection with the portion of the Property not so released.

Section 23.4. BORROWER'S ACQUISITION OF PRIME LESSOR'S AND/OR ANNEX SL'S ESTATE. In the event that Borrower hereafter acquires Prime Lessor's fee interest in the real property subject to the Prime Annex Lease and/or Annex SL's interest in the Prime Annex Lease, Borrower agrees, at its sole cost and expense, including without limitation, Lender's reasonable attorney's fees, to (i) execute any and all documents or instruments necessary to subject each of the foregoing interest to the lien of this Security Instrument; and (ii) provide a title insurance policy which shall insure that the lien of this Security Instrument is a first lien on each such interest.

Section 23.5. REJECTION OF THE ANNEX SUBLEASE.

(a) If the Annex Sublease is terminated by Annex SL for any reason in the event of the rejection or disaffirmance of the Annex Sublease by Annex SL pursuant to the Bankruptcy Code or any other law affecting creditor's rights, (i) Borrower, immediately after obtaining notice thereof, shall give notice thereof to Lender, (ii) Borrower, without the prior written consent of Lender, shall not elect to treat the Annex Sublease as terminated pursuant to Section 365(h) of the Bankruptcy Code or any comparable federal or state statute or law, and any election by Borrower made without such consent shall be void and (iii) this Security Instrument and all the Liens, terms, covenants and conditions of this Security Instrument shall extend to and cover Borrower's possessory rights under Section 365(h) of the Bankruptcy Code and to any claim for damages due to the rejection of the Annex Sublease or other termination of the Annex Sublease. In addition, Borrower hereby assigns irrevocably to Lender, Borrower's rights to treat the Annex Sublease as terminated pursuant to Section 365(h) of the Bankruptcy Code and to offset rents under the Annex Sublease in the event any case, proceeding or other action is commenced by or against Annex SL under the Bankruptcy Code or any comparable federal or state statute or law, provided that Lender shall not exercise such rights and shall permit Borrower to exercise such rights with the prior written consent of Lender, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing.

(b) Borrower hereby assigns to Lender Borrower's right to reject the Annex Sublease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Borrower under the Bankruptcy Code or comparable federal or state statute or law, provided Lender shall not exercise such right, and shall permit Borrower to exercise such right with the prior written consent of Lender, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing. Further, if Borrower shall desire to so reject the Annex Sublease, at Lender's request, to the extent not prohibited by the terms of the Annex Sublease and applicable law, Borrower shall assign its interest in the Annex Sublease to Lender in lieu of rejecting the Annex Sublease as described above, upon receipt by Borrower of written notice from Lender of such request together with Lender's agreement to cure any existing defaults of Borrower under the Annex Sublease and to provide adequate assurance of future performance of Borrower's obligations thereunder.

(c) Borrower hereby assigns to Lender Borrower's right to seek an extension of the 60-day period within which Borrower must accept or reject the Annex Sublease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Borrower under the Bankruptcy Code or comparable federal or state statute or law, provided the Lender shall not exercise such right, and shall permit Borrower to exercise such right with the prior written consent of Lender, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing.

(d) Borrower hereby agrees that if the Annex Sublease is terminated for any reason in the event of the rejection or disaffirmance of the Annex Sublease pursuant to the Bankruptcy Code or any other law affecting creditor's rights, any Personal Property of Borrower not removed by Borrower from the portion of the Property leased pursuant to the Annex Sublease as permitted or required by the Annex Sublease, shall at the option of Lender be deemed abandoned by Borrower, provided that Lender may remove any such Personal Property required to be removed by Borrower pursuant to the Annex Sublease and all reasonable out-of-pocket costs and expenses associated with such removal shall be paid by Borrower within five (5) days of receipt by Borrower of an invoice for such removal costs and expenses.

Section 23.6. CONVERSION OF THE ANNEX SUBLEASE INTO A DIRECT LEASE WITH PRIME LESSOR. Without limiting any of the provisions hereof, in the event that Borrower shall hereafter convert the Annex Sublease into a direct lease with Prime Lessor or otherwise enter into a replacement lease with Prime Lessor (any of the foregoing, a "**Replacement Lease**"), then the provisions herein referring to (a) the "Annex Sublease" shall thereafter be deemed to refer to the Replacement Lease and (b) "Annex SL" shall thereafter be deemed to refer to the Prime Lessor. Borrower agrees, at its sole cost and expense, including without limitation, Lender's reasonable attorney's fees, to (i) execute any and all documents or instruments necessary to subject Borrower's interest in the Replacement Lease the lien of this Security Instrument; and (ii) provide a title insurance policy which shall insure that the lien of this Security Instrument is a first lien on Borrower's interest in the Replacement Lease.

Article 24. TRUSTEE PROVISIONS

Section 24.1. CONCERNING THE TRUSTEE. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Borrower and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as

aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 24.2. TRUSTEE'S FEES. Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 24.3. CERTAIN RIGHTS. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the Other Security Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 24.4. RETENTION OF MONEY. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 24.5. PERFECTION OF APPOINTMENT. Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute trustee to more fully and certainly vest in and confirm to Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

Section 24.6. SUCCESSION INSTRUMENTS. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in Trustee's place.

Article 25. SPECIAL STATE OF CALIFORNIA PROVISIONS

Section 25.1. INCONSISTENCIES. In the event of any inconsistencies between the terms and conditions of this Article 25 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 25 shall control and be binding.

Section 25.2. POWER OF SALE.

(a) Should Lender elect to foreclose by exercise of the power of sale contained herein, Lender shall notify Trustee and shall, if required, deposit with Trustee the Note, the original or a certified copy of this Security Instrument, and such other documents, receipts and evidences of expenditures made and secured hereby as Trustee may require. Upon receipt of such notice from Lender, Trustee shall cause to be recorded and delivered to Borrower such notice as may then be required by law and by this Security Instrument. Trustee shall, without demand on Borrower, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale has been given as required by law, sell the Property at the time and place of sale fixed by it in said notice of sale, either as a whole or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to the purchaser or purchasers at such sale its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Borrower, Trustee or Lender, may purchase at such sale, and Borrower hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all costs, fees and expenses of Trustee and of this Security Instrument, including, without limitation, costs of evidence of title and actual and customary attorneys' fees of Trustee or Lender in connection with a sale as provided in subparagraph (a) above, Trustee shall apply the proceeds of such sale (i) first, to the payment of all sums expended by Lender under the terms of any of the Other Security Documents and not yet repaid, together with interest on such sums at the Default Rate as set forth in the Note, (ii) second, to the payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate of interest equal to the rate then in effect under the Note, or if the Note has been repaid, the rate that would have been in effect under the Note, (iii) third, to the payment of all other sums then secured hereby, and (iv) fourth, the remainder, if any, to the person or persons legally entitled thereto.

Section 25.3. RIGHT OF RESCISSION. Lender may from time to time rescind any Notice of Default or Notice of Sale before any Trustee's sale in accordance with the laws of the State of California. The exercise by Lender of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Lender to execute and deliver to Trustee, as above provided, other declarations or notices of default to satisfy the obligations of this Security Instrument or secured hereby, nor otherwise affect any provision, covenant or condition of any Loan Document or any of the rights, obligations or remedies of Trustee or Lender hereunder or thereunder.

Section 25.4. FULL RECONVEYANCE. Upon written request of Lender stating that all sums secured hereby have been paid, upon surrender to Trustee of the Note and the original or a certified copy of this Security Instrument for cancellation and retention, and upon payment of its fees, Trustee shall fully re-convey, without warranty, the entire remaining Property then held hereunder. The recitals in such re-conveyance of any matters of facts shall be conclusive proof of the truthfulness thereof. The grantee in such re-conveyance may be described as "the person or persons legally entitled thereto."

Section 25.5. FIXTURE FILING. This Security Instrument constitutes a financing statement filed as a fixture filing pursuant to the provisions of Article 9 of the Uniform Commercial Code with respect to those portions of the Property consisting of goods which are or are to become fixtures relating to the Property.

Section 25.6. BORDER ZONE PROPERTY. Borrower represents and warrants that the Property has not been designated as Border Zone Property under the provisions of California Health and Safety Code, Sections 25220 et seq. or any regulation adopted in accordance therewith, and there has been no occurrence or condition on any real property adjoining or in the vicinity of the Property that is reasonably likely to cause the Property or any part thereof to be designated as Border Zone Property.

Section 25.7. ADDITIONAL SECURITY AGREEMENT PROVISIONS.

(a) With respect to fixtures, Lender or Trustee may elect to treat same as either real property or personal property and proceed to exercise such rights and remedies applicable to the categorization so chosen. Lender may proceed against the items of real property and any items of Property separately or together in any order whatsoever, without in any way affecting or waiving Lender's rights and remedies under the Uniform Commercial Code, this Security Instrument or the Note. Borrower acknowledges and agrees that Lender's rights and remedies under this Security Instrument and the Note shall be cumulative and shall be in addition to every other right and remedy now or hereafter existing at law, in equity, by statute or by agreement of the parties.

(b) Borrower agrees that this Security Instrument constitutes a financing statement filed as a fixture filing in the Recorder's Office with respect to any and all fixtures included within the term "Land" or "Property" as used herein and with respect to any goods and other personal property that may now be or hereafter become fixtures. The names and mailing addresses of the debtor (Borrower) and the secured party (Lender) are set forth on the introductory paragraph of this Security Instrument. Borrower is the record owner of the

Property. The personal property described above is the collateral covered by this financing statement. Any reproduction of this Security Instrument or any other security agreement or financing statement shall be sufficient as a financing statement.

Section 25.8. ADDITIONAL ENVIRONMENTAL PROVISIONS. The following statutes are hereby deemed to be included in the definition of Environmental Law as that term is used throughout this Security Instrument: the Porter-Cologne Water Control Act; the Waste Management Act of 1980; the Toxic Pit Cleanup Act; the Underground Tank Act of 1984; the California Water Quality Improvement Act; and California Health and Safety Codes §§ 25117 and 25316.

Section 25.9. REQUEST FOR NOTICES. Borrower hereby requests that a copy of a Notice of Default and a copy of any Notice of Sale given pursuant to this Security Instrument be mailed to Borrower at the address set forth herein. Borrower may, from time to time, change the address to which Notice of Default and Notice of Sale hereunder shall be sent by both filing a request therefore, in the manner provided by California Civil Code, Section 2924b, and sending a copy of such request to Lender in accordance with the provisions of Article 16 hereof.

Section 25.10. APPLICATION OF PROCEEDS. Notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event that Lender or Trustee, in the exercise of its rights or remedies hereunder or under any other Loan Document, elects to apply any sums realized by Lender or Trustee as a result of such exercise of rights or remedies to any amounts due under the Note in accordance with the applicable terms and conditions hereof and of the other Loan Documents, such sums shall be deemed to be applied to each Individual Note in an amount equal to (1) the total amount of sums to be applied, *multiplied by* (2) the Proportionate Share (hereafter defined) allocated to such Individual Note. As used herein, the term "**Proportionate Share**" shall mean the amount obtained by dividing (i) the original principal amount of each applicable Individual Note by (ii) the original principal amount of the Loan as evidenced by all of the Individual Notes.

[TEXT CONTINUES ON FOLLOWING PAGE]

Section 25.11. DUE ON SALE/ENCUMBRANCE. Borrower expressly agrees that upon a violation of Article 8 of this Security Instrument by Borrower and acceleration of the principal balance of the Note because of such violation, Borrower will pay all sums required to be paid in connection with a prepayment, if any, as described in the Note, herein imposed on prepayment after an Event of Default and acceleration of the principal balance. Borrower expressly acknowledges that Borrower has received adequate consideration for the foregoing agreement.

LANDMARK FIREHILL HOLDINGS, LLC, a Delaware limited liability company

By: FAEC California Holdings, LLC, a Delaware limited liability company, its sole member

By: /s/ Laurie Cross
Name: Laurie Cross
Title: Vice-President

LANDMARK VENTURE HOLDINGS, LLC, a Delaware limited liability company

By: /s/ Robert F. Barton
Name: Robert F. Barton
Title: CFO

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

LANDMARK FIREHILL HOLDINGS, LLC, a Delaware limited liability company

By: FAEC California Holdings, LLC, a Delaware limited liability company, its sole member

By: /s/ Laurie Cross
Name: Laurie Cross
Title: Vice President

LANDMARK VENTURE HOLDINGS, LLC, a Delaware limited liability company

By: /s/ Robert F. Barton
Name: Robert F. Barton
Title: CFO

Schedule 1

"**Debt Service Coverage Ratio**" means the ratio of (a) Net Operating Income, to (b) Annual Debt Service, all as determined by Lender.

"**Annual Debt Service**" means an amount equal to twelve (12) times the Monthly Payment (as defined in the Note) payable under the Note.

"**Net Operating Income**" means for the 12-month period immediately preceding the date of calculation, (A) all sustainable Rents and other income received from the Property received from tenants during such 12-month period, less (B) all Operating Expenses for such 12-month period and any Extraordinary Expenses approved by Lender and applicable to such 12-month period.

"**Operating Expenses**" means the aggregate of the following items: (a) real estate taxes, general and special assessments or similar charges, other than Taxes; (b) sales, use and personal property taxes; (c) management fees of not less than 4% of the gross income derived from the operation of the Property and disbursements for management services whether such services are performed at the Property or off-site; (d) wages, salaries, pension costs and all fringe and other employee-related benefits and expenses, of all employees up to and including (but not above) the level of the on-site manager, engaged in the repair, operation and maintenance of the Property and service to tenants and on-site personnel engaged in audit and accounting functions performed by Borrower; (e) insurance premiums including, but not limited to, casualty, liability, rent and fidelity insurance premiums, other than Insurance Premiums; (f) cost of all electricity, oil, gas, water, steam, HVAC and any other energy, utility or similar item and overtime services, the cost of building and cleaning supplies, and all other administrative, management, ownership, operating, advertising, marketing and maintenance expenses incurred by Borrower (and not paid directly by any tenant) in connection with the operation of the Property; (g) costs of necessary cleaning, repair, replacement, maintenance, decoration or painting of existing improvements on the Property (including, without limitation, parking lots and roadways), of like kind or quality or such kind or quality which is necessary to maintain the Property to the same standards as competitive properties of similar size and location of the Property; (h) the cost of such other maintenance materials, HVAC repairs, parts and supplies, and all equipment to be used in the ordinary course of business, which is not capitalized in accordance with approved accounting method; (i) legal, accounting and other professional expenses incurred in connection with the Property; (j) casualty losses to the extent not reimbursed by a third party; and (k) to the extent not already included in any of (f)-(h) above, a reserve for structural repairs, normalized leasing commissions and tenant improvements equal to the greater of (i) applicable market rates therefore or (ii) the minimum requirements of any Rating Agency therefore. The Operating Expenses shall be based on the above-described items actually incurred or payable on an accrual basis in accordance with the Approved Accounting Method by Borrower during the twelve (12) month period ending one month prior to the date on which the Net Operating Income is to be calculated, with customary adjustments for items such as taxes and insurance which accrue but are paid periodically, as adjusted by Lender to reflect projected adjustments for only those items which are definitively ascertainable and of a fixed amount (for example, real estate taxes) for the subsequent twelve (12) month period beginning on the date on which the Net Operating Income is to be calculated. Notwithstanding the foregoing, the term "Operating Expenses" shall not

include (i) depreciation or amortization or any other non-cash item of expense unless approved by Lender, (ii) interest, principal, fees, costs and expense reimbursements of Lender in administering the Loan or exercising remedies under the Note, this Security Instrument or the Other Security Documents; or (iii) any expenditure properly treated as a capital item under the Approved Accounting Method.

"**Extraordinary Expenses**" means expenses incurred in connection with necessary capital improvements or operating expenses of the Property which were not reasonably anticipated in (i) prior to the Fiscal Year in which the Anticipated Maturity Date occurs, the annual operating budget prepared for the Property (including, without limitation, any budget furnished Lender pursuant to Section 3.11(b) hereof) and (ii) beginning with the Fiscal Year in which the Anticipated Maturity Date occurs, the Approved Annual Budget, in each case as reasonably approved by Lender; provided, that, with respect to any Extraordinary Expense not contemplated in any Approved Annual Budget, Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense prior to Lender's approval thereof.

EXHIBIT A

LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF STEUART STREET THAT IS DISTANT NORTH 44°51’51” WEST, 334.33 FEET FROM THE NORTHWESTERLY LINE OF MISSION STREET; THENCE SOUTH 45°08’09” WEST, BEING PARALLEL WITH AND DISTANT 334.33 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM SAID NORTHWESTERLY LINE OF MISSION STREET, 32 FEET AND 4-1/2 INCHES; THENCE NORTH 44°51’51” WEST, 6 FEET AND 1-1/2 INCHES; THENCE SOUTH 45°08’09” WEST, 16 FEET AND 4 INCHES; THENCE NORTH 44°51’51” WEST, 112 FEET AND 5-1/8 INCHES; THENCE SOUTH 45°08’09” WEST, 177 FEET, 7-1/2 INCHES; THENCE SOUTH 44°51’51” EAST, 112 FEET AND 5-1/8 INCHES; THENCE SOUTH 45°08’09” WEST, 16 FEET AND 3-1/2 INCHES; THENCE SOUTH 44°51’51” EAST, 6 FEET AND 1-1/2 INCHES TO A POINT IN SAID LINE THAT IS PARALLEL WITH AND DISTANT 334.33 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES FROM SAID NORTHWESTERLY LINE OF MISSION STREET; THENCE SOUTH 45°08’09” WEST ALONG SAID PARALLEL LINE, 32 FEET, 4-1/2 INCHES TO THE POINT ON THE NORTHEASTERLY LINE OF SPEAR STREET; THENCE NORTH 44°51’51” WEST ALONG SAID NORTHEASTERLY LINE, 216 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF MARKET STREET; THENCE NORTH 45°08’09” EAST ALONG SAID SOUTHEASTERLY LINE, 275 FEET TO A POINT IN SAID SOUTHWESTERLY LINE OF STEUART STREET; THENCE SOUTH 44°51’51” EAST ALONG LAST SAID LINE, 216 FEET TO THE POINT OF BEGINNING.

ASSESSOR’S LOT 006, BLOCK 3713

PARCEL TWO:

EASEMENTS AS GRANTED IN THAT CERTAIN INSTRUMENT ENTITLED, “GRANT OF PARTY WALL EASEMENT AND ENCROACHMENT AGREEMENT”, DATED APRIL 16, 1973 AND RECORDED JUNE 17, 1974 IN BOOK B899, PAGE 507, SERIES NO. W82040, OFFICIAL RECORDS, AND AS AFFECTED BY THAT CERTAIN INSTRUMENT ENTITLED, “FIRST AMENDMENT TO GRANT OF PARTY WALL EASEMENT AND ENCROACHMENT AGREEMENT”, DATED JANUARY 12, 1993 AND RECORDED JANUARY 25, 1993, IN REEL F801, IMAGE 266, SERIES NO. F278389, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

PARCEL THREE:

RIGHT TO CONTINUED USE OF LOADING DOCK AREA AS SET FORTH IN THE INTER-BUILDING OPERATIONAL AGREEMENT DATED JANUARY 12, 1993 AND RECORDED JANUARY 25, 1993, REEL F801, IMAGE 267, SERIES NO. F278390, OFFICIAL RECORDS.

PARCEL FOUR:

PORTIONS OF THE FOLLOWING DESCRIBED LAND, WHICH PORTIONS ARE DESCRIBED IN THE “ANNEX LEASE”, AS MORE PARTICULARLY DESCRIBED IN THE FOURTH AMENDMENT TO LEASE, DATED MAY 5, 2000, RECORDED NOVEMBER 28, 2000, SERIES NO. 2000-G868967, OFFICIAL RECORDS AS APPROXIMATELY 56,564 RENTABLE SQUARE FEET OF SPACE DESCRIBED AS THE FIRST (1ST) BASEMENT, COMPUTER SPACE ON THE SECOND (2ND) FLOOR IN THE COURT/ANNEX AREA AND FLOORS THREE (3), FOUR (4), FIVE (5) AND SIX (6) IN THE COURT/ANNEX AREA AND IN THE SOUTHWEST QUADRANT OF THE ONE MARKET COURT/ANNEX.

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF MISSION STREET WITH THE SOUTHWESTERLY LINE OF STEUART STREET; THENCE NORTH 44°51’51” WEST ALONG SAID SOUTHWESTERLY LINE, 334.33 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT 334.33 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM SAID NORTHWESTERLY LINE OF MISSION STREET; THENCE SOUTH 45°08’09” WEST ALONG SAID PARALLEL LINE 32 FEET AND 4-1/2 INCHES; THENCE NORTH 44°51’51” WEST 6 FEET AND 1-1/2 INCHES; THENCE SOUTH 45°08’09” WEST 16 FEET AND 4 INCHES; THENCE NORTH 44°51’51” WEST 112 FEET AND 5-1/8 INCHES; THENCE SOUTH 45°08’09” WEST 177 FEET AND 7-1/2 INCHES; THENCE SOUTH 44°51’51” EAST 112 FEET AND 5-1/8 INCHES; THENCE SOUTH 45°09’09” WEST 16 FEET AND 3-1/2 INCHES; THENCE SOUTH 44°51’51” EAST 6 FEET AND 1-1/2 INCHES TO A POINT IN SAID PARALLEL LINE; THENCE SOUTH 45°08’09” WEST ALONG SAID PARALLEL LINE 32 FEET AND 4-1/2 INCHES TO A POINT IN THE NORTHEASTERLY LINE OF SPEAR STREET; THENCE SOUTH 44°51’51” EAST ALONG SAID NORTHEASTERLY LINE, 334.33 FEET TO A POINT IN SAID NORTHWESTERLY LINE OF MISSION STREET; THENCE NORTH 45°08’09” EAST ALONG SAID NORTHWESTERLY LINE 275 FEET TO THE POINT OF BEGINNING.

PARCEL FIVE:

EASEMENTS AS GRANTED AND DESCRIBED IN PARAGRAPHS 1(C), 1(D) AND 3 OF THAT CERTAIN INSTRUMENT ENTITLED, “FIRST AMENDMENT TO INTER-BUILDING OPERATIONAL AGREEMENT” DATED SEPTEMBER 15, 1999.

EXHIBIT B

FORM OF SNDA

(attached hereto)

MORGAN STANLEY MORTGAGE CAPITAL INC.
(Lender)

- and -

[_____]
(Tenant)

- and –

[_____]
(Landlord)

_____

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

_____

Dated:

Location:

Section:
Block:
Lot:
County:

PREPARED BY AND UPON
RECORDATION RETURN TO:

_____
_____
_____
Attention: _____

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made as of the __ day of _____, 200[__] by and among **MORGAN STANLEY MORTGAGE CAPITAL INC.**, having an address at 1221 Avenue of the Americas, New York, New York 10020 ("**Lender**"), [_____] ("**Tenant**") and **[_____]** ("**Landlord**").

RECITALS:

A. Lender is the present owner and holder of a certain Deed of Trust and Security Agreement (the "**Security Instrument**") given by Landlord to Lender which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "**Property**") and which secures the payment of certain indebtedness owed by Landlord to Lender evidenced by the Note (as defined in the Security Instrument);

B. Tenant is the holder of a leasehold estate in a portion of the Property under and pursuant to the provisions of a certain [Lease] dated [_____, 200[__] between Landlord, as landlord, and Tenant, as tenant (the "Lease"); and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

For good and valuable consideration, Tenant, Lender and Landlord agree as follows:

1. Subordination. The Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate to the lien and terms of the Security Instrument, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. Non-Disturbance. If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note or the Security Instrument shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the term of the Lease shall have commenced pursuant to the provisions thereof, (b) Tenant shall be in possession of the premises demised under the Lease, (c) the Lease shall be in full force and effect and (d) Tenant shall not be in default beyond any applicable notice and cure period under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed.

3. Attornment. If Lender or any other subsequent purchaser of the Property shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter referred as "**Purchaser**"), and the conditions set forth in Section 2 above have been met at the time Purchaser becomes owner of the Property, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Property shall be deemed to have agreed to accept such attornment, provided, however, that Purchaser shall not be (a) liable for the failure of any prior landlord (any such prior landlord, including Landlord and any successor landlord, being hereinafter referred to as a "**Prior Landlord**") to perform any of its obligations under the Lease which have accrued prior to the date on which Purchaser shall become the owner of the Property, provided that the foregoing shall not limit Purchaser's obligations under the Lease to correct any conditions of a continuing nature that (i) existed as of the date Purchaser shall become the owner of the Property and (ii) violate Purchaser's obligations as landlord under the Lease; provided further, however, that Purchaser shall have received written notice of such omissions, conditions or violations and has had a reasonable opportunity to cure the same, all pursuant to the terms and conditions of the Lease, (b) subject to any offsets, defenses, abatements or counterclaims which shall have accrued in favor of Tenant against any Prior Landlord prior to the date upon which Purchaser shall become the owner of the Property, except for those that are specifically provided for in the Lease, (c) liable for the return of rental security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by Purchaser, (d) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser or (ii) such prepayment shall have been expressly approved of by Purchaser, (e) unless set forth in any instrument or document provided to Lender prior to Lender's execution hereof, bound by any agreement terminating or amending or modifying the rent, term, commencement date or other material term of the Lease, or any voluntary surrender of the premises demised under the Lease, made without Lender's or Purchaser's prior written consent prior to the time Purchaser succeeded to Landlord's interest (provided, however, Purchaser's consent is not required for a termination of the Lease exercised pursuant to the original terms of the Lease) or (f) bound by any assignment of the Lease or sublease of the Property, or any portion thereof, made prior to the time Purchaser succeeded to Landlord's interest other than if pursuant to the provisions of the Lease. In the event that any liability of Purchaser does arise pursuant to this Agreement, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such interest. Alternatively, upon the written request of Lender or its successors or assigns, Tenant shall enter into a new lease of the Premises with Lender or such successor or assign for the then remaining term of the Lease, upon the same terms and conditions as contained in the Lease (including without limitation any renewal options), except as otherwise specifically provided in this Agreement.

4. Notice to Tenant. After notice is given to Tenant by Lender that the Landlord is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.

5. Intentionally Omitted.

6. Notice to Lender and Right to Cure. Tenant shall notify Lender of any default by Landlord under the Lease if the default is of such a nature as to give Tenant a right to terminate the Lease, reduce the rent or to credit or offset any amounts against future rents, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of an abatement shall be effective unless Lender shall have received notice of default giving rise to such cancellation or abatement and (i) in the case of any such default that can be cured by the payment of money, until thirty (30) days shall have elapsed following the giving of such notice or (ii) in the case of any other such default, until a reasonable period for remedying such default shall have elapsed following the giving of such notice, provided Lender, with reasonable diligence, shall have commenced and continued to remedy such default or cause the same to be remedied. Notwithstanding the foregoing, (i) Lender shall have no obligation to cure any such default and (ii) in the event that any aforesaid default cannot, by its nature, be cured by Lender prior to Lender's gaining possession of Landlord's interest in the Property, the aforesaid "reasonable period for remedying such default" shall be deemed to include such time as is required for Lender to gain possession of Tenant's interest in the Property.

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for one (1) day overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: [_____]

If to Lender: Morgan Stanley Mortgage Capital Inc.
1221 Avenue of the Americas
27th Floor
New York, New York 10020
Attention: Stephen Holmes
Facsimile No. (212) 762-9495

With a copy to: c/o American Assets, Inc.
11455 El Camino Real, Suite 200
San Diego, California 92130

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 7, the term “Business Day” shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.

9. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

10. Miscellaneous. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

11. Joint and Several Liability. If there is more than one Tenant under the Lease, the obligations and liabilities of each hereunder shall be joint and several.

12. Definitions. The term “Lender” as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term “Landlord” as used herein shall mean and include the present landlord under the Lease and such landlord’s predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term “Property” as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Security Instrument.

13. Limitations on Purchaser’s Liability. In no event shall the Purchaser, nor any heir, legal representative, successor, or assignee of the Purchaser have any personal liability for the obligations of Landlord under the Lease and should the Purchaser succeed to the interests of the Landlord under the Lease, Tenant shall look only to the estate and property of any such Purchaser in the Property for the satisfaction of Tenant’s remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by any Purchaser as landlord under the Lease, and no other property or assets of any Purchaser shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant’s

remedies under or with respect to the Lease; provided, however, that the Tenant may exercise any other right or remedy provided thereby or by law in the event of any failure by Landlord to perform any such material obligation. Notwithstanding the foregoing, Tenant may offset against rent due under the Lease the amount of any judgment obtained against any Purchaser.

14. Estoppel Certificate. Tenant, shall, from time to time, within ten (10) Business Days after request by Lender, execute, acknowledge and deliver to Lender a statement by Tenant certifying (a) that the Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) the amounts of fixed rent, additional rent, or other sums, if any, which are payable in respect of the Lease and the commencement date and expiration date of the Lease, (c) the dates to which the fixed rent, additional rent, and other sums which are payable in respect to the Lease have been paid, (d) whether or not Tenant is entitled to any then presently accrued credits or offsets against rent, and, if so, the reasons therefor and the amount thereof, (e) that to Tenant's actual knowledge (without investigation) it is not in default in the performance of any of its obligations under the Lease and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute such a default or, if so, specifying the nature of such default, (f) whether or not, to the actual knowledge (without investigation) of the person certifying on behalf of Tenant, Landlord is in default in the performance of any of its obligations under the Lease, and, if so, specifying the same, and (g) whether or not, to the actual knowledge (without investigation) of such person, Tenant has any then presently accrued claims, defenses or counterclaims against Landlord under the Lease, and, if so, specifying the same, it being intended that any such statement delivered pursuant hereto shall be deemed a certification by Tenant to be relied upon by Lender and by others with whom Lender may be dealing. Tenant also shall include in any such statement such other information concerning the status of the Lease as Lender may reasonably request.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Lender, Tenant and Landlord have duly executed this Agreement as of the date first above written.

TENANT:

[_____]

By: _____

Name:

Title:

LANDLORD:

[_____]

By: _____

Name:

Title:

[_____]

By: _____
Name:
Title:

LENDER:

MORGAN STANLEY MORTGAGE CAPITAL INC., a New York corporation

By: _____
Name:
Title:

EXHIBIT A

LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF STEUART STREET THAT IS DISTANT NORTH 44°51’51” WEST, 334.33 FEET FROM THE NORTHWESTERLY LINE OF MISSION STREET; THENCE SOUTH 45°08’09” WEST, BEING PARALLEL WITH AND DISTANT 334.33 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM SAID NORTHWESTERLY LINE OF MISSION STREET, 32 FEET AND 4-1/2 INCHES; THENCE NORTH 44°51’51” WEST, 6 FEET AND 1-1/2 INCHES; THENCE SOUTH 45°08’09” WEST, 16 FEET AND 4 INCHES; THENCE NORTH 44°51’51” WEST, 112 FEET AND 5-1/8 INCHES; THENCE SOUTH 45°08’09” WEST, 177 FEET, 7-1/2 INCHES; THENCE SOUTH 44°51’51” EAST, 112 FEET AND 5-1/8 INCHES; THENCE SOUTH 45°08’09” WEST, 16 FEET AND 3-1/2 INCHES; THENCE SOUTH 44°51’51” EAST, 6 FEET AND 1-1/2 INCHES TO A POINT IN SAID LINE THAT IS PARALLEL WITH AND DISTANT 334.33 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES FROM SAID NORTHWESTERLY LINE OF MISSION STREET; THENCE SOUTH 45°08’09” WEST ALONG SAID PARALLEL LINE, 32 FEET, 4-1/2 INCHES TO THE POINT ON THE NORTHEASTERLY LINE OF SPEAR STREET; THENCE NORTH 44°51’51” WEST ALONG SAID NORTHEASTERLY LINE, 216 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF MARKET STREET; THENCE NORTH 45°08’09” EAST ALONG SAID SOUTHEASTERLY LINE, 275 FEET TO A POINT IN SAID SOUTHWESTERLY LINE OF STEUART STREET; THENCE SOUTH 44°51’51” EAST ALONG LAST SAID LINE, 216 FEET TO THE POINT OF BEGINNING.

ASSESSOR’S LOT 006, BLOCK 3713

PARCEL TWO:

EASEMENTS AS GRANTED IN THAT CERTAIN INSTRUMENT ENTITLED, “GRANT OF PARTY WALL EASEMENT AND ENCROACHMENT AGREEMENT”, DATED APRIL 16, 1973 AND RECORDED JUNE 17, 1974 IN BOOK B899, PAGE 507, SERIES NO. W82040, OFFICIAL RECORDS, AND AS AFFECTED BY THAT CERTAIN INSTRUMENT ENTITLED, “FIRST AMENDMENT TO GRANT OF PARTY WALL EASEMENT AND ENCROACHMENT AGREEMENT”, DATED JANUARY 12, 1993 AND RECORDED JANUARY 25, 1993, IN REEL F801, IMAGE 266, SERIES NO. F278389, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

PARCEL THREE:

RIGHT TO CONTINUED USE OF LOADING DOCK AREA AS SET FORTH IN THE INTER-BUILDING OPERATIONAL AGREEMENT DATED JANUARY 12, 1993 AND RECORDED JANUARY 25, 1993, REEL F801, IMAGE 267, SERIES NO. F278390, OFFICIAL RECORDS.

PARCEL FOUR:

PORTIONS OF THE FOLLOWING DESCRIBED LAND, WHICH PORTIONS ARE DESCRIBED IN THE “ANNEX LEASE”, AS MORE PARTICULARLY DESCRIBED IN THE FOURTH AMENDMENT TO LEASE, DATED MAY 5, 2000, RECORDED NOVEMBER 28, 2000, SERIES NO. 2000-G868967, OFFICIAL RECORDS AS APPROXIMATELY 56,564 RENTABLE SQUARE FEET OF SPACE DESCRIBED AS THE FIRST (1ST) BASEMENT, COMPUTER SPACE ON THE SECOND (2ND) FLOOR IN THE COURT/ANNEX AREA AND FLOORS THREE (3), FOUR (4), FIVE (5) AND SIX (6) IN THE COURT/ANNEX AREA AND IN THE SOUTHWEST QUADRANT OF THE ONE MARKET COURT/ANNEX.

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF MISSION STREET WITH THE SOUTHWESTERLY LINE OF STEUART STREET; THENCE NORTH 44°51’51” WEST ALONG SAID SOUTHWESTERLY LINE, 334.33 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT 334.33 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM SAID NORTHWESTERLY LINE OF MISSION STREET; THENCE SOUTH 45°08’09” WEST ALONG SAID PARALLEL LINE 32 FEET AND 4-1/2 INCHES; THENCE NORTH 44°51’51” WEST 6 FEET AND 1-1/2 INCHES; THENCE SOUTH 45°08’09” WEST 16 FEET AND 4 INCHES; THENCE NORTH 44°51’51” WEST 112 FEET AND 5-1/8 INCHES; THENCE SOUTH 45°08’09” WEST 177 FEET AND 7-1/2 INCHES; THENCE SOUTH 44°51’51” EAST 112 FEET AND 5-1/8 INCHES; THENCE SOUTH 45°09’09” WEST 16 FEET AND 3-1/2 INCHES; THENCE SOUTH 44°51’51” EAST 6 FEET AND 1-1/2 INCHES TO A POINT IN SAID PARALLEL LINE; THENCE SOUTH 45°08’09” WEST ALONG SAID PARALLEL LINE 32 FEET AND 4-1/2 INCHES TO A POINT IN THE NORTHEASTERLY LINE OF SPEAR STREET; THENCE SOUTH 44°51’51” EAST ALONG SAID NORTHEASTERLY LINE, 334.33 FEET TO A POINT IN SAID NORTHWESTERLY LINE OF MISSION STREET; THENCE NORTH 45°08’09” EAST ALONG SAID NORTHWESTERLY LINE 275 FEET TO THE POINT OF BEGINNING.

PARCEL FIVE:

EASEMENTS AS GRANTED AND DESCRIBED IN PARAGRAPHS 1(C), 1(D) AND 3 OF THAT CERTAIN INSTRUMENT ENTITLED, “FIRST AMENDMENT TO INTER-BUILDING OPERATIONAL AGREEMENT” DATED SEPTEMBER 15, 1999.

Exhibit 10.24

MSMCI Loan No. [__]

PROMISSORY NOTE

$[__] San Diego, California
June [__], 2005

FOR VALUE RECEIVED, [_____]**,** a [_____], having an address at [_____] (**"Borrower"**), as maker, hereby unconditionally promises to pay to the order of **MORGAN STANLEY MORTGAGE CAPITAL INC.**, a New York corporation, a New York corporation (together with its successors and assigns, **"Lender"**), having an address at 1221 Avenue of the Americas, New York, New York 10020, or at such other place as the holder hereof may from time to time designate in writing, the aggregate principal sum of [__] DOLLARS ($[__]), in lawful money of the United States of America, with interest thereon to be computed from the date of this Note at the Applicable Interest Rate (defined below), and to be paid in installments as follows:

ARTICLE 1: PAYMENT TERMS

(a) A payment on the date hereof on account of all interest that will accrue on the principal amount of the Loan from and after the date hereof through and including the [__] ([__]) day of [_____];

(b) A payment (the "**Monthly Payment**") equal to the amount of interest which has accrued during the preceding Interest Accrual Period (defined below) computed at the Initial Interest Rate (defined below) on the [__] ([__]) day of [_____] and on the [__] ([__]) day of each calendar month thereafter up to and including the [__] ([__]) day of [_____] (each such date to be hereinafter referred to as a "**Monthly Payment Date**"); each Monthly Payment to be applied to the payment of interest which has accrued during the preceding Interest Accrual Period (defined below) computed at the Initial Rate;

(c) A payment equal to the Excess Cash Flow (as defined in that certain Cash Management Agreement executed in connection herewith (the **"Cash Management Agreement"**)) on the [__] ([__]) day of [_____] and on each Monthly Payment Date thereafter up to and including the [__] ([__]) day of [_____] (the **"Maturity Date"**), to be applied in accordance with the applicable terms and conditions of the Cash Management Agreement; and

(d) The balance of the principal sum and all interest thereon (including, without limitation, all Accrued Interest (defined below)) shall be due and payable on the Maturity Date.

(e) From and after [_____] (the **"Anticipated Maturity Date"**), all interest accruing at the Revised Rate in excess of interest calculated at the Initial Rate (the **"Accrued Interest"**) shall accrue and be deferred, and, to the extent permitted by Applicable Law, shall earn interest at the Revised Rate and shall be payable in accordance with the terms hereof.

(f) Interest on the principal sum of this Note shall be calculated by multiplying the actual number of days elapsed in the period for which interest is being calculated by a daily rate based on a 360-day year

(g) As used herein, the term **"Interest Accrual Period"** shall mean (i) for the first such period, the period beginning on the date hereof and ending on (but including) the fourth (4th) day of July, 2005, and (ii) with respect subsequent period beginning with the period immediately following the period described in subsection (i) above, the period beginning on the fifth (5th) day of each calendar month during the term hereof and ending on (but including) the fourth (4th) day of the following calendar month.

(h) Lender shall have the right, at any time prior to a Securitization (as defined in the Security Instrument), to change the Maturity Date from the Maturity Date stated herein to the date of the Anticipated Maturity Date stated herein upon notice to Borrower (in which event such change shall then be deemed effective and all provisions of the Loan Documents with respect to periods after Anticipated Maturity Date shall no longer apply). If requested by Lender, Borrower shall promptly execute an amendment to this Note and any other Loan Documents to evidence such change.

ARTICLE 2: INTEREST

The term "**Applicable Interest Rate**" for the purposes hereof and each other Loan Document shall mean (a) from the date hereof through and including the day immediately prior to the Anticipated Maturity Date, an interest rate (the **"Initial Rate"**) equal to 5.605% per annum, and (b) from the Anticipated Maturity Date through and including the date on which the Debt is paid in full, an interest rate per annum (the **"Revised Rate"**) equal to the greater of (i) the Initial Interest Rate plus five percentage points (5%) or (ii) the Treasury Rate (hereafter defined) plus five percentage points (5%). Lender's determination of the Revised Rate and the Treasury Rate shall be final absent manifest error.

As used herein, the term "**Treasury Rate**" shall mean, as of the Anticipated Maturity Date, the yield, calculated by Lender by linear interpolation (rounded to the nearest one-thousandth of one percent (i.e., 0.001%) of the yields of non-inflation adjusted non-callable United States Treasury obligations with terms (one longer and one shorter) most nearly approximating the period from such date of determination to the Maturity Date, as determined by Lender on the basis of Federal Reserve Statistical Release H.15-Selected Interest Rates under the heading U.S. Governmental Security/Treasury Constant Maturities, or another recognized source of financial market information selected by Lender.

ARTICLE 3: DEFAULT AND ACCELERATION

(a) The whole of the principal sum of this Note and the Other Note (defined below), (b) interest, default interest, late charges and other sums, as provided in this Note, the Other Note, the Security Instrument or the Other Security Documents (defined below), (c) all other monies agreed or provided to be paid by Borrower in this Note, the Other Note, the Security Instrument or the Other Security Documents, (d) all sums advanced pursuant to the provisions of

the Security Instrument to protect and preserve the Property (defined below) and the lien and the security interest created thereby, and (e) all reasonable sums advanced and costs and expenses incurred by Lender pursuant to the provisions of this Note, the Other Note, the Security Instrument or the Other Security Documents in connection with the Debt (defined below) or any part thereof, any renewal, extension or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender (all the sums referred to in (a) through (e) above shall collectively be referred to as the "**Debt**") shall without notice become immediately due and payable at the option of Lender if (i) any payment required in this Note or the Other Note is not paid on or before the date the same is due, or (ii) Borrower commits any other default, and fails to cure same prior to the expiration of any applicable notice and grace periods, herein or under the terms of the Security Instrument or any of the Other Security Documents (collectively, an "**Event of Default**").

ARTICLE 4: DEFAULT INTEREST

Borrower does hereby agree that upon the occurrence of an Event of Default, Lender shall be entitled to receive and Borrower shall pay interest on the entire unpaid principal sum at a rate equal to the lesser of (a) four percent (4%) plus the Applicable Interest Rate and (b) the maximum interest rate which Borrower may by law pay (the "**Default Rate**"). The Default Rate shall be computed from the occurrence of the Event of Default until the earlier of the date upon which the Event of Default is cured or waived or the date upon which the Debt is paid in full. Interest calculated at the Default Rate shall be added to the Debt, and shall be deemed secured by the Security Instrument. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default.

ARTICLE 5: PREPAYMENT; DEFEASANCE

Except as otherwise expressly permitted by this Article 5, no voluntary prepayments, whether in whole or in part, of the Loan or any other amount at any time due and owing under this Note or the Other Note can be made by Borrower or any other Person without the express written consent of Lender.

(a) Lockout Period. Borrower has no right to make, and Lender shall have no obligation to accept, any voluntary prepayment, whether in whole or in part, of the Loan during the Lockout Period (defined below). Notwithstanding the foregoing, if (i) Lender, in its sole and absolute discretion, accepts a full or partial voluntary prepayment during the Lockout Period or (ii) there is an involuntary prepayment during the Lockout Period, then, in any such case, Borrower shall, in addition to any portion of the Loan prepaid (together with all interest accrued and unpaid thereon), pay to Lender a prepayment premium in an amount calculated in accordance with subsection (c) below. The term "**Lockout Period**" shall mean the period commencing on the date hereof and ending on the date which is three (3) months prior to the Anticipated Maturity Date.

(b) Defeasance.

(i) Notwithstanding any provisions of this Article 5 to the contrary, including, without limitation, subsection (a) of this Article 5, at any time other than (1) during a REMIC Prohibition Period (defined below) or (2) after the Anticipated Maturity Date, Borrower may cause the release of the Property from the lien of the Security Instrument and the other Loan Documents (and, subject to Borrower's satisfaction of clause (iii) under this subsection (b), a release of Borrower and Indemnitor (as defined in that certain Indemnity Agreement dated as of the date hereof among Borrower, American Assets, Inc. and Lender (the **"Indemnity Agreement"**)) from any further liability or obligation under this Note, the Security Instrument or the Other Security Documents other than a liability or obligation in connection with a provision of this Note, the Security Instrument or Other Security Document which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument upon the satisfaction of the following conditions:

(A) no Event of Default shall exist under any of the Loan Documents;

(B) not less than sixty (60) (or such shorter period as may be agreed to by Lender in its reasonable discretion) (but not more than ninety (90)) days prior written notice shall be given to Lender specifying a date on which the Defeasance Collateral (as hereinafter defined) is to be delivered (the "**Release Date**"), such date being on a Monthly Payment Date; provided, however, that Borrower shall have the right (i) to cancel such notice by providing Lender with notice of cancellation ten (10) days prior to the scheduled Release Date, or (ii) to extend the scheduled Release Date until the next Monthly Payment Date; provided that in each case, Borrower shall pay all of Lender's costs and expenses incurred as a result of such cancellation or extension;

(C) all accrued and unpaid interest and all other sums due under this Note, the Other Note, the Security Instrument and under the Other Security Documents up to the Release Date, including, without limitation, all reasonable fees, costs and expenses incurred by Lender and its agents in connection with such release (including, without limitation, legal fees and expenses for the review and preparation of the Defeasance Security Agreement (as hereinafter defined) and of the other materials described in subsection (b)(i)(D) below and any related documentation, and any servicing fees, Rating Agency (as defined in the Security Instrument) fees or other reasonable costs related to such release), shall be paid in full on or prior to the Release Date;

(D) Borrower shall deliver to Lender on or prior to the Release Date:

(1) a pledge and security agreement, in form and substance satisfactory to a prudent lender, creating a first priority security interest in favor of Lender in the Defeasance Collateral (the "**Defeasance Security Agreement**"), which shall provide, among other things, that any excess

amounts received by Lender from the Defeasance Collateral over the amounts payable by Borrower on a given Monthly Payment Date, which excess amounts are not required to cover all or any portion of amounts payable on a future Monthly Payment Date, shall be refunded to Borrower (which may be the original Borrower hereunder provided Successor Borrower affirmatively assigns such receivable rights in writing to such original Borrower) promptly after each such Monthly Payment Date;

(2) direct non-callable obligations of the United States of America or other obligations which are "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940 (to the extent the applicable Rating Agencies rating the Securities have confirmed in writing that the same will not cause a downgrade, withdrawal or qualification of the initial, or, if higher, then applicable ratings of the Securities) that provide for payments prior and as close as possible to (but in no event later than) all successive Monthly Payment Dates occurring after the Release Date, with each such payment being equal to or greater than the amount of the corresponding Monthly Payment required to be paid under this Note and the Other Note (including all amounts due on the Anticipated Maturity Date (assuming that the entire amount of the Debt is due and payable on the Anticipated Maturity Date)) for the balance of the term hereof (the "**Defeasance Collateral**"), each of which shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance wholly satisfactory to Lender in its sole discretion (including, without limitation, such certificates, documents and instruments as may be required by the depository institution holding such securities or the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the Defeasance Security Agreement the first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing granting of such security interests;

(3) a certificate of Borrower certifying that all of the requirements set forth in this subsection (b)(i) have been satisfied;

(4) one or more opinions of counsel for Borrower in form and substance and delivered by counsel which would be satisfactory to a prudent lender stating, among other things, that (i) Lender has a perfected first priority security interest in the Defeasance Collateral and that the Defeasance Security Agreement is enforceable against Borrower in accordance with its terms, (ii) in the event of a bankruptcy proceeding or similar occurrence with respect to Borrower, none of the Defeasance Collateral nor any proceeds thereof will be property of Borrower's estate under Section 541 of the U.S. Bankruptcy Code or any similar statute and the grant of security interest therein to Lender should not constitute an avoidable preference under Section 547 of the U.S. Bankruptcy Code or

applicable state law, (iii) the release of the lien of the Security Instrument and the pledge of Defeasance Collateral will not directly or indirectly result in or cause any "real estate mortgage investment conduit" within the meaning of Section 860D of the Internal Revenue Code that holds this Note and the Other Note (a "**REMIC Trust**") to fail to maintain its status as a REMIC Trust and (iv) the defeasance will not cause any REMIC Trust to be an "investment company" under the Investment Company Act of 1940;

(5) a certificate in form and scope acceptable to Lender in its sole discretion from an Acceptable Accountant (defined below) certifying that the Defeasance Collateral will generate amounts sufficient to make all payments of principal and interest due under this Note and the Other Note (including the scheduled outstanding principal balance of the Loan due on the Anticipated Maturity Date (assuming that the entire amount of the Debt is due and payable on the Anticipated Maturity Date)). The term "**Acceptable Accountant**" shall mean a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender; and

(6) such other certificates, documents and instruments as Lender may reasonably require; and

(E) in the event the Loan is held by a REMIC Trust, Lender has received written confirmation from each Rating Agency rating any Securities (as defined in the Security Instrument) that substitution of the Defeasance Collateral will not result in a downgrade, withdrawal, or qualification of the ratings then assigned to any of the Securities.

(ii) Upon compliance with the requirements of subsection (b)(i), the Property shall be released from the lien of the Security Instrument and the Other Security Documents, and the Defeasance Collateral shall constitute the sole collateral which shall secure this Note and the Other Note and all other obligations under the Loan Documents. Lender will, at Borrower's expense, execute and deliver any agreements reasonably requested by Borrower to release the lien of the Security Instrument and the Other Security Documents from the Property and will, subject to Borrower's satisfaction of clause (iii) under this subsection (b), cause a release of Borrower and Indemnitor from any further liability or obligation under this Note, the Security Instrument or the Other Security Documents other than a liability or obligation in connection with a provision of this Note, the Security Instrument or Other Security Document which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument.

(iii) Upon the release of the Property in accordance with this subsection (b), Borrower shall assign all its obligations and rights under this Note and the Other Note, together with the pledged Defeasance Collateral, to a successor entity designated and approved by Lender in its reasonable discretion ("**Successor Borrower**"). Successor

Borrower shall execute an assignment and assumption agreement (the "**Defeasance Assumption Agreement**") in form and substance satisfactory to Lender in its sole and absolute discretion pursuant to which it shall assume Borrower's obligations under this Note, the Other Note and the Defeasance Security Agreement. As conditions to such assignment and assumption, Borrower shall (A) deliver to Lender one or more opinions of counsel in form and substance and delivered by counsel which would be satisfactory to a prudent Lender stating, among other things, that such Defeasance Assumption Agreement is enforceable against Borrower and the Successor Borrower in accordance with its terms and that this Note, the Other Note, the Defeasance Security Agreement and the other Loan Documents, as so assigned and assumed, are enforceable against the Successor Borrower in accordance with their respective terms, and opining to such other matters relating to Successor Borrower and its organizational structure as Lender may reasonably require, and (B) pay all fees, costs and expenses incurred by Lender or its agents in connection with such assignment and assumption (including, without limitation, legal fees and expenses and for the review of the proposed transferee and the preparation of the assignment and assumption agreement and related certificates, documents and instruments and any fees payable to any Rating Agencies and their counsel in connection with the issuance of the confirmation referred to in subsection (b)(i)(E) above). Upon such assignment and assumption, Borrower and Indemnitor shall be relieved of their obligations under this Note, under the Other Note, under the other Loan Documents and under the Defeasance Security Agreement, except for any liability or obligation in connection with a provision of this Note, the Other Note, the Security Instrument or any Other Security Document which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument.

(iv) For purposes of this Article 5, "**REMIC Prohibition Period**" means the period commencing on the date hereof and ending on the earlier to occur of (i) the first Monthly Payment Date occurring after the second anniversary of the "startup day" within the meaning of Section 860G(a)(9) of the Code of any REMIC Trust that holds this Note and the Other Note and (ii) the first Monthly Payment date occurring after the fourth anniversary of the date hereof. In no event shall Lender have any obligation to notify Borrower that a REMIC Prohibition Period is in effect with respect to the Loan, except that Lender shall notify Borrower if any REMIC Prohibition Period is in effect with respect to the Loan after receiving any notice described in subsection (b)(i)(B); provided, however, that the failure of Lender to so notify Borrower shall not impose any liability on Lender or grant Borrower any right to defease the Loan during any such REMIC Prohibition Period.

(c) Involuntary Prepayment During the Lockout Period. During the Lockout Period, in the event of any involuntary prepayment of the Loan or any other amount under this Note, whether in whole or in part, in connection with or following Lender's acceleration of this Note and the Other Note or otherwise, and whether the Security Instrument is satisfied or released by foreclosure (whether by power of sale or judicial proceeding), deed in lieu of foreclosure or by any other means, including, without limitation, repayment of the Loan by Borrower or any other Person pursuant to any statutory or common law right of redemption, Borrower shall, in addition to any portion of the principal balance of the Loan prepaid (together with all interest accrued and

unpaid thereon and in the event the prepayment is made on a date other than a Monthly Payment Date, a sum equal to the amount of interest which would have accrued under this Note and the Other Note on the amount of such prepayment if such prepayment had occurred on the next Monthly Payment Date), pay to Lender a prepayment premium in an amount calculated in accordance with this subsection (c). Such prepayment premium (the **"Yield Maintenance Premium"**) shall be an amount equal to the greater of: (i) one percent (1%) of the principal amount of the Loan being prepaid or (ii) the present value as of the Prepayment Date of the Calculated Payments from the Prepayment Date through the Anticipated Maturity Date determined by discounting such payments at the Discount Rate. As used in this definition, the term "**Prepayment Date**" shall mean the date on which prepayment is made. As used in this definition, the term "**Calculated Payments**" shall mean the monthly payments of interest only which would be due based on the principal amount of the Loan being prepaid on the Prepayment Date and assuming an interest rate per annum equal to the difference (if such difference is greater than zero) between (y) the Interest Rate and (z) the Yield Maintenance Treasury Rate. As used in this definition, the term "**Discount Rate**" shall mean the rate which, when compounded monthly, is equivalent to the Yield Maintenance Treasury Rate, when compounded semi-annually. As used in this definition, the term "**Yield Maintenance Treasury Rate**" shall mean the yield calculated by Lender by the linear interpolation of the yields, as reported in the Federal Reserve Statistical Release H.15-Selected Interest Rates under the heading U.S. Government Securities/Treasury Constant Maturities for the week ending prior to the Prepayment Date, of U.S. Treasury Constant Maturities with maturity dates (one longer or one shorter) most nearly approximating the Maturity Date. In the event Release H.15 is no longer published, Lender shall select a comparable publication to determine the Yield Maintenance Treasury Rate. In no event, however, shall Lender be required to reinvest any prepayment proceeds in U.S. Treasury obligations or otherwise.

(d) Insurance and Condemnation Proceeds; Excess Interest. Notwithstanding any other provision herein to the contrary, and provided no Event of Default exists, Borrower shall not be required to pay any prepayment premium in connection with any prepayment occurring solely as a result of (i) the application of insurance proceeds or condemnation proceeds pursuant to the terms of the Loan Documents, (ii) the application of any interest in excess of the maximum rate permitted by applicable law to the reduction of the Loan, or (iii) the exercise by Lender of any other right under the Loan Documents to apply an amount received by Lender to the principal balance of this Note or the Other Note, other than any exercise in connection with an Event of Default, which shall be controlled by the preceding paragraph (c).

(e) After the Lockout Period. Commencing on the day after the expiration of the Lockout Period, and upon giving Lender at least fifteen (15) days (but not more than ninety (90) days) prior written notice, Borrower may voluntarily prepay (without premium) this Note and the Other Note in whole (but not in part) on a Monthly Payment Date. Lender shall accept a prepayment pursuant to this subsection (e) on a day other than a Monthly Payment Date provided that, in addition to payment of the full outstanding principal balance of this Note and the Other Note, Borrower pays to Lender a sum equal to the amount of interest which would have accrued on this Note and the Other Note if such prepayment occurred on the next Monthly Payment Date.

(f) Limitation on Partial Prepayments. In no event shall Lender have any obligation to accept a partial prepayment.

(g) Prepayment and Defeasance of this Note and the Other Note. Notwithstanding anything to the contrary contained herein, any defeasance or prepayment permitted hereunder and consummated in accordance with the terms and conditions contained herein must occur simultaneously with a defeasance or prepayment permitted by (and consummated in accordance with the applicable terms and conditions of) the Other Note. Lender shall have no obligation to accept any payment or defeasance of this Note in accordance with the terms and provisions of this Note unless the Other Note is simultaneously prepaid or defeased, as applicable, in accordance with the terms and conditions of the Other Note.

ARTICLE 6: SECURITY

This Note is secured by the Security Instrument and the Other Security Documents. The term "**Security Instrument**" as used in this Note and the Other Note shall mean the Deed of Trust and Security Agreement dated as of the date hereof given by Borrower (among others) to (or for the benefit of) Lender covering the fee simple and leasehold estate of Borrower in certain premises located in San Francisco County, State of California, and other property, as more particularly described therein (collectively, the "**Property**") and intended to be duly recorded in said County. The term "**Other Security Documents**" as used in this Note shall mean all and any of the documents other than this Note, the Other Note or the Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guarantee payment of this Note. Whenever used, the singular number shall include the plural, the plural number shall include the singular, and the words "Lender" and "Borrower" shall include their respective successors, assigns, heirs, executors and administrators. The term "**Other Note**" as used herein shall refer, individually or collectively (as the context requires), to each Individual Note (as defined in the Security Instrument) other than this Note. Lender by acceptance of this Note hereby agrees to pursue its remedies under each Note executed by Borrower jointly and in a manner which is not more detrimental to Borrower than if Borrower executed only one Note.

All of the terms, covenants and conditions contained in the Other Note, the Security Instrument and the Other Security Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein.

ARTICLE 7: SAVINGS CLAUSE

This Note is subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance due hereunder at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Note, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of such maximum rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the

full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

ARTICLE 8: LATE CHARGE

If any monthly installment of principal and interest payable under this Note is not paid on the date on which it was due, Borrower shall pay to Lender upon demand an amount equal to the lesser of two and one-half percent (2.5%) of the unpaid sum or the maximum amount permitted by applicable law to defray the expenses incurred by Lender in handling and processing the delinquent payment and to compensate Lender for the loss of the use of the delinquent payment and the amount shall be secured by the Security Instrument and the Other Security Documents.

ARTICLE 9: NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 10: JOINT AND SEVERAL LIABILITY

If there is more than one Borrower, the obligations and liabilities of each such person or party shall be joint and several.

ARTICLE 11: WAIVERS

Except as otherwise provided herein, in the Other Note, in the Security Instrument, or in the Other Security Documents, Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof or the Other Note or any installment thereof, and no alteration, amendment or waiver of any provision of this Note, the Other Note, the Security Instrument or the Other Security Documents made by agreement between Lender or any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other person or entity who may become liable for the payment of all or any part of the Debt, under this Note, the Other Note, the Security Instrument or the Other Security Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Other Note, the Security Instrument or the Other Security Documents. If Borrower is a partnership, the agreements herein contained shall remain in force and applicable, notwithstanding any changes in the individuals comprising the partnership. If Borrower is a corporation, the agreements contained herein shall remain in full force and applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation. If Borrower is a limited liability company, the agreements contained herein shall remain in full force and applicable notwithstanding any changes in the members comprising, or the managers, officers or agents relating to, the limited

liability company. The term “Borrower”, as used herein, shall include any alternate or successor partnership, corporation, limited liability company or other entity or person to the Borrower named herein, but any predecessor partnership (and their partners), corporation, limited liability company, other entity or person shall not thereby be released from any liability except as otherwise provided in the Security Instrument or Other Security Documents. Nothing in this Article 11 shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership which may be set forth in the Security Instrument or any Other Security Document.

ARTICLE 12: INTENTIONALLY OMITTED

ARTICLE 13: WAIVER OF TRIAL BY JURY

BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THIS NOTE AND THE OTHER NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THIS NOTE AND THE OTHER NOTE, THIS NOTE, THE OTHER NOTE THE SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

ARTICLE 14: EXCULPATION

(a) Notwithstanding any contrary provisions contained herein or in the Other Note, the Security Instrument or the Other Security Documents (other than a provision herein or therein which expressly states that it is intended to override any exculpatory provisions of this Note or the Other Note), Lender shall not enforce the liability and obligation of Borrower, to perform and observe the obligations contained in this Note, the Other Note, the Security Instrument or the Other Security Documents by any action or proceeding wherein a money judgment shall be sought against Borrower or any partner or member of Borrower, except that Lender may bring a foreclosure action (where no deficiency judgment is sought against Borrower or any partner or member of Borrower), an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon this Note, the Other Note, the Security Instrument, the Other Security Documents, and the interests in the Property; and any other collateral given to Lender pursuant to the Security Instrument and the Other Security Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall not be enforceable against Borrower (or any partner or member of Borrower) except to the extent of Borrower’s interest in the Property and in any other collateral given to Lender as security, and Lender, by accepting this Note, the Security Instrument and the Other Security Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower (or any partner or member of Borrower) in any such action or proceeding, under or by reason of or in connection with this Note, the Other Note, the Security Instrument or the Other Security Documents. The provisions of this paragraph shall not, however, (1) constitute a waiver, release or impairment of any obligation evidenced or secured by this Note, the Other Note, the Security Instrument or the Other Security Documents;

(2) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument, where Lender is required to do so in order to properly pursue such action (and subject to the above-described prohibition on suing for, seeking or demanding any deficiency judgment); (3) affect the validity or enforceability of any guaranty or indemnity made in connection with this Note, the Other Note, the Security Instrument or the Other Security Documents; (4) impair the right of Lender to obtain the appointment of a receiver; (5) impair the enforcement of any assignment; or (6) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any losses suffered by Lender arising out of the following:

(i) fraud or intentional misrepresentation by Borrower in connection with this Note, the Other Note, the Security Instrument or the Other Security Documents;

(ii) any material inaccuracy, error or omission contained in the rent roll of the Property certified to by Borrower in that certain Borrower's Certification executed in connection with the Loan;

(iii) beginning on the date that GE Sponsor first obtains indirect Control over Venture, each Borrower not being 51% directly or indirectly owned and Controlled by GE Sponsor after the expiration of the first thirty (30) days of a Sponsor Cure Period (provided, however, this sub-paragraph (iii) shall be null and void and of no further force or effect upon each Borrower being 51% directly or indirectly owned and Controlled by GE Sponsor);

(iv) the breach of provisions in this Note, the Other Note, the Security Instrument or the Other Security Documents concerning Environmental Laws and Hazardous Substances and any indemnification of Lender with respect thereto in any document;

(v) the removal or disposal of any portion of the Property by Borrower after the occurrence and during the continuance of an Event of Default under this Note, the Other Note, the Security Instrument or the Other Security Documents;

(vi) the misapplication or conversion by Borrower of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Property, (B) any awards or other amounts received in connection with the condemnation of all or a portion of the Property, or (C) any Rents (other than as permitted by the Cash Management Agreement) after the occurrence and during the continuance of an Event of Default under this Note, the Other Note, the Security Instrument or the Other Security Documents;

(vii) any security deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to such foreclosure or action in lieu thereof;

(viii) the violation by Borrower of the representations or covenants contained in Section 4.3 of the Security Instrument;

(ix) Borrower's failure to make any required deposit to the Escrow Fund as required pursuant to the Security Instrument; and/or

(x) any matters set forth in Section 13.4 of the Security Instrument.

(b) Notwithstanding anything to the contrary in this Note, the Other Note, the Security Instrument or the Other Security Documents, the agreement of Lender not to pursue recourse liability as set forth in subsection (a) above SHALL BECOME NULL AND VOID and shall be of no further force and effect and the Debt shall be fully recourse to Borrower in the event that: (A) the first full Monthly Payment is not paid when due; (B) a Prohibited Transfer (as defined in the Security Instrument) occurs in violation of Article 8 of the Security Instrument; (C) if (I) an involuntary petition (other than the collusive involuntary petitions described in the following clause (II)) is filed against Borrower under the U.S. Bankruptcy Code or any other federal or state bankruptcy or insolvency law (collectively, the **"Insolvency Laws**") and is not dismissed within ninety (90) days of the filing thereof, or (II) Borrower files or consents to the filing against Borrower of a petition, voluntary or involuntary, under applicable Insolvency Laws, or any partner, member or equivalent person of Borrower or any person acting in concert with Borrower or any of the foregoing persons, files or joins in the filing against Borrower of an involuntary petition under applicable Insolvency Laws and/or (D) the Annex Restoration Conditions become applicable and fail to be satisfied (provided, that, Principal's liability under this subclause (D) shall be limited to an amount reasonably determined by Lender (which such determination shall be final and binding absent manifest error) to be the costs required to be incurred in order to complete the Annex Restoration Work and to pay for the same in full (less any portion of the Net Proceeds actually received by Lender attributable to the Annex Restoration Work)).

(c) Nothing herein shall be deemed to be a waiver of any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with this Note, the Security Instrument or the Other Security Documents.

ARTICLE 15: AUTHORITY

Borrower (and the undersigned representative of Borrower, if any) represents that Borrower has full power, authority and legal right to execute and deliver this Note, the Other Note, the Security Instrument and the Other Security Documents and that this Note, the Other Note, the Security Instrument and the Other Security Documents constitute valid and binding obligations of Borrower, except as may be limited by (i) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and (ii) general principles of equity.

ARTICLE 16: APPLICABLE LAW

This Note shall be deemed to be a contract entered into pursuant to the laws of the State of California and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of California and applicable laws of the United States of America.

ARTICLE 17: SERVICE OF PROCESS

(a) Borrower will maintain a place of business or an agent for service of process in San Diego, California and give prompt notice to Lender of the address of such place of business and of the name and address of any new agent appointed by it, as appropriate. Borrower further agrees that the failure of its agent for service of process to give it notice of any service of process will not impair or affect the validity of such service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of Borrower available to be served, and if it at that time has no place of business in San Diego, California then Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to the first paragraph hereof.

(b) Borrower initially designates John W. Chamberlain, with offices on the date hereof at 11455 El Camino Real, Suite 200, San Diego, California 92130, to receive for and on behalf of Borrower service of process with respect to this Note and the other Loan Documents.

ARTICLE 18: COUNSEL FEES

In the event that it should become necessary to employ counsel to collect the Debt or to protect or foreclose the security therefor, Borrower also agrees to pay all reasonable fees and expenses of Lender, including, without limitation, reasonable attorney's fees for the services of such counsel whether or not suit be brought.

ARTICLE 19: NOTICES

All notices or other written communications to Borrower or Lender hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Borrower or Lender at their addresses set forth in the Security Instrument or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

ARTICLE 20: MISCELLANEOUS

Except as otherwise specified herein (or in the Other Note, the Security Instrument or the Other Security Documents), wherever pursuant to this Note (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the reasonable determination of Lender applied in good faith. All approvals of or waivers by Lender in respect of any of the terms, conditions or requirements of this Note must be in writing. No waiver with respect to any condition, breach or other matter shall extend to or be taken in any manner whatsoever to affect any other condition, breach or matter or affect Lender's rights resulting therefrom. Whenever

any payment to be made hereunder or under any other Loan Document shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day, provided, however, with respect to the payments due hereunder on each of the Anticipated Maturity Date and the Maturity Date, if any such date does not occur on a Business Day, such date shall be deemed to occur on the immediately preceding Business Day.

ARTICLE 21: DEFINITIONS

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Security Instrument and the Other Security Documents.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

[ ], a
[ ]

By: _____
Name:
Title:

ADDENDUM TO NOTE

BY SIGNING BELOW, BORROWER EXPRESSLY ACKNOWLEDGES AND UNDERSTANDS THAT, PURSUANT TO THE TERMS OF THIS NOTE, BORROWER HAS AGREED THAT IT HAS NO RIGHT TO PREPAY THIS NOTE DURING THE LOCKOUT PERIOD (EXCEPT AS EXPRESSLY SET FORTH TO THE CONTRARY HEREIN) OR IN THE SECURITY INSTRUMENT, AND THAT IT SHALL BE LIABLE FOR THE PAYMENT OF THE PREPAYMENT PREMIUM FOR PREPAYMENT OF THIS NOTE UPON ACCELERATION OF THIS NOTE IN ACCORDANCE WITH ITS TERMS EXCEPT AS EXPRESSLY SET FORTH IN THE HEREIN OR IN THE SECURITY INSTRUMENT. FURTHER, BY SIGNING BELOW, BORROWER WAIVES ANY RIGHTS IT MAY HAVE UNDER SECTION 2954.10 OF THE CALIFORNIA CIVIL CODE, OR ANY SUCCESSOR STATUTE, AND EXPRESSLY ACKNOWLEDGES AND UNDERSTANDS THAT LENDER HAS MADE THE LOAN IN RELIANCE ON THE AGREEMENTS AND WAIVER OF BORROWER AND THAT LENDER WOULD NOT HAVE MADE THE LOAN WITHOUT SUCH AGREEMENTS AND WAIVER OF BORROWER.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Addendum to Note as of the day and year first above written.

[ ], a [ ]

By: _____
Name:
Title:

Exhibit 10.25

RECORDING REQUESTED BY AND UPON
RECORDATION RETURN TO:
Dechert LLP
30 Rockefeller Plaza
New York, New York 10112-2200
Attention: Gerard C. Keegan, Esq.

DEL MONTE - POH, LLC,

DEL MONTE - DMSJH, LLC,

DEL MONTE - KMBC, LLC,

and

DEL MONTE - DMCH, LLC

collectively, as trustor

(Borrower)

to

FIRST AMERICAN TITLE INSURANCE COMPANY, as trustee

(Trustee)

for the benefit of

COLUMN FINANCIAL, INC., as beneficiary

(Lender)

DEED OF TRUST AND SECURITY AGREEMENT

Dated: June 30, 2005

THIS DEED OF TRUST AND SECURITY AGREEMENT (this "**Security Instrument**") is made as of the 30th day of June, 2005, by **DEL MONTE - POH, LLC**, a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**TIC 1**"), **DEL MONTE - DMSJH, LLC**, a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**TIC 2**"), **DEL MONTE - KMBC, LLC**, a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**TIC 3**") and **DEL MONTE - DMCH, LLC**, a Delaware limited liability company, having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130 ("**TIC 4**"; TIC 1, TIC 2, TIC 3 and TIC 4 are individually or collectively (as the context requires) referred to herein as "**Borrower**"), as trustor, in favor of **FIRST AMERICAN TITLE INSURANCE COMPANY**, a California corporation, having an office at 411 Ivy Street, San Diego, California 92101 ("**Trustee**"), as trustee, for the benefit of **COLUMN FINANCIAL, INC.**, a Delaware corporation, having an address at 11 Madison Avenue, New York, New York 10010 (together with its successors and assigns, "**Lender**"), as beneficiary.

RECITALS:

Borrower by (i) that certain Promissory Note A-1 given to Lender dated as of the date hereof (the "**A-1 Note**"), (ii) that certain Promissory Note A-2 given to Lender dated as of the date hereof (the "**A-2 Note**"), (iii) that certain Promissory Note A-3 given to Lender dated as of the date hereof (the "**A-3 Note**") of even date herewith, (iv) that certain Promissory Note A-4 given to Lender dated as of the date hereof (the "**A-4 Note**"; each of the A-1 Note, the A-2 Note, the A-3 Note and the A-4 Note, together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to herein as the "**Note**") is indebted to Lender in the aggregate principal sum of $82,300,000 (the "**Loan**") in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note.

Borrower desires to secure the payment of the Debt (as defined in Article 2) and the performance of all of the Other Obligations (as defined in Article 2).

Article 1. GRANTS OF SECURITY

Section 1.1. PROPERTY GRANTED. For the purpose of securing payment and performance of the Obligations (as defined in Article 2), Borrower, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration in hand paid, the receipt of which hereby is acknowledged, and the further consideration, uses, purposes and trusts herein set forth and declared, has granted, deeded, sold, bargained, transferred, assigned, set-over and conveyed and by these presents does grant, deed, bargain, sell, transfer, assign, set-over and convey unto Trustee, and unto his or its successors in the trust hereby created and his or its assigns, forever, and grant a security interest in (each for the benefit of Lender and its successors and assigns) all of Borrower's right, title and interest in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**"):

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

(b) Intentionally Omitted;

(c) Intentionally Omitted;

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

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

(f) Easements. All easements, rights of way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

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

(h) Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, including, without limitation, any guaranty of any of the foregoing leases (a "**Lease**" or "**Leases**"), and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements (the "**Rents**"), subject to the license to collect and use such Rents pursuant to the provisions of Section 3.7 below, and all proceeds from the sale or other disposition of the Leases;

(i) Environmental Agreement and Remediation Account. That certain (i) Global Fixed Fee Environmental Services Agreement (together with any amendments, restatements, replacements or other modifications thereof, collectively, the "**Environmental Agreement**") dated as of January 9, 1997 between Del Monte Regional Mall, LLC (predecessor-in-interest to Borrower) and ARCADIS G&M, Inc. (together with its successors and assigns, "**ARCADIS**") and all right, title and interest of Borrower therein and thereunder and (ii) Remediation Account (as defined in the Environmental Agreement) and all right, title and interest of Borrower therein;

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

(k) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property (whether or not Borrower is required to carry such insurance by Lender hereunder), including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property, subject to the provisions hereof;

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

(m) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

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

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

(p) Letter of Credit Rights. All letter of credit rights (whether or not the letter of credit is evidenced by a writing) Borrower now has or hereafter acquires relating to the properties, rights, titles and interest referred to in this Section 1.1;

(q) Tort Claims. All commercial tort claims Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(r) Borrower Accounts. All payments for goods or property sold or leased or for services rendered arising from the operation of the Land and the Improvements, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper;

(s) Reserve Accounts. All reserves, escrows and deposit accounts required under the Loan Documents and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(t) TIC Agreement. Borrower's contract rights under that certain Tenancy-in-Common Agreement executed by and among TIC 1, TIC 2, TIC 3 and TIC 4 and dated on or about the date hereof (such agreements, together with all amendments, restatements, memoranda or other modifications thereof, collectively, the "**TIC Agreement**");

(u) Assignments/Modifications of TIC Agreement. Borrower's contract rights under all assignments, modifications, extensions and renewals of the TIC Agreement and all credits, deposits, options, privileges and rights of each of TIC 1, TIC 2, TIC 3 and/or TIC 4 under the TIC Agreement, including, but not limited to, any rights of first refusal relating thereto arising under Section 363(i) of the Bankruptcy Code;

(v) Proceeds. All proceeds of any of the foregoing items set forth in subsections (a) through (r); and

(w) Other Rights. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (t) above.

Section 1.2. ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Notwithstanding the

foregoing or anything to the contrary contained herein, until (a) the occurrence and continuance of an Event of Default in connection with which Lender has elected to accelerate the Loan in accordance with the applicable terms hereof and (b) such Event of Default has continued up to the earlier date of the following occurrences: (i) ninety (90) days after Lender's delivery to Borrower of written notice of the commencement of such Event of Default or (ii) Lender's commencement of a foreclosure (which such "commencement" shall be deemed to occur (I) in the case of a non-judicial foreclosure, upon recordation of a Notice of Sale establishing the date of a trustee's sale of the Land pursuant to which the Trustee will exercise the power of sale granted herein or (II) in the case of a judicial foreclosure, upon Lender's commencement of foreclosure proceedings in the court of applicable jurisdiction) or acceptance of a deed-in lieu of foreclosure (the "**Acceleration Default**"), all Rents shall be deposited, held and applied pursuant to that certain Restricted Account Agreement by and among Borrower and Lender (among others) (the "**Restricted Account Agreement**") and that certain Cash Management Agreement dated as of the date hereof between Borrower and Lender (the "**Cash Management Agreement**").

Section 1.3. SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations, a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code. To the extent permitted by law, Borrower and Lender agree that with respect to all items of Personal Property, which are or will become fixtures on the Land, this Security Instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the applicable provisions of the Uniform Commercial Code of the State of California. Borrower is the record owner of the Land.

Section 1.4. PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies belonging to Borrower which are now or hereafter held by Lender, and which are (i) deposited in the Escrow Fund (as defined in Section 3.5), (ii) Net Proceeds (as defined in Section 4.4), and/or (iii) condemnation awards or payments described in Section 3.6, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto Trustee, as trustee for the benefit of Lender, to its successor in the trust created by this Security Instrument, and to its or their respective assigns forever, in trust, however, upon the terms and conditions set forth herein;

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

PROVIDED, HOWEVER, these presents are upon the express condition that, when all of the Obligations have been paid in full, Lender shall request Trustee in writing to re-convey the Property and shall surrender this Security Instrument and all notes and instruments evidencing the Obligations to Trustee.

Article 2. PAYMENTS

Section 2.1. DEBT AND OBLIGATIONS SECURED. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the "**Debt**"): (a) the payment of the indebtedness evidenced by the Note in lawful money of the United States of America; (b) the payment of interest, prepayment premiums, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the Other Security Documents (defined below); (c) the payment of all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument or the Other Security Documents (collectively sometimes referred to herein as the "**Loan Documents**"); (d) the payment of all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; (e) the payment of all sums reasonably advanced and costs and expenses reasonably incurred (including unpaid or unreimbursed servicing and special servicing fees) by Lender in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of all other obligations of Borrower contained herein and the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of this Security Instrument, the Note, or the Other Security Documents (collectively, the "**Other Obligations**"). Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations**."

Section 2.2. PAYMENTS. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall not cure any then-existing Event of Default (defined below).

Article 3. BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1. PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

Section 3.2. INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Note (the "**Other Security Documents**"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3. INSURANCE.

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall obtain and maintain, or cause to be maintained, during the entire term of this Security Instrument policies of insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk insurance ("**Special Form**") including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Loan; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of Twenty-Five Thousand and No/100 Dollars ($25,000.00) for all such insurance coverage and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the Full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such lesser amount as Lender shall require; and (z) earthquake insurance in amounts and in form and substance reasonably satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance required to be maintained pursuant to clauses (y) and (z) above shall be on terms consistent with the Special Form policy required pursuant to this subsection (i). Notwithstanding anything to the contrary in this Security Instrument, the insurance coverage described in the foregoing subparagraphs (y) and (z) shall be required (1) as of the date hereof only if determined to be necessary by Lender based upon its reasonable evaluation of third party reports, and (2) at any time hereafter in the event subsequent third party reports indicate a change in the condition of or circumstances surrounding the Property;

(ii) rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an annual aggregate amount equal to 100% of all rents or estimated gross revenues from the operation of the Property (as reduced to reflect actual vacancies and expenses not incurred during a period of Restoration) and covering rental losses for a period of at least eighteen (18) months, after the date of the casualty, and notwithstanding that the Policy may expire prior to the end of such period; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the Personal Property has been repaired, the continued loss of income will be insured until such income returns to the same level it was prior to the loss, or the expiration of six (6) months from the date of the completion of the Restoration, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such rental loss insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Property for the succeeding eighteen (18) month period and a reasonable vacancy factor acceptable to Lender. All proceeds payable to Lender pursuant to this subsection (the "**Rent Loss Proceeds**") shall be disbursed by Lender to Borrower immediately following Lender's receipt thereof, provided no Event of Default is then in existence; provided, however, (i) if a Cash Management Period (as defined in the Cash Management Agreement) then exists, such proceeds shall be deposited into the Cash Management Account (as defined in the Cash Management Agreement) and disbursed in accordance with the applicable terms and conditions of the Cash Management Agreement (provided, further, that in the event such Rent Loss Proceeds are paid in a lump sum in advance, Lender shall hold such Rent Loss Proceeds in a segregated interest-bearing escrow account and Lender shall estimate the number of months required for Borrower to restore the damage caused by the applicable casualty, shall divide the applicable aggregate Rent Loss Proceeds by such number of months and shall disburse such monthly installment of Rent Loss Proceeds from such escrow account into the Cash Management Account each month during the performance of such Restoration), and (ii) that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form referenced in subsection (i), above, does not otherwise apply, (A) owner's contingent or protective liability insurance, otherwise known as Owner Contractor's Protective Liability, covering claims not covered by or under the terms or provisions of the commercial general liability insurance policy in (v) below; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(iv) comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(v) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars ($2,000,000.00) in the aggregate and One Million and No/100 Dollars ($1,000,000.00) per occurrence; (B) to continue at not less than the aforesaid limit until reasonably required to be changed by Lender as provided in subsection 3.3(b) below; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability and (5) contractual liability covering the indemnities contained in Section 13.1 to the extent the same is available;

(vi) automobile liability coverage for all owned and non-owned vehicles, if any, used by Borrower in the operation of the Property, including rented and leased vehicles containing minimum limits per occurrence of One Million and No/100 Dollars ($1,000,000.00);

(vii) umbrella liability insurance in an amount not less than Ten Million and No/100 Dollars ($10,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above, including, but not limited to, supplemental coverage for workers' compensation and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (vi) above;

(viii) so-called "dramshop" insurance, if applicable, or other liability insurance required in connection with the sale of alcoholic beverages; and

(ix) any insurance coverage required to be maintained by Borrower pursuant to the terms of the Environmental Agreement;

(x) environmental insurance (the "**Environmental Insurance**") in the same amount and on the same terms (including, without limitation, terms relating to deductibles) as that certain environmental insurance policy maintained by Borrower as of the date hereof (provided, that, Borrower shall only be obligated to maintain the same until the earlier to occur of (y) the Remediation Completion (defined below) (z) the expiration of the current term of such Environmental Insurance in 2013); and

(xi) upon sixty (60) days' written notice, such other reasonable insurance such as sinkhole or land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 3.3(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and (i) shall be issued by financially sound and responsible insurance companies reasonably approved by Lender, and authorized or licensed to do business in the state where the Property is located, with claims paying ability/financial strength ratings of "AA" or better by S&P (as defined in the Cash Management Agreement) and Fitch (as defined in the Cash Management Agreement) and "Aa2" or better by Moody's (as

defined in the Cash Management Agreement) and general policy ratings of A or better and financial classes of X or better by A.M. Best Company, Inc.; (ii) shall name Borrower as the insured and Lender as an additional insured, as its interests may appear; (iii) in the case of property damage, boiler and machinery and, if required pursuant to the provisions hereof, flood and earthquake insurance, shall contain a so called New York Non Contributory Standard Mortgagee Clause and (other than those strictly limited to liability protection) a Lender's Loss Payable Endorsement (Form 438 BFU NS), or their equivalents, naming Lender as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Lender; (v) shall be maintained throughout the term of this Security Instrument without cost to Lender; (vi) shall be assigned and, if requested in writing by Lender, the originals (or duplicate originals certified to be true and correct by the applicable insurer or its agent) delivered to Lender; and (vii) shall contain such provisions, consistent with the provisions hereof, as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements or clauses providing that (I) neither Borrower, Lender nor any other party shall be a co insurer under said Policies, (II) that Lender shall receive at least ten (10) days prior written notice of any modification, reduction or cancellation of any Policy, (III) no act or negligence of Borrower, or anyone acting for Borrower, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned, (IV) Lender shall not be liable for any Insurance Premiums (defined below) thereon or subject to any assessments thereunder, and (V) such Policies do not exclude coverage for acts of terror or similar acts of sabotage. Any blanket Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 3.3(a). Borrower shall pay the premiums for such Policies (the "**Insurance Premiums**") as the same become due and payable and shall furnish to Lender evidence of the renewal of each of the new Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided that such Insurance Premiums have not been paid to Lender or Lender's servicing agent pursuant to Section 3.5 hereof). If Borrower does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any apparently expiring Policy, then Lender may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Borrower agrees to reimburse Lender for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like; provided, however, such increased coverages shall not be requested more frequently than once every three years, and shall only be requested if such coverage is commercially available at commercially reasonable rates and such rates are consistent with those paid in respect of comparable properties in comparable locations, and Lender also reasonably determines that either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including without limitation, investment banks) to such owners are generally requiring that such owners maintain such insurance.

(c) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be approved by Lender (the "**Restoration**") and otherwise in accordance with Section 4.4 of this Security Instrument. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. In case of loss covered by Policies, Lender may either (1) settle and adjust any claim, or (2) allow Borrower to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that (A) provided no Event of Default shall have occurred and be continuing, Borrower may adjust losses aggregating not in excess of the Threshold Amount (defined below) if such adjustment is carried out in a competent and timely manner and (B) if no Event of Default shall have occurred and be continuing, Lender shall not settle or adjust any such claim under clause (1), above, without the consent of Borrower, which consent shall not be unreasonably withheld or delayed. In any case Lender shall and is hereby authorized to collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Borrower to Lender upon demand.

Section 3.4. PAYMENT OF TAXES, ETC. (a) Subject to the provisions of Sections 3.4(b) and 3.5 hereof, Borrower shall pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "**Taxes**"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "**Other Charges**"), and all charges for utility services provided to the Property prior to the same becoming delinquent. Borrower will deliver to Lender, promptly upon Lender's written request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge against the Property arising out of such Taxes, Other Charges and utility service charges. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish to Lender, promptly upon Lender's written request, paid receipts for the payment of the Taxes and Other Charges.

(b) Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the Other Security Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting

the Property, (iii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, and (vii) Borrower shall have furnished the security as may be required in the proceeding to insure the payment of any contested Taxes, together with all interest and penalties thereon.

Section 3.5. ESCROW FUND. Except as provided below, Borrower shall pay to Lender on the first day of each calendar month (a) one twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months and (b) one twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the amounts in (a) and (b) above shall be called the "**Escrow Fund**"). Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has obtained knowledge and authorizes Lender or its agent to obtain the bills for Taxes and Other Charges directly from the appropriate taxing authority. The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Lender will timely apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3.3 and 3.4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 3.3 and 3.4 hereof, Lender shall promptly return any excess to Borrower. In disbursing such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Escrow Fund shall be payable to Borrower. Notwithstanding the foregoing, Borrower shall not be required to make deposits to the Escrow Fund for Insurance Premiums pursuant to this Section 3.5 so long as (i) no Event of Default occurs and is continuing hereunder, (ii) Borrower pays all Insurance Premiums by no later than ten (10) Business Days prior to the delinquency thereof, and (iii) Borrower provides Lender paid receipts for the payment of the Insurance Premiums by no later than one (1) Business Day prior to the delinquency thereof. Upon the occurrence of a failure of any of the conditions specified in clauses (i) through (iii) above, Borrower shall, upon Lender's demand therefor, commence making the deposits to the Escrow Fund for Insurance Premiums required pursuant to this Section 3.5 commencing with the next Monthly Payment Date (as defined in the Note), which payments shall continue until Borrower corrects each such failure.

Section 3.6. CONDEMNATION. Borrower shall (a) promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting the Land and/or the Improvements, (b) deliver to Lender copies of any and all papers

served in connection with such proceedings and (c) shall promptly commence and diligently prosecute the Restoration of the Property in accordance with Section 4.4 hereof. Lender is hereby irrevocably appointed as Borrower's attorney in fact coupled with an interest, with exclusive powers to collect, receive and apply to the Debt (or provide to Borrower to pay for Restoration) any award or payment for any taking accomplished through a condemnation or eminent domain proceeding and, at any time during which an Event of Default has occurred and is continuing, to make any compromise or settlement in connection therewith. All condemnation awards or proceeds shall be either (a) paid to Lender for application against the Debt or (b) applied to Restoration of the Property in accordance with Section 4.4 hereof. Notwithstanding any taking by any public or quasi public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. Any award or payment to be applied to the reduction or discharge of the Debt or any portion thereof may be so applied whether or not the Debt or such portion thereof is then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been or may be sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the unpaid portion of the Debt.

Notwithstanding anything contained in this Section 3.6 or this Security Instrument to the contrary, but subject to the provisions of Section 4.4, below, Lender may elect to (y) apply the net proceeds of any condemnation award (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) in reduction of the Debt in such order and manner as Lender may elect, whether due or not, or (z) make the proceeds available to Borrower for the restoration or repair of the Property. Any implied covenant in this Security Instrument restricting the right of Lender to make such an election is waived by Borrower. In addition, Borrower hereby waives the provisions of any law prohibiting Lender from making such an election.

Section 3.7. LEASES AND RENTS. (a) Borrower does hereby absolutely and unconditionally assign to Lender, Borrower's right, title and interest in all current and future Leases and Rents, it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Lender shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Lender. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereafter be requested by Lender to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section 3.7, Lender grants to Borrower a revocable license (revocable only as provided herein) to operate and manage the Property and to collect, retain, and enjoy the Rents pursuant to (and as such license may be limited by) the terms and conditions contained in the Restricted Account Agreement and the Cash Management Agreement. Furthermore, notwithstanding anything to contrary contained

herein and notwithstanding the rights granted to Lender pursuant to this Section 3.7, all Rents shall be deposited, held and applied pursuant to the provisions of the Restricted Account Agreement and the Cash Management Agreement. Upon the occurrence and continuance of an Acceleration Default, the license granted to Borrower herein shall automatically be revoked (subject to automatic reinstatement upon Borrower's cure of the applicable Event of Default), and Lender shall, subject to the provisions of the Other Security Documents, immediately be entitled to possession of all Rents, whether or not Lender enters upon or takes control of the Property. Subject to the provisions of the Other Security Documents, Lender is hereby granted by Borrower the right, at its option, during any period of revocation of the license granted herein, to enter upon the Property in person, by agent or by court appointed receiver to collect the Rents. Any Rents collected during the revocation of the license shall, subject to any contrary provision of the Other Security Documents, be applied by Lender against the Debt, in such order and priority as it may determine. Notwithstanding the foregoing, in the event of any conflict or inconsistency between the terms and provisions of this Section 3.7(a) and those contained in that certain Assignment of Leases and Rents executed by Borrower in connection with the Loan (the "**ALR**"), the terms and conditions of the ALR shall control and govern.

(b) All Leases entered into after the date hereof shall be written on (i) the standard form of lease which has been approved by Lender (the "**Standard Form**") or (ii) an Acceptable Chain Tenant Form (defined below). Commercially reasonable changes may be made to the Lender-approved standard lease or an Acceptable Chain Tenant Form without the prior written consent of Lender in the ordinary course of Borrower's business. All Leases (including any Acceptable Chain Tenant Form) shall provide that they are subordinate to this Security Instrument (subject to Lender's agreement (by Lender's acceptance of this Security Instrument hereby given) not to disturb such tenant's tenancy while they are in compliance with the terms of their Lease) and that the tenant thereunder agrees to attorn to Lender. As used herein, the term "**Acceptable Chain Tenant Form**" shall mean the form of lease promulgated by a prospective national or regional chain tenant that generally insists, on a programmatic or institutional basis (although an occasional exception to such requirement shall not cause this provision to fail), on using its own form of lease; provided, that, the provisions contained in such form of lease (i) are commercially reasonably for properties similar to the Property, (ii) do not contain any rights, options (including, without limitation, rights to purchase the Property or any interest therein) or obligations that would be unacceptable to a prudent secondary market lender substantially similar to Lender and (iii) do not have a Material Adverse Effect (defined below). As used herein, the term "**Material Adverse Effect**" shall mean a material adverse effect on (i) the Property, (ii) the business, profits, prospects, management, operations or condition (financial or otherwise) of Borrower, Guarantor or the Property, (iii) the enforceability, validity, perfection or priority of the lien of this Security Instrument or the other Loan Documents, or (iv) the ability of Borrower to perform its obligations under this Security Instrument or the other Loan Documents.

(c) Borrower (i) shall observe and perform all material obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall receive thereunder; (iii) shall not

collect any of the Rents more than one (1) month in advance (other than security deposits and prepaid first and last month's rent collected in the ordinary course of Borrower's business); and (iv) shall not execute any other assignment of the lessor's interest in the Leases or the Rents. Borrower (A) shall enforce all material terms, covenants and conditions contained in the Leases upon the part of the lessees thereunder to be observed or performed, short of termination thereof and short instituting litigation (provided, that, Borrower (1) shall be obligated to so institute litigation if the failure to do so would have a Material Adverse Effect and (2) may institute litigation and terminate a Lease only in the event of (aa) a monetary event of default under such Lease or (bb) a material non-monetary default under such Lease where the tenant fails to cure such event of default within the cure period set forth in the subject Lease); (B) may alter, modify or change the terms of the Leases in any material respect without the prior written consent of Lender, provided that such alterations, modifications or changes are commercially reasonable alterations, modifications or changes agreed to in the ordinary course of Borrower's business; (C) shall not, without Lender's consent, convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights, or a termination or diminution of the obligations of, tenants under the Leases; (D) may approve or consent to any assignment of or subletting under the Leases in accordance with the terms of such Leases, without the prior written consent of Lender; and (E) shall not cancel the Leases or accept a surrender thereof, except that any Lease may be canceled if at the time of the cancellation thereof a new Lease is entered into on substantially the same terms or more favorable terms as the canceled Lease.

(d) Borrower, as the lessor thereunder, may enter into proposed lease renewals and new leases without the prior written consent of Lender, provided each such proposed lease: (i) shall have an initial term of not less than one (1) year or greater than ten (10) years; (ii) shall provide for rental rates (including rates during any renewal or option term or rates applicable to any expansion space) comparable to then-existing (as of the time of entering into such new lease or lease renewal) local market rates that would be agreed to in an arm's length transaction; (iii) shall be to a tenant which Borrower reasonably determines to be capable and reputable; and (iv) shall comply with the provisions of subsection (b) above (except that any lease renewals may be on the same form as the original lease). Borrower may enter into a proposed lease which does not satisfy all of the conditions set forth in clauses (i) through (iv) immediately above, provided Lender consents in writing to such proposed lease, such consent not to be unreasonably withheld or delayed. Borrower expressly understands that any and all proposed leases are included in the definition of "Lease" or "Leases" as such terms may be used throughout this Security Instrument, the Note and the Other Security Documents. Borrower shall furnish Lender with executed copies of all Leases and any amendments or other agreements pertaining thereto.

(e) Notwithstanding anything to the contrary contained herein or in any other Loan Document, Borrower shall not, without the prior written consent of Lender, enter into, renew (other than in accordance with its express terms), extend (other than in accordance with its express terms), terminate (for reasons other than non-payment of rent), reduce rents under, permit an assignment or subleasing of (other than, in each

case, in accordance with its express terms) or otherwise amend, modify or waive any material or economic provisions of, accept a surrender of space under, or shorten the term of, any Major Lease or any instrument guaranteeing or providing credit support for any Major Lease. As used herein, the term "**Major Lease**" shall mean (i) any Lease which, individually or when aggregated with all other Leases at the Property with the same tenant or any Affiliate (defined below) of such tenant, demises 15,000 square feet or more of the Property's net rentable square footage, (ii) any Lease which contains any option, offer, right of first refusal or other similar entitlement to purchase all or any portion of the Property (which such rights shall be deemed to be exclusive of any rights under any Lease to extend the term thereof or to lease additional space at the Property) or (iii) any instrument guaranteeing or providing credit support for any Lease meeting the requirements of (i) or (ii) above. As used above, the term "**Affiliate**" shall mean, with respect to any tenant under any Lease at the Property, any affiliate of such tenant, unless such affiliate (i) operates under a separate trade name and under a separate corporate or other similar division from such tenant and (ii) is otherwise treated as a separate tenant under a separate Lease by Borrower.

(f) Notwithstanding anything to the contrary contained herein, to the extent Lender's prior approval is required for any leasing matters set forth in this Section, Lender shall have ten (10) Business Days from receipt of written request and all required information and documentation relating thereto in which to approve or disapprove such matter, provided that such request to Lender is marked in bold lettering with the following language: "LENDER'S RESPONSE IS REQUIRED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF A DEED OF TRUST BETWEEN THE UNDERSIGNED AND LENDER". In the event that Lender fails to respond to the leasing matter in question within such time, Lender's approval shall be deemed given for all purposes. Borrower shall provide Lender with such information and documentation as may be reasonably required by Lender, including, without limitation, lease comparables and other market information as reasonably required by Lender. Lender shall not be entitled to any fee or reimbursement in connection with any such review and approval process in excess of the reasonable fees or reimbursements customarily charged by lenders or servicers of secondary market loans similar to the Loan for actions similar to the foregoing. Further, in no event will Borrower be responsible for any attorneys' fees in connection with such review and approval process except to the extent that any such attorney is engaged to (i) negotiate modifications to such proposed Lease required in order to make such Lease acceptable to Lender or (ii) review material deviations in such Lease from the Standard Form.

(g) Intentionally Omitted.

(h) Intentionally Omitted.

(i) Within ten (10) Business Days after receipt of written request therefore and a copy of the executed corresponding Lease, Lender shall execute and deliver to Borrower a subordination, non-disturbance and attornment agreement (an "**SNDA**") with respect to such Lease and any other Leases with Tenants appearing on the rent roll

of the Property as of the date hereof. If the form of the SNDA shall be prescribed by the Lease in question, and Lender shall have approved (or been deemed to have approved (it being understood that all of the Leases on the rent roll of the Property as of the date hereof are deemed approved)) such Lease, Lender shall execute and deliver the SNDA in the form prescribed by such Lease. In the case of any other Lease or any Lease as to which Lender's approval is not required pursuant to the terms hereof where such tenant thereunder requests an SNDA, the SNDA to be executed and delivered by Lender shall be in substantially the form attached hereto as Exhibit B, as such form may be modified to reflect reasonable changes thereto negotiated by Lender and such tenant. Lender agrees to negotiate in good faith the terms of the SNDA with any tenant under any Lease. All reasonable attorneys' fees and disbursements incurred by Lender in connection with the negotiation of changes to such SNDA shall be payable by Borrower within ten (10) Business Days after Lender's written request therefore, whether or not the SNDA is ultimately executed and/or recorded. No attorney's fees will be charged for merely conforming such SNDA to the terms of the Lease in question (as opposed to material changes to the substantive content thereof).

Section 3.8. MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof which may have a Material Adverse Effect. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or abandoned without the express written consent of Lender.

Section 3.9. WASTE. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.10. COMPLIANCE WITH LAWS. Borrower shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted to affect the Property and/or Borrower, or the use thereof, including, without limitation, the Prescribed Laws (defined below) (each of the foregoing, collectively, "**Applicable Laws**"). Borrower shall from time to time,

upon Lender's request, based on Lender's belief, in the exercise of Lender's reasonable judgment, that the Property is in violation of any Applicable Law, provide Lender with evidence satisfactory to Lender that the Property complies with the Applicable Laws which Lender believes the Property is in violation of or is exempt from compliance with such Applicable Laws. Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws. As used herein, the term "**Prescribed Laws**" shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et. seq. and (d) all other Applicable Laws relating to money laundering or terrorism.

Section 3.11. BOOKS AND RECORDS. (a) Borrower shall keep adequate books and records of account in accordance with Borrower's current methods (which such methods are tax basis accounting) or such other method as may be acceptable to Lender in its reasonable discretion, in each case consistently applied (each or any of the foregoing, the "**Approved Accounting Method**") and furnish to Lender:

(i) prior to Securitization (defined below), monthly (but in no event for a period of more than two (2) years from the date hereof) and, thereafter, quarterly, rent rolls signed, dated and certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) to be true and complete to the best knowledge of such person, detailing the names of all tenants of the Improvements, the portion of Improvements occupied by each tenant, the base rent and any other charges payable under each Lease and the term of each Lease, including the expiration date, and any other information as is reasonably required by Lender, within thirty (30) days after the end of each calendar month or quarter (as applicable);

(ii) prior to Securitization (defined below), monthly (but in no event for a period of more than two (2) years from the date hereof) and, thereafter, quarterly, operating statements of the Property certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) to be true and complete to the best knowledge of such person, detailing the total revenues received, total expenses incurred, total capital expenditures (including, but not limited to, all capital improvements (including, but not limited to, tenant improvements)), leasing commissions and other leasing costs, total debt service and total cash flow, and if available, any quarterly operating statement prepared by an independent certified public accountant, within thirty (30) days after the close of each calendar month or quarter (as applicable); and

(iii) an annual balance sheet and profit and loss statement of Borrower, prepared and certified by Borrower, and, if available, any financial statements prepared by an independent certified public accountant within ninety (90) days after the close of each fiscal year of Borrower.

(b) Upon request from Lender, Borrower and its affiliates shall furnish to Lender: (1) an accounting of all security deposits held in connection with any Lease of any part of the Property; and (2) an annual operating budget presented on a monthly basis consistent with the annual operating statement described above for the Property and all proposed capital replacements and improvements.

(c) Borrower and its affiliates shall furnish Lender with such other additional financial or management information as may, from time to time, be reasonably required by Lender.

(d) Borrower shall provide Lender with the following financial statements if requested by Lender (it being understood that Lender shall request (i) full financial statements only if it anticipates that the principal amount of the Loan at the time of Securitization may, or if the principal amount of the Loan at any time during which the Loan is included in a Securitization does, equals or exceeds 20% of the aggregate principal amount of all mortgage loans included in the Securitization and (ii) summaries of such financial statements only if the principal amount of the Loan at any such time equals or exceeds 10% of such aggregate principal amount):

(i) As of the date of the closing of the Loan (the "**Closing Date**"), a balance sheet with respect to the Property for the two most recent fiscal years of Borrower or Sponsor (each such year, a "**Fiscal Year**"), meeting the requirements of Section 210.3-01 of Regulation S-X of the Securities Act (defined below) and statements of income and statements of cash flows with respect to the Property for the three most recent Fiscal Years, meeting the requirements of Section 210.3-02 of Regulation S-X, and, to the extent that such balance sheet is more than 135 days old as of the Closing Date, interim financial statements of the Property meeting the requirements of Section 210.3-01 and 210.3-02 of Regulation S-X (all of such financial statements, collectively, the "**Standard Statements**"); provided, however, to the extent the Property that has been acquired by Borrower from an unaffiliated third party (an "**Acquired Property**") and as to which the other conditions set forth in Section 210.3-14 of Regulation S-X for the provision of financial statements in accordance with such Section have been met (other than any Property that is a hotel, nursing home or other property that would be deemed to constitute a business and not real estate under Regulation S-X and as to which the other conditions set forth in Section 210.3-05 of Regulation S-X for provision of financial statements in accordance with such Section have been met (a "**Business Property**")), in lieu of the Standard Statements otherwise required by this Section, Borrower shall instead provide the financial statements required by such Section 210.3-14 of Regulation S-X ; provided, further, however, with respect to any Business Property which is an Acquired Property, Borrower shall instead provide the financial statements required by Section 210.3-05 (such Section 210.3-14 or Section 210.3-05 financial statements referred to herein as ("**Acquired Property Statements**")).

(ii) Not later than 30 days after the end of each fiscal quarter following the Closing Date, a balance sheet of the Property as of the end of such fiscal quarter, meeting the requirements of Section 210.3-01 of Regulation S-X, and statements of income and statements of cash flows of the Property for the period commencing on the day following the last day of the most recent Fiscal Year and ending on the date of such balance sheet and for the corresponding period of the most recent Fiscal Year, meeting the requirements of Section 210.3-02 of

Regulation S-X (provided, that if for such corresponding period of the most recent Fiscal Year Acquired Property Statements were permitted to be provided hereunder pursuant to paragraph (i) above, Borrower shall instead provide Acquired Property Statements for such corresponding period). If requested by Lender, Borrower shall also provide "summarized financial information," as defined in Section 210.1-02(bb) of Regulation S-X, with respect to such quarterly financial statements.

(iii) Not later than 60 days after the end of each Fiscal Year following the Closing Date, a balance sheet of the Property as of the end of such Fiscal Year, meeting the requirements of Section 210.3-01 of Regulation S-X, and statements of income and statements of cash flows of the Property for such Fiscal Year, meeting the requirements of Section 210.3-02 of Regulation S-X. If requested by Lender, Borrower shall provide summarized financial information with respect to such annual financial statements.

(iv) Within ten (10) Business Days after notice from Lender in connection with the Securitization of this Loan, such additional financial statements, such that, as of the date (each a "**Disclosure Document Date**") of each Disclosure Document (defined below), Borrower shall have provided Lender with all financial statements as described in paragraph (i) above; provided that the Fiscal Year and interim periods for which such financial statements shall be provided shall be determined as of such Disclosure Document Date.

(v) In the event Lender determines, in connection with a Securitization, that the financial statements required in order to comply with Regulation S-X or Applicable Laws are other than as provided herein, then notwithstanding the provisions of this Section, Lender may request, and Borrower shall promptly provide, such combination of Acquired Property Statements and/or Standard Statements as may be necessary for such compliance.

(vi) Any other or additional financial statements, or financial, statistical or operating information, as shall be required pursuant to Regulation S-X or other Applicable Laws in connection with any Disclosure Document or any filing under or pursuant to the Exchange Act in connection with or relating to a Securitization (hereinafter an "**Exchange Act Filing**") or as shall otherwise be reasonably requested by Lender to meet disclosure, Rating Agency or marketing requirements.

(vii) All financial statements provided by Borrower pursuant to this Section 3.11(d) shall be prepared in accordance with GAAP, and shall meet the requirements of Regulation S-X and other Applicable Laws. If required in order to comply with Regulation S-X (given the size of the Loan as described in the introductory paragraph of this Section 3.11(d)), all, financial statements relating to a Fiscal Year shall be audited by the independent accountants in accordance with generally accepted auditing standards, Regulation S-X and all other Applicable Laws, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation S-X and all other Applicable Laws, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent

accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided. All other financial statements shall be certified by the chief financial officer of Borrower, which certification shall state that such financial statements meet the requirements set forth in the first sentence of this paragraph.

Section 3.12. PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist (subject to Borrower’s right to contest any such matter as described below) beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof. Nothing contained herein shall, however, affect or impair Borrower’s ability to diligently and in good faith contest any lien or bill for labor or materials (or any federal tax lien of the type), provided that any lien placed upon the Property must be fully and irrevocably discharged (by bond or otherwise) at least 30 days prior to the date such lien could otherwise be foreclosed upon pursuant to Applicable Law.

Section 3.13. PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing an obligation secured hereby and any amendments, modifications or changes thereto.

Section 3.14. PROPERTY MANAGEMENT.

(a) Borrower shall (i) promptly perform and observe all of the covenants required to be performed and observed by it under the agreement between Manager and Borrower pursuant to which the manager of the Property (the “**Manager**”) is employed to perform management services for the Property (the “**Management Agreement**”) and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of any notice of default or other material notice received by Borrower under the Management Agreement; (iv) promptly give notice to Lender of any notice or information that Borrower receives which indicates that Manager is terminating the Management Agreement or that Manager is otherwise discontinuing its management of the Property; and (v) promptly enforce the performance and observance of all of the material covenants required to be performed and observed by Manager under the Management Agreement. Borrower shall not, without the prior written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed): (i) surrender, terminate or cancel the Management Agreement or otherwise replace Manager or enter into any other management agreement with respect to the Property; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. In the event that Borrower replaces Manager at any time during the term of Loan, such Manager shall be a Qualified Manager (defined below).

(b) In the event that (i) an Event of Default occurs and is not cured within the applicable cure period (if any) or waived, (ii) Manager shall become a debtor in a proceeding under any applicable Insolvency Laws (as defined in the Note), or (iii) a material default by Manager has occurred and is continuing under the Management Agreement beyond any applicable grace, notice or cure periods thereunder, then, upon the occurrence of any of the events described in clauses (i) through (iii) above, Borrower shall, at Lender's direction, immediately terminate the Management Agreement and enter into a new property management agreement reasonably acceptable to Lender with a management company reasonably acceptable to Lender, which such new property management company must (i) be a Qualified Manager, (ii) not be an affiliate of, or controlled by, Lender, and (iii) have not provided (nor agreed to provide) Lender (or its affiliates) with any compensation for being so named. In the event Lender directs Borrower to engage a professional third party property manager, then Borrower shall engage such a property manager pursuant to an agreement reasonably acceptable to Lender, and Borrower and such manager shall execute an agreement acceptable to Lender conditionally assigning Borrower's interest in such management agreement to Lender and subordinating manager's right to receive fees and expenses under such agreement while the Debt remains outstanding. In no event shall Lender or Borrower be liable for any termination, severance or other fees to Manager or others resulting from any termination of any property management agreement (including, without limitation the Management Agreement).

(c) As used herein, the term "**Qualified Manager**" shall mean (I) American Assets, Inc. ("**AAI**"), CB Richard Ellis, Cushman and Wakefield or Cornish and Carey (unless such entity (A) is the entity being replaced as property manager or (B) has suffered a material adverse change in its general business standing or reputation from that as exists as of the date hereof (as reasonably determined by Lender)), or (II) a reputable and experienced professional management organization (a) which manages, together with its affiliates, at least 2,000,000 square feet of gross leasable area (including all anchor space), exclusive of the Property and (b) approved by Lender, which approval shall not have been unreasonably withheld and for which Lender shall have received (i) written confirmation from the Rating Agencies that the employment of such manager will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization, and (ii) with respect to any Affiliated Manager (defined below), a New Non-Consolidation Opinion (defined below).

Article 4. SPECIAL COVENANTS

Borrower covenants and agrees that:

Section 4.1. PROPERTY USE. The Property shall (a) be used only as a retail shopping center and related uses typical of a property such as the Property and allowed by the

Property's zoning classification and all agreements pertaining to the Property and (b) be used for no other use without the prior written consent of Lender, which consent may be withheld in Lender's reasonable discretion.

Section 4.2. ERISA. (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Security Instrument and the Other Security Documents) to be a non exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**").

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Security Instrument, as requested by Lender in its reasonable discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended (the "**Code**"), or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

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

(B) Less than 25 percent of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R.§ 2510.3 101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R § 2510.3 101(c) or (e) or an investment company registered under The Investment Company Act of 1940.

Section 4.3. SINGLE PURPOSE ENTITY.

(a) Borrower has not and shall not:

(i) Own any asset or property other than (A) the Property, and (B) incidental personal property necessary for the ownership or operation of the Property.

(ii) Engage in any business other than the ownership, management and operation of the Property or fail to conduct and operate its business as presently conducted and operated.

(iii) Enter into any contract or agreement with any affiliate of Borrower, any constituent party of Borrower or any affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(iv) Incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Debt, (B) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than sixty (60) days past the date incurred and paid on or prior to such date, and/or (C) financing leases and purchase money indebtedness incurred in the ordinary course of business relating to personal property on commercially reasonable terms and conditions; provided however, the aggregate amount of the indebtedness described in (B) and (C) shall not exceed at any time three percent (3%) of the outstanding principal amount of the Debt. No Indebtedness other than the Debt may be secured (subordinate or pari passu) by the Property.

(v) Make any loans or advances to any third party (including any affiliate or constituent party) or acquire obligations or securities of its affiliates.

(vi) Fail to remain solvent or fail to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(vii) Fail to do or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, or permit any constituent party to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of Borrower or such constituent party without the prior consent of Lender in any manner that (i) violates the single purpose covenants set forth in this Section, or (ii) amends, modifies or otherwise changes any provision thereof that by its terms cannot be modified at any time when the Loan is outstanding or by its terms cannot be modified without Lender's consent.

(viii) Fail to maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party. Borrower's assets have not been and will not be listed as assets on the financial statement of any other person or entity, provided, however, that Borrower's assets may be included in a consolidated financial statement of its affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such affiliates or any other person or entity and (ii) such assets shall be listed on Borrower's own separate balance sheet. Borrower will file its own tax returns (to the extent Borrower is required to file any such tax returns) and will not file a consolidated federal income tax return with any other person or entity. Borrower shall maintain its books, records, resolutions and agreements as official records.

(ix) Fail to be, or fail to hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Borrower or any constituent party of Borrower), fail to correct any known misunderstanding regarding its status as a separate entity, fail to conduct business in its own name, identify itself or any of its affiliates as a division or part of the other, fail to allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an affiliate) among the persons or entities sharing such expenses or fail to maintain and utilize separate stationery, invoices and checks bearing its own name.

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

(xi) Seek or effect the liquidation, dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of Borrower.

(xii) Commingle the funds and other assets of Borrower with those of any affiliate or constituent party or any other person or entity or fail to hold all of its assets in its own name. Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party or any other person or entity.

(xiii) Guarantee or become obligated for the debts of any other person or entity or hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other person or entity.

(xiv) Fail to conduct its business so that the assumptions made with respect to Borrower in that certain non-consolidation opinion delivered by Solomon Ward Seidenwurm & Smith, LLP in connection with the closing of the Loan (together with any subsequently delivered confirmations or amendments thereto or any subsequent substantive non-consolidation opinions, collectively, the "**Non-Consolidation Opinion**") shall fail to be true and correct in all respects.

(xv) Permit any affiliate or constituent party independent access to its bank accounts.

(xvi) Fail to pay the salaries of its own employees (if any) from its own funds or fail to maintain a sufficient number of employees (if any) in light of its contemplated business operations.

(xvii) Fail to compensate each of its consultants and agents from its funds for services provided to it or fail to pay from its own assets all obligations of any kind incurred.

(xviii) If Borrower is an Acceptable Delaware LLC, fail to observe all Delaware limited liability company required formalities.

(xix) own any subsidiary, or make any investment in, any person or entity.

(xx) if Borrower is a partnership or limited liability company, without the unanimous written consent of all of its partners or members, as applicable, and the written consent of 100% of the board of directors or managers of Borrower (if Borrower is an Acceptable Delaware LLC or a corporation) or each SPE Component Entity (defined below) (if Borrower is an entity other than an Acceptable Delaware LLC or a corporation), including, without limitation, the Independent Director (defined below), (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable Insolvency

Laws, (b) seek or consent to the appointment of a receiver, liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, or (d) make an assignment for the benefit of creditors.

(b) If Borrower is a partnership or limited liability company (other than an Acceptable Delaware LLC), each general partner in the case of a general partnership, each general partner in the case of a limited partnership, or the managing member in the case of a limited liability company (each an "**SPE Component Entity**") of Borrower, as applicable, shall be a corporation or an Acceptable Delaware LLC whose sole asset is its interest in Borrower. Each SPE Component Entity (i) will own at least a 0.5% direct equity interest in Borrower, (ii) will at all times comply with each of the covenants, terms and provisions contained in Section 4.3(a) above, to the extent applicable, as if such representation, warranty or covenant was made directly by such SPE Component Entity; (iii) will not engage in any business or activity other than owning an interest in Borrower; (iv) will not acquire or own any assets other than its partnership, membership, or other equity interest in Borrower; (v) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation) other than Permitted Trade Payables (defined below); and (vi) will cause Borrower to comply with the provisions of Section 4.3. Prior to the withdrawal or the disassociation of any SPE Component Entity from Borrower, Borrower shall immediately appoint a new general partner or managing member whose articles of incorporation are substantially similar to those of such SPE Component Entity and deliver a New Non-Consolidation Opinion to Lender and the Rating Agencies with respect to the new SPE Component Entity and its equity owners. Notwithstanding the foregoing, to the extent any Borrower is a Delaware limited liability company whose organization documents contain springing member provisions satisfying the requirements of the Delaware Limited Liability Company Act and are otherwise acceptable to Lender (an "**Acceptable Delaware LLC**"), so long as such Borrower maintains such formation status, no SPE Component Entity shall be required. As used above, the term "**Permitted Trade Payables**" shall mean trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than sixty (60) days past the date incurred and paid on or prior to such date and, provided, further, that the same shall not, in the aggregate, exceed at any time one percent (1%) of the outstanding principal amount of the Debt.

(c) (i) The organizational documents of each SPE Component Entity (if any) or Borrower (to the extent Borrower is an Acceptable Delaware LLC or a corporation) shall provide that at all times there shall be, and Borrower shall cause there to be, at least one duly appointed members of the board of directors or managers (an "**Independent Director**") of such SPE Component Entity or Borrower (as applicable) reasonably satisfactory to Lender who is not at the time of such individual's initial appointment, and shall not have been at any time during the preceding five (5) years, and shall not be at any time while serving as a director of such SPE Component Entity or Borrower (as applicable), either (i) a shareholder (or other equity owner) of, or an officer, director (other than serving as the Independent Director of any Borrower or any SPE Component Entity), partner, manager, member (other than as a Special Member in

the case of an Acceptable Delaware LLC), employee (other than serving as the Independent Director of any Borrower or any SPE Component Entity), attorney or counsel of, Borrower, such SPE Component Entity or any of their respective shareholders, partners, members, subsidiaries or affiliates; (ii) a customer or creditor of, or supplier to, Borrower or any of its respective shareholders, partners, members, subsidiaries or affiliates who derives any of its purchases or revenue from its activities with Borrower or such SPE Component Entity or any affiliate of any of them (other than in such person's employment as the Independent Director of any Borrower or any SPE Component Entity); (iii) a Person who Controls (defined below) or is under common Control with any such shareholder, officer, director, partner, manager, member, employee, supplier, creditor or customer; or (iv) a member of the immediate family of any such shareholder, officer, director, partner, manager, member, employee, supplier, creditor or customer. Notwithstanding the foregoing, a person who serves as an independent director for affiliates of Borrower may serve as an Independent Director so long as (A) such person is appointed by a nationally recognized provider of independent directors (such as CT Corporation) or (B) such person derives less than 5% of their total annual income from their service as independent director for Borrower and each applicable affiliate of Borrower.

(ii) The organizational documents of each SPE Component Entity (if any) or Borrower (as applicable) shall provide that the board of directors or board of managers of such SPE Component Entity or Borrower (as applicable) shall not take any action which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to any common stock, requires an unanimous vote of the board of directors or managers of such SPE Component Entity or Borrower (as applicable) unless at the time of such action there shall be at least one member of the board of directors or managers who is an Independent Director. Such SPE Component Entity or Borrower (as applicable) will not, without the unanimous written consent of its board of directors or managers including each Independent Director, on behalf of itself or Borrower, (i) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable Insolvency Laws; (ii) seek or consent to the appointment of a receiver, liquidator or any similar official; (iii) take any action that might cause such entity to become insolvent; or (iv) make an assignment for the benefit of creditors.

(d) (I) In the event that Borrower or any SPE Component Entity is an Acceptable Delaware LLC, the limited liability company agreement of Borrower or such SPE Component Entity (as applicable) (the "**LLC Agreement**") shall provide that (i) upon the occurrence of any event that causes the sole member of Borrower or such SPE Component Entity (as applicable) ("**Member**") to cease to be the member of Borrower or such SPE Component Entity (as applicable) (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower or such SPE Component Entity (as applicable) and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower or such SPE Component Entity (as applicable) in accordance with the terms of the Loan Documents and the LLC Agreement), any person acting as Independent Director of Borrower or such SPE Component Entity (as applicable) shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower or

such SPE Component Entity (as applicable), automatically be admitted to Borrower or such SPE Component Entity (as applicable) ("**Special Member**") and shall continue Borrower or such SPE Component Entity (as applicable) without dissolution and (ii) Special Member may not resign from Borrower or such SPE Component Entity (as applicable) or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower or such SPE Component Entity (as applicable) as Special Member in accordance with requirements of Delaware law and (B) such successor Special Member has also accepted its appointment as an Independent Director. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower or such SPE Component Entity (as applicable) upon the admission to Borrower or such SPE Component Entity (as applicable) of a substitute Member, (ii) Special Member shall be a member of Borrower or such SPE Component Entity (as applicable) that has no interest in the profits, losses and capital of Borrower or such SPE Component Entity (as applicable) and has no right to receive any distributions of Borrower or such SPE Component Entity (as applicable) assets, (iii) pursuant to Section 18-301 of the Delaware Limited Liability Company Act (the "**Act**"), Special Member shall not be required to make any capital contributions to Borrower or such SPE Component Entity (as applicable) and shall not receive a limited liability company interest in Borrower or such SPE Component Entity (as applicable), (iv) Special Member, in its capacity as Special Member, may not bind Borrower or such SPE Component Entity (as applicable) and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower or such SPE Component Entity (as applicable), including, without limitation, the merger, consolidation or conversion of Borrower or such SPE Component Entity (as applicable); provided, however, such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Director, to vote on such matters required by the Loan Documents or the LLC Agreement. In order to implement the admission to Borrower or such SPE Component Entity (as applicable) of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower or such SPE Component Entity (as applicable) as Special Member, Special Member shall not be a member of Borrower or such SPE Component Entity (as applicable).

(II) Upon the occurrence of any event that causes the Member to cease to be a member of Borrower or such SPE Component Entity (as applicable), to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower or such SPE Component Entity (as applicable), agree in writing (i) to continue Borrower or such SPE Component Entity (as applicable) and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower or such SPE Component Entity (as applicable), effective as of the occurrence of the event that terminated the continued membership of Member of Borrower or such SPE Component Entity (as applicable) in Borrower or such SPE Component Entity (as applicable). Any action initiated by or brought against Member or Special Member under any applicable Insolvency Laws shall not cause Member or Special Member to cease to be a member of Borrower or such SPE Component Entity (as applicable) and upon the occurrence of such an event, the business of Borrower or

such SPE Component Entity (as applicable) shall continue without dissolution. The LLC Agreement shall provide that each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower or such SPE Component Entity (as applicable) upon the occurrence of any action initiated by or brought against Member or Special Member under any applicable Insolvency Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower or such SPE Component Entity (as applicable).

(e) Borrower shall not change or permit to be changed (a) Borrower's name, (b) Borrower's identity (including its trade name or names), (c) Borrower's principal place of business set forth on the first page of this Security Instrument, (d) the corporate, partnership or other organizational structure of Borrower, each SPE Component Entity (if any), or Guarantor, (e) Borrower's state of organization, or (f) Borrower's organizational identification number, without in each case notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's or any SPE Component Entity's structure, without first obtaining the prior written consent of Lender. In addition, Borrower shall not change or permit to be changed any organizational documents of Borrower or any SPE Component Entity (if any) if such change would adversely impact the covenants set forth in this Section 4.3. Borrower authorizes Lender to file any financing statement or financing statement amendment required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property. If Borrower does not now have an organizational identification number and later obtains one, or if the organizational identification number assigned to Borrower subsequently changes, Borrower shall promptly notify Lender of such organizational identification number or change.

(f) Notwithstanding the foregoing, nothing contained in this Section 4.3 shall be deemed to limit any Borrower's ability to own, manage and operate the Property in conjunction with the other entities comprising the defined term "Borrower" hereunder, including, without limitation, the right to operate the Property under a fictitious business name co-owned by Borrowers (or some of them), to maintain all books and records relating to the Property on a consolidated basis with the other entities comprising the defined term "Borrower" hereunder and to commingle the Rents and profits generated by the Property with the other entities comprising the defined term "Borrower" hereunder. Furthermore, any act with respect to the Property which is permitted to be taken by "Borrower" may be taken by any of the entities comprising the defined term "Borrower" hereunder in conjunction with the other entities comprising the defined term "Borrower" hereunder.

Section 4.4. RESTORATION AFTER CASUALTY/CONDEMNATION. In the event of a casualty or a taking by eminent domain, the following provisions shall apply in connection with the Restoration of the Property:

(a) If the Net Proceeds (defined below) shall be less than the amount equal to five percent (5%) of the original aggregate principal amount of the Loan (the "**Threshold Amount**") and the costs of completing the Restoration shall be less than the Threshold Amount, the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Subsection 4.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Security Instrument.

(b) If the Net Proceeds are equal to or greater than the Threshold Amount or the costs of completing the Restoration is equal to or greater than the Threshold Amount, Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Subsection 4.4(b). The term "**Net Proceeds**" for purposes of this Section 4.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Subsection 3.3(a)(i), (iii), (iv) and (x) of this Security Instrument as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same or (ii) the net amount of all awards and payments received by Lender with respect to a taking referenced in Section 3.6 of this Security Instrument, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same, whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for the Restoration provided that each of the following conditions are met: (A) no Event of Default shall have occurred and be continuing under the Note, this Security Instrument or any of the Other Security Documents or an event which after the passage of time or the giving of notice would constitute an Event of Default; (B) Borrower shall deliver or cause to be delivered to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, reasonably satisfactory to Lender; (C) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's reasonable discretion to cover the cost of the Restoration; (D) Borrower shall deliver to Lender the proceeds of the insurance described in Subsection 3.3(a)(iii) hereof (which such proceeds shall be held and disbursed in accordance with Subsection 3.3(a)(iii) hereof); (E) Borrower shall commence the Restoration as soon as reasonably practicable and shall diligently pursue the same to satisfactory completion; (F) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note at the Applicable Interest Rate (as defined in the Note), which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Subsection 3.3(a)(ii), if applicable, or (3) by other funds of Borrower which are deposited with Lender prior to the commencement of the Restoration; (G) Lender shall be satisfied that, upon the completion of the Restoration and following a rent-up period from the time such Restoration is complete through the date which is three (3) months prior to the expiration of the rental loss insurance coverage maintained by Borrower pursuant to Section 3.3(a)(ii) above, the (1) fair market value of the Property, as reasonably determined by Lender, is equal to or greater than the fair market value of the Property immediately prior to the casualty or condemnation, and (2) gross cash flow and the net cash flow of the Property will be restored to a level sufficient to cover all carrying

costs and operating expenses of the Property, including, without limitation, a Debt Service Coverage Ratio (as defined on Schedule 1 hereto) of at least 1.00 to 1.00; (H) Lender shall be reasonably satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date (as defined in the Note), (2) one (1) year after the occurrence of such fire or other casualty or taking, whichever the case may be, or (3) such time as may be required under applicable zoning law, ordinance, rule or regulation in order to repair and restore the Property to the condition it was in immediately prior to such fire or other casualty or to as nearly as possible the condition it was in immediately prior to such taking, as applicable; (I) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable zoning laws, ordinances, rules and regulations; (J) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable governmental laws, rules and regulations (including, without limitation, all applicable Environmental Laws (defined below) and the Environmental Agreement); (K) such fire or other casualty or taking, as applicable, does not result in the loss of access to the Property or the Improvements; (L) (1) in the event the Net Proceeds are insurance proceeds, less than thirty-five percent (35%) of each of (i) fair market value of the Property as reasonably determined by Lender, and (ii) rentable area of the Property has been damaged, destroyed or rendered unusable as a result of a casualty or (2) in the event the Net Proceeds are condemnation proceeds, less than fifteen percent (15%) of each of (i) the fair market value of the Property as reasonably determined by Lender and (ii) rentable area of the Property is taken and such land is located along the perimeter or periphery of the Property; and (M) the Required Leases (defined below) shall remain in full force and effect during and after the completion of the Restoration. Lender agrees to use due diligence and good faith efforts to process its determination of Borrower's compliance with the requirements of this Paragraph 4.4(b)(i) as promptly as possible, recognizing the need for a quick determination in order to avoid delay in Restoration of the Property. As used above, the term "**Required Leases**" shall mean Leases encumbering, in the aggregate, 65% of the rentable square footage at the Property.

(ii) The Net Proceeds shall be held by Lender, and until disbursed in accordance with the provisions of this Subsection 4.4(b), shall constitute additional security for the Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower on a monthly basis during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Lender that (A) all materials installed and work and labor performed to date (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialmen's liens or written notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the reasonable satisfaction of Lender and discharged of record or in the alternative fully insured to the reasonable satisfaction of Lender by the title company insuring the lien of this Security Instrument.

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior reasonable review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "**Casualty Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been

engaged, shall be subject to prior reasonable review and acceptance by Lender and the Casualty Consultant. All reasonable costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, the Casualty Consultant's fees, shall be paid by Borrower. Lender shall not require Borrower to pay attorney's fees and expenses in connection therewith unless such process involves unusual circumstances that cannot reasonably be handled by Lender (or its Servicer) in-house and which otherwise reasonably justify the need for counsel.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "**Casualty Retainage**" as used in this Subsection 4.4(b) shall mean an amount equal to 10% of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until such time as the Casualty Consultant certifies to Lender that 50% of the required Restoration has been completed. There shall be no Casualty Retainage with respect to costs actually incurred by Borrower for work in place in completing the last 50% of the required Restoration. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Subsection 4.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental and quasi governmental authorities, and Lender receives evidence reasonably satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage, provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, and the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company insuring the lien of this Security Instrument. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**") with Lender in an interest-bearing account before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Subsection 4.4(b) shall constitute additional security for the Obligations.

(vii) With respect to Restorations related to casualties, the excess, if any, of the Net Proceeds, and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b), and the receipt by Lender of evidence reasonably satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Security Instrument or any of the Other Security Documents.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection 4.4(b)(vii) may, at Lender's election, be retained and applied by Lender toward the payment of the principal balance of the Debt whether or not then due and payable, either in whole or in part, or disbursed to Borrower. If Lender shall receive and retain Net Proceeds, as permitted above, the lien of this Security Instrument shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt. Notwithstanding the foregoing, if Lender does not make the Net Proceeds available for Restoration, Lender shall allow Borrower to prepay the Debt in whole (but not in part) without penalty, provided, that, (i) such prepayment is made by Borrower by no later than the date which is six (6) months prior to the expiration of the rental loss insurance coverage maintained by Borrower pursuant to Section 3.3(a)(ii) above and (ii) no Event of Default has otherwise occurred and is continuing.

Section 4.5. INTENTIONALLY OMITTED

Section 4.6. TIC AGREEMENT COVENANTS. Until such time as this Security Instrument is released or reconveyed in connection with the repayment of the Debt or such time as the Loan is defeased in full in accordance with the applicable terms and conditions of the Note or such time as Borrowers cease to be tenants-in-common pursuant to a transfer permitted by this Security Instrument, each Borrower hereby covenants and agrees that:

(a) they shall each pay all sums required to be paid under the TIC Agreement pursuant to the provisions thereof;

(b) they shall each diligently perform and observe all of the terms, covenants and conditions of the TIC Agreement;

(c) they shall not, without the prior consent of Lender, surrender the interest in the Property created by the TIC Agreement or terminate or cancel the TIC Agreement or modify, change, supplement, alter or amend the TIC Agreement (either orally or in writing) in any material respect;

(d) no Borrower shall institute or prosecute (nor shall any Borrower permit any other person or entity to institute or prosecute) an Action for Partition (defined below);

(e) each Borrower hereby waives each of their respective rights to an Action for Partition under the TIC Agreement and under Applicable Law;

(f) notwithstanding (but in no way abrogating or otherwise waiving) the foregoing, if any Action for Partition is brought by any Borrower, each other Borrower shall purchase such Borrower's tenancy in common interest in the Property at fair market value;

(g) in the event that the purchase described in subclause (f) shall fail to occur within fifteen (15) Business Days of the occurrence of the aforesaid Action for Partition (or such shorter time period as may be required for this subsection (g) to become effective immediately prior to the consummation of such Action for Partition), Sponsor (through an entity which Sponsor Controls, owns at least a 51% direct or indirect equity interest and which satisfies the criteria set forth in Section 4.3 hereof for single purpose, bankruptcy remote entities) shall purchase such interest at fair market value;

(h) in the event that the purchase described in subclauses (f) or (g) shall occur, the purchasing entity shall execute any documents or instruments reasonably requested by Lender (and shall provide such opinions, title endorsements or other documents or instruments reasonably requested by Lender) to affirm and/or assume the Loan and such entity's respective obligations thereunder;

(i) (1) any lien rights, indemnity rights, rights of subrogation or rights of first offer, first refusal or other rights to purchase or other similar rights inuring to any Borrower, Manager or any other person or entity under the TIC Agreement or Applicable Law are subject and subordinate to the Loan and the Loan Documents and Lender's rights thereunder and (2) with respect to the aforesaid rights (other than rights to payment from the cash flow of the Property), each applicable person or entity (including, without limitation, any Borrower) agrees to waive the same or "standstill" with respect to the enforcement of the same until such time as this Security Instrument is released or reconveyed in connection with the repayment of the Debt or such time as the Loan is defeased in full in accordance with the applicable terms and conditions of the Note; and

(j) the sale or issuance of any tenancy in common interests pursuant to the TIC Agreement will not violate any applicable provisions of the Securities Act or the Exchange Act or any other Applicable Law.

With respect to the foregoing covenants, Lender hereby acknowledges and agrees that the same are (i) restrictions customarily imposed by Lender in connection with commercial loans similar to the Loan and (ii) are intended to be restrictions which are "consistent with customary commercial lending practices" within the meaning of the applicable provisions of Revenue Procedure 2002-22. The foregoing covenants shall only be deemed to apply to each Borrower so long as they are parties to the TIC Agreement and such covenants shall cease to bind any Borrower at such time as such Borrower ceases to be a party to the TIC Agreement as a result of a transfer permitted under Section 8.4 below.

Article 5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1. WARRANTY OF TITLE. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same, and that Borrower possesses an unencumbered fee simple absolute in the Land and the Improvements, and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions (other than standard printed exceptions) shown in the title insurance policy insuring the lien of this Security Instrument (the "**Permitted Exceptions**"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever. Borrower hereby represents and warrants that none of the Permitted Exceptions will materially and adversely affect the ability of the Borrower to pay in full the Loan, the use of the Property for the use currently being made thereof, the operation of the Property or the value thereof.

Section 5.2. AUTHORITY. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

Section 5.3. LEGAL STATUS AND AUTHORITY. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the State where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted and proposed to be conducted. Borrower now has and shall continue to have the full right, power and authority to operate and lease the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Note, this Security Instrument and the Other Security Documents. Borrower's exact legal name and Borrower's organization identification number assigned by its state of formation, if any, is correctly set forth on the first page of this Security Instrument.

Section 5.4. VALIDITY OF DOCUMENTS. The execution, delivery and performance of the Note, this Security Instrument and the Other Security Documents and the borrowing evidenced by the Note (i) are within the corporate/partnership/limited liability company (as the case may be) power of Borrower; (ii) have been authorized by all requisite corporate/partnership/limited liability company (as the case may be) action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by laws, partnership, trust or operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any

of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby).

Section 5.5. LITIGATION. There is no action, suit or proceeding (including any condemnation or similar proceeding), or any governmental investigation or any arbitration, in each case pending or, to the knowledge of Borrower, threatened against Borrower or the Property before any governmental or administrative body, agency or official which (i) challenges the validity of this Security Instrument, the Note or any of the Other Security Documents or the authority of Borrower to enter into this Security Instrument, the Note or any of the Other Security Documents or to perform the transactions contemplated hereby or thereby or (ii) if adversely determined would have a material adverse effect on the occupancy of the Property or the business, financial condition or results of operations of Borrower or the Property.

Section 5.6. STATUS OF PROPERTY. (a) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.3 hereof, if required under the terms of that section.

(b) Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(c) The Property and the present and contemplated use and occupancy thereof are in compliance in all material respects with all applicable zoning ordinances, building codes, land use and Environmental Laws and other similar laws. Borrower and the Property each comply in all material respects with Prescribed Laws.

(d) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all weather and are physically and legally open for use by the public.

(f) The Property is served by public water and sewer systems.

(g) The Property is free from damage caused by fire or other casualty.

(h) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.

(i) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(j) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.

Section 5.7. NO FOREIGN PERSON. Borrower is not a "foreign person" within the meaning of Sections 1445(f)(3) of the Code and the related Treasury Department regulations, including temporary regulations.

Section 5.8. SEPARATE TAX LOT. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 5.9. ERISA COMPLIANCE. (a) As of the date hereof and throughout the term of this Security Instrument, (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the Code, and (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA or Section 4975 of the Code; and

(b) As of the date hereof and throughout the term of this Security Instrument (i) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA and (ii) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

Section 5.10. LEASES. (a) Borrower is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable; (c) the terms of all alterations, modifications and amendments to the Leases are reflected in the certified rent roll delivered to and approved by Lender; (d) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (e) none of the Rents have been collected for more than one (1) month in advance (other than typical first and last months' rent collected in advance in the ordinary course of leasing space at the Property); (f) the premises demised under the Leases have been completed for the tenants who have accepted and have taken possession of the same on a rent paying basis; (g) to the best of Borrower's knowledge (which for purposes hereof will mean the actual knowledge of John Chamberlain and Patrick Kinney), there exist no offsets or defenses to the payment of any portion of the Rents; and (h) the number and type of parking spaces available at the Property as of the date hereof satisfy any applicable requirements relating thereto contained in the Leases.

Section 5.11. FINANCIAL CONDITION. (a) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated, and (b) Borrower has received reasonably equivalent value for the granting of this Security Instrument. Borrower has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditors.

Section 5.12. BUSINESS PURPOSES. The loan evidenced by the Note is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 5.13. TAXES. Borrower has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Borrower does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.14. MAILING ADDRESSES. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

Section 5.15. NO CHANGE IN FACTS OR CIRCUMSTANCES. All information submitted to Lender in connection with any request by Borrower for the loan evidenced by the Note and/or any letter of application, preliminary commitment letter, final commitment letter or other application or letter of intent (including, but not limited to, all financial statements, rent rolls, reports and certificates) were accurate, complete and correct in all respects when delivered. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading.

Section 5.16. DISCLOSURE. To the best of Borrower's knowledge (which for purposes hereof will mean the actual knowledge of John Chamberlain and Patrick Kinney), Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 5.17. LETTER-OF-CREDIT RIGHTS. If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 of this Security Instrument now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall, pursuant to an agreement in form and substance satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing in each case that upon an Event of Default, the proceeds of any drawing under the letter of credit are to be applied as provided in Section 11.2 of this Security Agreement.

Section 5.18. AUTHORIZATION TO FILE FINANCING STATEMENTS, POWER OF ATTORNEY. Borrower hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without

the signature of Borrower as authorized by Applicable Law, as applicable to all or part of the fixtures or Personal Property. For purposes of such filings, Borrower agrees to furnish any information requested by Lender promptly upon request by Lender. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Borrower or in Borrower's own name to execute in Borrower's name any documents and otherwise to carry out the purposes of this Section 5.18, to the extent that Borrower authorization above is not sufficient. To the extent permitted by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

Section 5.19. EMBARGOED PERSON. As of the date hereof, (a) none of the funds or other assets of Borrower, Sponsor and/or Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law ("**Embargoed Person**"), including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Borrower, Sponsor and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, Sponsor and/or Guarantor, as applicable, with the result that the investment in Borrower, Sponsor and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Sponsor and/or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower, Sponsor and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. At all times throughout the term of the Loan, including after giving effect to any transfers permitted pursuant to Article 8 hereof, Borrower shall not permit any event to occur which would cause any of the foregoing representations to become untrue in any material respect.

Section 5.20. TIC AGREEMENT REPRESENTATIONS. (a) The TIC Agreement is in full force and effect and has not been modified or amended in any manner whatsoever; (b) there are no material defaults under the TIC Agreement and no event has occurred which but for the passage of time, or notice, or both would constitute a material default under the TIC Agreement, (c) all sums due and payable (if any) under the TIC Agreement as of the date hereof have been paid in full; and (d) no Borrower (nor, to the knowledge of Borrower, any other person or entity) has (i) commenced any action or given or received any notice for the purpose of terminating the TIC Agreement, or (ii) instituted or prosecuted any action for partition of the Property (or any portion thereof or interest therein) or any similar action pursuant to the TIC Agreement or any other contractual agreement or instrument or under Applicable Law (including, without limitation, common law) (any such action, the **"Action for Partition"**).

Section 5.21. WHOLE FOODS. Borrower hereby represents and warrants that the overpayment of CAM and real estate taxes alleged by Whole Foods Market California, Inc. in its estoppel delivered to Lender in connection with the closing of the Loan relating to its Lease at the Property would, if accurate, in no event exceed the sum of $2,000.

Article 6. OBLIGATIONS AND RELIANCES

Section 6.1. RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, this Security Instrument and the Other Security Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 6.2. NO RELIANCE ON LENDER. The general partners, shareholders, members, principals or other beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 6.3. NO LENDER OBLIGATIONS. (a) Notwithstanding any of the provisions of this Security Instrument (including, but not limited to, the provisions of Subsections 1.1(f) and (l), Section 1.2 or Section 3.7), Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

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

Section 6.4. RELIANCE. Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument and the Other Security Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 5 without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Note, this Security Instrument and the Other Security Documents; and that Lender would not be willing to make the loan evidenced by the Note, this Security Instrument and the Other Security Documents and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 5.

Article 7. FURTHER ASSURANCES

Section 7.1. RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses (the "**Expenses**") incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the Other Security Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law to do so.

Section 7.2. FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender pursuant to this Section 7.2.

Section 7.3. CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS. (a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

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

Section 7.4. ESTOPPEL CERTIFICATES. (a) After request by Lender, Borrower, within ten (10) Business Days, shall furnish Lender or any proposed assignee or Investor (as defined in Section 19.1) with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Loan, (ii) the unpaid principal amount of each individual promissory note comprising the defined term "Note" hereunder (each such promissory note, an **"Individual Note"**), (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of each Individual Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, Borrower has no actual knowledge of any defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under the Note or the Security Instrument, (vii) that the Note and this Security Instrument are valid, legal and binding obligations (except as may be limited by (A) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and (B) general principles of equity) and have not been modified or if modified, giving particulars of such modification, (viii) whether, to Borrower's actual knowledge, any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect, (x) the date to which the Rents thereunder have been paid pursuant to the Leases, (xi) whether or not, to the actual knowledge, of Borrower, any of the lessees under the Leases are in default under the Leases, and, if any of the aforesaid lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other factual matters within Borrower's actual knowledge reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or this Security Instrument.

(b) Borrower shall use its commercially reasonable best efforts to deliver to Lender, promptly upon request (provided such request is not made more than once in any calendar year other than any request by Lender made in connection with the securitization of the Loan or following an Event of Default), duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding the Lease as Lender may require, including but not limited to attestations that each Lease covered thereby is in full force and effect (and to the best of lessee's knowledge) with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) Lender, by its acceptance of this Security Instrument, agrees to deliver to Borrower (without cost (other than in extraordinary circumstances)) promptly upon Borrower's request therefor (provided such request is not made more than twice in any calendar year) a written statement setting forth the unpaid principal amount of the Note, the accrued and unpaid interest thereon, the date on which an installment of interest and/or principal were last paid thereunder and whether there are any Events of Default which currently exist and are actually known to Lender.

(d) Borrower shall use its commercially reasonable best efforts to deliver to Lender, promptly upon request (provided such request is not made more than once in any calendar year other than any request by Lender made in connection with the securitization of the Loan or following an Event of Default), a duly executed estoppel certificate from ARCADIS attesting to such facts regarding the Environmental Agreement as Lender may reasonably require (which such facts shall be attested by ARCADIS to the best of ARCADIS' knowledge).

Section 7.5. FLOOD INSURANCE. After Lender's request, Borrower shall deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally designated "special flood hazard area." or, if any of the Improvements are located within any such area Borrower will obtain and maintain the insurance required prescribed in Section 3.3 hereof, if required under the terms of that section.

Section 7.6. SPLITTING OF SECURITY INSTRUMENT. This Security Instrument and each Individual Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender and at Lender's sole cost and expense, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of this Security Instrument, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be reasonably required by Lender. Borrower's obligations hereunder are conditioned upon Lender's agreement, as evidenced by its acceptance hereof, that such splitting or division shall not result in any decrease of any rights of Borrower or any Indemnitor (as defined in the Indemnity Agreement (defined below)) hereunder or under any other Loan Document or any additional cost or potential liability to Borrower or any Indemnitor that exceeds that which exists hereunder prior to such splitting or division.

Section 7.7. REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of any Individual Note or any other Loan Document which is not of public record: (i) with respect to any Loan Document other than any Individual Note, Borrower will issue, in lieu thereof, a replacement of such other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Loan Document in the

same principal amount thereof and otherwise of like tenor and (ii) with respect to any Individual Note, (a) Borrower will execute a reaffirmation of the portion of the Debt as evidenced by such Individual Note acknowledging that Lender has informed Borrower that such Individual Note was lost, stolen destroyed or mutilated and that such portion of the Debt continues to be an obligation and liability of the Borrower as set forth in such Individual Note, a copy of which shall be attached to such reaffirmation or (b) if requested by Lender, Borrower will execute a replacement note, provided, that Lender or Lender's custodian (at Lender's option) shall provide to Borrower Lender's (or Lender's custodian's) then standard form of lost note affidavit and indemnity, which such form shall be reasonably acceptable to Borrower.

Article 8. DUE ON SALE/ENCUMBRANCE

Section 8.1. LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the loan secured hereby, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 8.2. NO SALE/ENCUMBRANCE.

(a) Except as provided in this Security Instrument, Borrower shall not cause or permit a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein nor permit a Sale or Pledge of an interest in any Restricted Party (in each case, a "**Prohibited Transfer**"), other than pursuant to Leases of space at the Property to tenants in accordance with the applicable provisions hereof, without the prior written consent of Lender.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of transactions (other than as permitted pursuant to Section 8.3 below); (iv) any action for partition of the Property (or any portion thereof or interest therein) or any similar action instituted or prosecuted by any Borrower, as a tenant-in-common, or by any other person or entity, pursuant to any contractual agreement or other instrument or under Applicable Law (including, without limitation, common law); (v) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner (other than as permitted pursuant to Section 8.3

below) or any profits or proceeds relating to such partnership interests or the creation or issuance of new partnership interests; (vi) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of any member (other than as permitted pursuant to Section 8.3 below) or any profits or proceeds relating to such membership interest; (vii) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (viii) the removal or the resignation of Manager (including, without limitation, an Affiliated Manager) other than in accordance with the applicable terms and conditions hereof.

Section 8.3. PERMITTED EQUITY TRANSFERS. Notwithstanding anything to the contrary contained in this Article 8, the following transfers shall not be Prohibited Transfers and shall be permitted without Lender's consent: (a) a transfer (but not a pledge) by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party, (b) the transfer (but not the pledge), in one or a series of transactions, of the stock, partnership interests or membership interests (as the case may be) in a Restricted Party, (c) the sale, transfer or issuance of shares of common stock in any Restricted Party that is a publicly traded entity, provided such shares of common stock are listed on the New York Stock Exchange or another nationally recognized stock exchange and (d) in addition to the transfers permitted by clause (b), any other transaction involving the direct and/or indirect equity interests in a Restricted Party (other than a pledge) that would otherwise fit within the definition of Prohibited Transfer (including, without limitation, a transaction of the type described in clauses (iii), (v), (vi) or (vii) of Section 8.2(b) hereof) constituting a transfer of less than 10% of the direct and/or indirect equity ownership of any Borrower, Guarantor, Sponsor any SPE Component Entity and/or Affiliated Manager; provided, however, with respect to the transfers listed in clauses (a), (b) or (d) above, (A) Lender shall receive not less than five (5) days prior written notice thereof, (B) no such transfers shall result in a change in Control of Sponsor or Affiliated Manager (provided, however, a "change in Control" of Sponsor or Affiliated Manager shall not be deemed to have occurred for the purposes of this subsection (B) if any one of the persons or entities comprising the definition of "Sponsor" contained herein succeeds to the interest of the then current Sponsor and such successor Sponsor Controls the Affiliated Manager), (C) after giving effect to such transfers, any one of the entities comprising the defined term "Sponsor" shall (I) own at least a 51% direct or indirect equity interest in each Borrower and any SPE Component Entity of any Borrower, (II) Control each Borrower and any SPE Component Entity of any Borrower and (III) control the day-to-day operation of the Property, (D) the Property shall continue to be managed by Affiliated Manager or a Qualified Manager, (E) in the case of the transfer of any direct or indirect equity ownership interests in any Borrower or in any SPE Component Entity of any Borrower, such transfers shall be conditioned upon continued compliance with the relevant provisions of Sections 4.2 and 4.3 hereof and (F) in the case of (1) the transfer of the management of the Property to a new Affiliated Manager in accordance with the applicable terms and conditions hereof, or (2) the transfer (in one or in a series of transactions) in excess of 49% (in the aggregate) of any equity ownership interests (I) directly in any Borrower or in any SPE Component Entity of any Borrower, or (II) in any Restricted Party whose sole asset is a direct or indirect equity ownership interest in Borrower or in any SPE Component Entity, such transfers shall be conditioned upon delivery to Lender of a substantive non-consolidation

opinion, which such opinion shall be provided by outside counsel acceptable to Lender and the Rating Agencies and shall otherwise be in form, scope and substance reasonably acceptable to Lender and acceptable to the Rating Agencies (such opinion, the **"New Non-Consolidation Opinion"**).

Section 8.4. PERMITTED PROPERTY TRANSFERS (ASSUMPTION). Notwithstanding anything to the contrary contained in this Article 8 and in addition to the transfers permitted under Section 8.3, the following transfers shall not be Prohibited Transfers and Lender's consent to any TIC Assumption (defined below) shall not be required and Lender's consent to the first four (4) other transfers of the Property (at any time after the first (1st) anniversary of the closing of the Loan or at any time prior to such date if Lender determines that such assignment or transfer will not hinder, delay or prevent Lender from completing a Secondary Market Transaction (as defined in Section 19.3)) shall not be withheld; provided, that, in each case, Lender receives (I) sixty (60) days prior written notice (in the case of any transfer other than a TIC Assumption) or (II) thirty (30) days prior written notice (in the case of a TIC Assumption) of each such transfer hereunder and no Event of Default has occurred and is continuing, and further provided that, the following additional requirements are satisfied:

(a) With respect to (i) any TIC Assumption, no transfer fee shall be due, and (ii) other than in connection with a TIC Assumption, with respect to the (I) first such transfer, Borrower shall not be required to pay Lender a transfer fee, (II) second such transfer, Borrower shall pay Lender a transfer fee equal to 0.5% of the outstanding principal balance of the Loan at the time of such transfer, (III) third such transfer, Borrower shall pay Lender a transfer fee equal to 1.0% of the outstanding principal balance of the Loan at the time of such transfer and (IV) fourth such transfer, Borrower shall pay Lender a transfer fee equal to 1.0% of the outstanding principal balance of the Loan at the time of such transfer (other than such assumption fees and the costs referenced in Section 8.4(b) below, Lender will not charge Borrower any additional fees or impose any additional conditions (other than as provided for in this Section 8.4) upon Borrower or the Transferee or Assuming Borrower (defined below) in connection with such transfer or TIC Assumption (as applicable));

(b) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with, as applicable, each TIC Assumption and the transfer of the Property (including, without limitation, Lender's reasonable counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and, other than with respect to any TIC Assumption, the fees and expenses of the Rating Agencies pursuant to clause (j) below);

(c) Other than in connection with a TIC Assumption, the proposed transferee (the "**Transferee**") or Transferee's Principals (hereinafter defined) must have demonstrated expertise in owning and operating properties similar in location, size and operation to the Property, which expertise shall be reasonably determined by Lender. The term "**Transferee's Principals**" shall include Transferee's (A) managing members, general partners or Controlling shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a 15% or greater interest in Transferee;

(d) Other than in connection with a TIC Assumption, Transferee's Principals shall, as of the date of such transfer, have an aggregate net worth and liquidity reasonably acceptable to Lender;

(e) Other than in connection with a TIC Assumption, Transferee, Transferee's Principals and all other entities which may be owned or controlled directly or indirectly by Transferee's Principals ("**Related Entities**") must not have been a party to any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed transfer of the Property;

(f) Transferee or Assuming Borrower (defined below) under a TIC Assumption, as applicable, shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance reasonably satisfactory to Lender;

(g) There shall be no material litigation or regulatory action pending or threatened against, as applicable, Transferee, Transferee's Principals or Related Entities or Assuming Borrower or Sponsor which is not reasonably acceptable to Lender;

(h) Other than in connection with a TIC Assumption, Transferee's Principals and Related Entities shall not have defaulted (beyond applicable notice and cure periods) under its or their obligations with respect to any other indebtedness in a manner which is not reasonably acceptable to Lender;

(i) Transferee or Assuming Borrower, as applicable, must be able to satisfy all the covenants set forth in Sections 4.3, and both Transferee and Transferee's Principals or both Assuming Borrower and Sponsor (as applicable) must be able to satisfy all the covenants set forth in Sections 4.3 and 5.9 hereof, no Event of Default or event which, with the giving of notice, passage of time or both, shall constitute an Event of Default, shall otherwise occur as a result of such transfer, and Transferee and Transferee's Principals or Assuming Borrower and Sponsor (as applicable) shall deliver (A) all organization documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender, and (B) all certificates, agreements and covenants reasonably required by Lender (including, without limitation, hazard insurance endorsements or certificates or other similar evidence that the Policies required hereunder have been obtained or maintained, as applicable);

(j) Other than in connection with a TIC Assumption, Transferee shall be approved by the Rating Agencies selected by Lender;

(k) Transferee or Assuming Borrower, as applicable, shall furnish (I) a New Non-Consolidation Opinion, and (II) an opinion of counsel reasonably satisfactory to Lender and its counsel (A) that the assumption of the Debt has been duly authorized, executed and delivered, and that the Note, this Security Instrument, the assumption agreement and the other Loan Documents are valid, binding and enforceable against

Transferee or Assuming Borrower, as applicable, in accordance with their terms, and (B) that Transferee or Assuming Borrower, as applicable, and any entity which is a controlling stockholder, member or general partner of Transferee or Assuming Borrower, as applicable, have been duly organized, and are in existence and good standing;

(l) Borrower shall deliver, at its sole costs and expense, an endorsement to the existing title policy insuring the Security Instrument, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee or Assuming Borrower, as applicable, as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the title policy issued on the date hereof. Immediately upon a transfer of the Property to such Transferee or Assuming Borrower, as applicable, and the satisfaction of all of the above requirements, the named Borrower herein or, in the case of a TIC Assumption, any entity constituting the defined term "Borrower" hereunder other than the Assuming Borrower or any other Borrower that is not transferring its interest in the Property to the Assuming Borrower shall be released from all liability under this Security Instrument, the Note and the Other Security Documents accruing after such transfer, and, in the case of a transfer hereunder other than a TIC Assumption, the Indemnitor under that certain Indemnity Agreement in favor of Lender relating hereto (the "**Indemnity Agreement**"), dated of even date herewith, shall be released from its obligations and liabilities thereunder accruing after such transfer provided that a new indemnitor approved by Lender, which approval shall be granted or withheld pursuant to Lender's customary underwriting procedures, enters into and delivers to Lender a new indemnity agreement in the form and content of the Indemnity Agreement. The foregoing release shall be effective upon the date of such transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower; and

(m) Other than in connection with a TIC Assumption, Borrower's obligations under the contract of sale pursuant to which the transfer is proposed to occur shall expressly be subject to the satisfaction of the terms and conditions of this Section.

Any transfer made pursuant to and in accordance with the terms and provisions of this Section 8.4 shall not be deemed to be a Prohibited Transfer. A consent by Lender with respect to a transfer of the Property in its entirety to, and the related assumption of the Loan by, a Transferee pursuant to this Section shall not be construed to be a waiver of the right of Lender to consent to any subsequent transfer of the Property.

Section 8.5. LENDER'S RIGHTS. Lender reserves the right to condition the consent to a Prohibited Transfer requested hereunder upon (a) a modification of the terms hereof and an assumption of the Note and the other Loan Documents as so modified by the proposed Prohibited Transfer, (b) receipt of payment of a transfer fee equal to one percent (1%) of the outstanding principal balance of the Loan and all of Lender's expenses incurred in connection with such Prohibited Transfer, (c) receipt of written confirmation from the Rating Agencies (a **"Rating Agency Confirmation"**) that the Prohibited Transfer will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection

with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization, (d) the proposed transferee's continued compliance with the covenants set forth in this Security Instrument (including, without limitation, the covenants in Sections 4.2 and 4.3) and the other Loan Documents, (e) a new manager for the Property and a new management agreement satisfactory to Lender, and (f) the satisfaction of such other conditions and/or legal opinions as Lender shall determine in its sole discretion to be in the interest of Lender. All expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Prohibited Transfer made without Lender's consent. This provision shall apply to each and every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer.

Section 8.6. DEFINITIONS. As used in this Article 8 (and elsewhere in this Security Instrument), the following terms shall have the following meanings:

(a) **"Affiliated Manager"** shall mean any managing agent of the Property in which Borrower, Guarantor, Sponsor, any SPE Component Entity or any affiliate of such entities has, directly or indirectly, any legal, beneficial or economic interest.

(b) **"Control"** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of an entity, whether through ownership of voting securities, by contract or otherwise.

(c) **"Restricted Party"** shall mean Borrower, Guarantor, Sponsor, any SPE Component Entity, any Affiliated Manager, or any shareholder, partner, member, non-member manager or any direct or indirect legal or beneficial owner of any of the foregoing.

(d) **"Sale or Pledge"** shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

(e) **"Sponsor"** shall mean (i) Guarantor, (ii) a Rady Family Entity or (iii) a Qualified Equityholder; provided, that, as conditions precedent to any transfer of Guarantor's or the Rady Family Entity's interest as "Sponsor" to a Qualified Equityholder, Lender shall have received a Rating Agency Confirmation in connection therewith and with respect to the (I) first such transfer, Borrower shall not be required to pay Lender a transfer fee, (II) second such transfer, Borrower shall pay Lender a transfer fee equal to 0.5% of the outstanding principal balance of the Loan at the time of such transfer, (III) third such transfer, Borrower shall pay Lender a transfer fee equal to 1.0 % of the outstanding principal balance of the Loan at the time of such transfer and (IV) fourth such transfer and each subsequent transfer thereafter, Borrower shall pay Lender a transfer fee equal to 1.0% of the outstanding principal balance of the Loan at the time of such transfer.

(f) **"Qualified Equityholder"** shall mean

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

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

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

(D) any entity (1) Controlled by any of the entities described in clauses (A), (B) or (C) above and (2) in which any of the entities described in clauses (A), (B) or (C) above own a 51% direct or indirect equity ownership interest;

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

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

Notwithstanding the foregoing, no person or entity shall be deemed to be a Qualified Equityholder if (y) such person or entity (or any other person or entity owned or Controlled by such person or entity or affiliated with such person or entity) has been,

within the last ten (10) years, (I) subject to any material, uncured event of default in connection with a loan financing which resulted in litigation or an acceleration of an indebtedness held by Lender or any other secondary market or institutional lender or (II) the subject of any action or proceeding under applicable Insolvency Laws; or (z) any of the principals or entities which Control such person or entity or own a material direct or indirect equity interest in such person or entity have ever been convicted of a felony.

As used in the above definition of "Qualified Equityholder", the following terms shall have the following meanings:

(i) **"Eligibility Requirements"** shall mean, with respect to any person or entity, that such person or entity (A) has total assets (in name or under management) in excess of $750,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's equity of $500,000,000 and (B) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties.

(ii) **"Permitted Fund Manager"** shall mean any Person or entity that on the date of determination is (A) a nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (B) investing through a fund with committed capital of at least $500,000,000 and (C) not subject to any action or proceeding under any bankruptcy, insolvency, rehabilitation or other similar proceeding.

(iii) **"Qualified Trustee"** shall mean (A) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least $300,000,000 and subject to supervision or examination by federal or state authority, (B) an institution insured by the Federal Deposit Insurance Corporation or (C) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

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

(g) **"Rady Family Entity"** shall mean an entity (i) in which Ernest S. Rady or a spouse, siblings, children or grandchildren, nieces, nephews or cousins of Ernest S. Rady or trusts for the benefit of any such persons or any combination of such individuals and/or trusts (collectively, the **"Rady Family Group"**) own at least a 51% direct or indirect equity interest, and (ii) which is Controlled by one or more members of the Rady Family Group having commercial real estate experience at least comparable to that of the current management of Guarantor.

(h) **"Rady SPE"** shall mean entity (i) which is a single purpose, bankruptcy remote entity meeting the requirements of Sections 4.3 and 5.9 hereof, (ii) which is Controlled by a Rady Family Entity and/or a member (or members) of the Rady Family Group and (iii) in which a Rady Family Entity and/or or a member (or members) of the Rady Family Group owns at least a 51% direct or indirect equity ownership interest.

(i) **"TIC Assumption"** shall mean the transfer of the ownership interest in the Property currently held by one (or, in the case of a transfer to a Rady SPE, all) of the entities comprising the defined term "Borrower" hereunder to (i) any one of the other parties comprising the defined term "Borrower" hereunder or (ii) a Rady SPE (each of the foregoing, an **"Assuming Borrower"**) and such Assuming Borrower's assumption of the Debt and the other obligations of the transferring Borrower hereunder and under the other Loan Documents in accordance with the terms and conditions set forth in Section 8.4 above; provided, that, no such TIC Assumption shall be permitted hereunder (A) if the same would result in (1) more than four (4) tenants-in-common owning the Property or (2) each such tenant-in-common Borrower not being 51% owned (directly or indirectly) and Controlled by one or more Rady Family Entities and/or Guarantor and (B) more frequently than once in any calendar year (unless otherwise consented to in writing by Lender); provided, that, Borrower shall have the one time right to have a TIC Assumption occur twice in the same calendar year.

Section 8.7 EASEMENT AGREEMENTS. By acceptance hereof, Lender agrees that it shall execute and subordinate this Security Instrument and the other Loan Documents to (and Borrower shall be permitted to enter into without Lender's consent) reasonable easements, restrictions, covenants, reservations and rights of way in the ordinary course of Borrower's business for traffic circulation, ingress, egress, parking, access, utilities lines or for other similar purposes; provided, that, in each case or taken as a whole, the same do not have a Material Adverse Effect.

Article 9. PREPAYMENT

Section 9.1. PREPAYMENT. The Debt may be prepaid only in strict accordance with the express terms and conditions of the Note and this Security Instrument including the payment (if applicable) of any prepayment consideration or premium due under the Note (whether due prior to or after the occurrence of an Event of Default).

Article 10. DEFAULT

Section 10.1. EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "**Event of Default**":

(a) if any portion of the Debt is not paid on the date the same is due or if the entire Debt is not paid on or before the Maturity Date; provided, however, Borrower shall not be in default so long as there is sufficient money in the Cash Management Account for payment of all amounts then due and payable (including any deposits into

Reserve Accounts (as such term is defined in that certain Reserve Agreement by and among Borrower and Lender executed in connection with the Loan (the **"Reserve Agreement"**)) and Lender's access to such money has not been constrained or constricted in any manner;

(b) if any of the Taxes or Other Charges are not paid within ten (10) days following the date the same is due and payable except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument;

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender within ten (10) days of Lender's request;

(d) if the Property is subject to actual waste;

(e) if Borrower violates or does not comply with any of the provisions of Sections 3.7 (and does not cure such failure within ten days of written notice) or 4.3 or Articles 8, 12 or 13;

(f) if any representation or warranty of Borrower or any person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument (including, without limitation, Guarantor) or any general partner, managing member, principal or beneficial owner of any of the foregoing, made herein or any guaranty or indemnity, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;

(g) if (i) Borrower or any general partner or managing member of Borrower or any SPE Component Entity shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower or any general partner or managing member of Borrower or any SPE Component Entity shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or any general partner or managing member of Borrower or any SPE Component Entity any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of ninety (90) days; or (iii) there shall be commenced against Borrower or any general partner or managing member of Borrower or any SPE Component Entity any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged,

or stayed or bonded pending appeal within ninety (90) days from the entry thereof; or (iv) Borrower or any general partner or managing member of Borrower or any SPE Component Entity shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower or any general partner of Borrower or any SPE Component Entity shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

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

(i) subject to Borrower's contest rights contained in Section 3.12 hereof, if the Property becomes subject to any mechanic's, materialman's or other lien (other than a lien for local real estate taxes and assessments not then due and payable) and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of ninety (90) days;

(j) subject to Borrower's contest rights contained in Section 3.12 hereof, if any federal tax lien is filed against Borrower, any general partner or managing member of Borrower, or the Property and same is not discharged of record (by payment, bonding or otherwise) within ninety (90) days after same is filed;

(k) if Borrower fails to cure any violations of Applicable Laws within ninety (90) days of first having received notice thereof;

(l) if (i) Borrower fails to timely provide Lender with the written certification and evidence referred to in Section 4.2 hereof, or (ii) Borrower consummates a transaction which would cause the Security Instrument or Lender's exercise of its rights under this Security Instrument, the Note or the Other Security Documents to constitute a nonexempt prohibited transaction under ERISA or result in a violation of a state statute regulating governmental plans, subjecting Lender to liability for a violation of ERISA or a state statute;

(m) if Borrower shall fail to reimburse Lender on demand, with interest calculated at the Default Rate (defined below), for all Insurance Premiums or Taxes, together with interest and penalties imposed thereon, paid by Lender pursuant to this Security Instrument (other than amounts paid by Lender from the Escrow Fund prior to the occurrence and continuance of an Event of Default);

(n) if Borrower shall fail to timely deliver to Lender an estoppel certificate pursuant to the terms of Subsection 7.4(a);

(o) if Borrower shall fail to timely deliver to Lender, after request by Lender, the statements referred to in Section 3.11 in accordance with the terms thereof;

(p) if any default occurs in the performance of any guarantor's or indemnitor's (including, without limitation, Guarantor's) obligations under any guaranty

or indemnity executed in connection herewith (including, without limitation, the Indemnity Agreement) and such default continues after the expiration of applicable grace periods set forth in such guaranty or indemnity, or if any representation or warranty of any guarantor or indemnitor thereunder shall be false or misleading in any material respect when made;

(q) Intentionally Omitted;

(r) Intentionally Omitted;

(s) Intentionally Omitted;

(t) if for more than thirty (30) days after notice from Lender, Borrower shall continue to be in default under any other term, covenant or condition of the Note, this Security Instrument or the Other Security Documents in the case of any default which can be cured by the payment of a sum of money or for sixty (60) days after notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such sixty (60) day period and Borrower shall have commenced to cure such default within such sixty (60) day period and thereafter diligently and expeditiously proceeds to cure the same, such sixty (60) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days; or

(u) a default beyond applicable notice or cure periods (if any) shall occur under any Other Security Documents.

Section 10.2. LATE PAYMENT CHARGE. If any monthly installment of principal and interest is not paid on the date on which it was due, Borrower shall pay to Lender upon demand an amount equal to the lesser of two and one half percent (2.5%) of such unpaid portion of the outstanding monthly installment of principal and interest then due or the maximum amount permitted by Applicable Law, to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment, and such amount shall be secured by this Security Instrument and the Other Security Documents.

Section 10.3. DEFAULT INTEREST. Borrower will pay, from the date of an Event of Default through the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal balance of the Note at a per annum rate equal to the lesser of (a) four percent (4%) plus the Applicable Interest Rate (as defined in the Note), and (b) the maximum interest rate which Borrower may by law pay or Lender may charge and collect (the "**Default Rate**"). Notwithstanding the foregoing, in the event Borrower becomes liable for interest at the Default Rate under this Section 10.3 due to the occurrence of an Event of Default which cannot reasonably be cured by Borrower, and which, in Lender's good faith, reasonable determination, (i) was not committed intentionally and knowingly by Borrower to circumvent the requirements of the Note, this Security Instrument, and/or the other Loan Documents, and (ii) does not have a Material Adverse Effect, Borrower shall only be liable for

interest at such Default Rate for a period not to exceed six (6) months unless Lender is in the process of actively pursuing a foreclosure action (or non-judicial foreclosure) as a result of such Event of Default.

Article 11. RIGHTS AND REMEDIES

Section 11.1. REMEDIES. Except as expressly and specifically limited hereby or by the Other Security Documents, upon the occurrence of any Event of Default, Borrower agrees that Trustee or Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Trustee or Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Trustee or Lender: (a) declare the entire unpaid Debt to be immediately due and payable; (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner; (c) with or without entry, to the extent permitted and pursuant to the procedures provided by Applicable Law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority; (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law; (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the Other Security Documents; (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents; (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower or of any person, firm or other entity liable for the payment of the Debt; (h) subject to Applicable Law, and following notice to Borrower (which may only be delivered during the existence of an Acceleration Default), the license granted to Borrower under Section 1.2 shall be revoked (subject to reinstatement as provided herein) and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and, subject to the Cash Management Agreement,

receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; (i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower; (j) apply any sums then deposited in the Escrow Fund and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any Other Security Document to the payment of the following items in any order in its discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) any other items or expenses for which such escrow was established; or (iv) during the continuance of an Acceleration Default, (A) interest on the unpaid principal balance of the Note, (B) the unpaid principal balance of the Note; or (C) all other sums payable pursuant to the Note, this Security Instrument and the Other Security Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument; (k) during the existence of an Acceleration Default, surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney in fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums; (l) pursue such other remedies as Lender may have under Applicable Law; (m) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or (n) under the power of sale hereby granted, Lender shall have the discretionary right to cause some or all of the Property, including any Personal Property, to be sold or otherwise disposed of in any combination and in any manner permitted by Applicable Law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. In the event of a sale, by foreclosure, power of sale, or otherwise, Lender may bid for and acquire the Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder and any other sums which Lender is

authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid. Notwithstanding the provisions of this Section 11.1 to the contrary, if any Event of Default as Subsection 10.1(g) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 11.2. APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender after the occurrence of an Event of Default pursuant to the Note, this Security Instrument or the Other Security Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Upon any foreclosure sale or sales of all or any portion of the Property under the power of sale herein granted, Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

Section 11.3. RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 11.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 11.4. ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 11.5. RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 11.6. EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower and each other "Indemnitor" under the Indemnity Agreement delivered in connection herewith which reflect upon their financial condition, at the Property or at any

office regularly maintained by Borrower or such other Indemnitor or where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower and such other Indemnitor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower and such other Indemnitor where the books and records are located.

Section 11.7. OTHER RIGHTS, ETC. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the Other Security Documents.

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

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

Section 11.8. RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 11.9. VIOLATION OF LAWS. If the Property is not in compliance with Applicable Laws, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 11.10. RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 11.11. EXCULPATION. All rights and remedies of Lender under this Security Instrument and the Other Security Documents are expressly made subject to the limitations and exculpations set forth in Article 15, below.

Article 12. ENVIRONMENTAL HAZARDS

Section 12.1. ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES. (I) Borrower represents and warrants, based upon an environmental assessment of the Property and information that Borrower knows (which for purposes hereof will mean the actual knowledge of John Chamberlain and Patrick Kinney) that: (a) there are no Hazardous Substances (defined below) or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with, if required, Environmental Laws (defined below) and with permits issued pursuant thereto or (ii) fully disclosed to Lender by Borrower in writing or pursuant to the written reports resulting from the environmental assessments of the Property delivered to Lender (the "**Environmental Report**"); (b) there are no past, present or threatened Releases (defined below) of Hazardous Substances in, on, under or from the Property except as described in the Environmental Report; (c) there is no likely threat of any Release of Hazardous Substances migrating to the Property except as described in the Environmental Report; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Report; (e) Borrower has not received, any written or oral notice from any person or entity (including but not limited to a governmental entity) relating to any unlawful accumulations of Hazardous Substances or Remediation (defined below) thereof on the Property, or of possible liability of any person or entity pursuant to violation of any Environmental Law in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to conditions in, on, under or from the Property that is known to Borrower (which for purposes hereof will mean the actual knowledge of John Chamberlain and Patrick Kinney) and that is contained in Borrower's files and records, including but not limited to any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property; and

(II) With respect to the Environmental Agreement and the RAP (defined below), Borrower hereby represents and warrants as follows: (a) neither Borrower nor any other party is currently in default (nor has any notice been given or received by Borrower with respect to an alleged or current default) under any of the terms and conditions of the Environmental Agreement; (b) each of the Environmental Agreement and the RAP represent the entire understanding of the parties thereto with respect to the subject matter set forth therein; (c) each of the Environmental Agreement and the RAP remains unmodified and in full force and effect; (d) the current balance of the Remediation Account is $1,189,438; (e) each of Borrower,

ARCADIS and the Property are currently in compliance with the RAP; (f) the RAP does not impose any restrictions (i) on mortgaging or otherwise collateralizing the Property, (ii) on transferring the Property (including, without limitation, in connection with any transfer of the Property subsequent to Lender's exercise of its rights and/or remedies hereunder) or (iii) any other restrictions which would have a Material Adverse Effect; and (g) to Borrowers' knowledge (which, for purposes hereof, will mean the best knowledge of John Chamberlain and Patrick Kinney) the estimated costs required to be borne by Borrower in order to complete the remediation required under the RAP will not exceed the sum of (y) the costs borne by ARCADIS under the Environmental Agreement and (z) the costs covered by the Environmental Insurance).

"**Environmental Law**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right to Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. "Environmental Law" also includes, but is not limited to, the requirements promulgated under that certain Remedial Action Plan described on Schedule 2 hereof (together with any amendments, restatements, replacements or other modifications thereof, the **"RAP"**), any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law; conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property. "**Hazardous Substances**" include but are not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives provided, however, that "Hazardous Substances" shall not include cleaning materials, office supplies, cleaning supplies and other substances commonly used or sold by establishments similar to those leasing space at the Property in the ordinary course of their business and customarily used at properties similar to the Property, to the extent such materials are used, stored and disposed of in accordance with Environmental Laws.

"**Release**" of any Hazardous Substance means any unlawful release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

"**Remediation**" means any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in Article 12.

Section 12.2. ENVIRONMENTAL COVENANTS. (I) Borrower covenants and agrees that so long as Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property: (a) all uses and operations on or of the Property shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances by Borrower, its agents or employees in, on, under or from the Property; (c) Borrower shall not knowingly permit any Hazardous Substances in, on, or under the Property, except those that are in compliance with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required; (d) the Property shall be kept free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other person or entity (the "**Environmental Liens**"); (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 12.3 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any written request of Lender (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties (as defined herein) shall be entitled to rely on such reports and other results thereof provided, however, that no such request shall be made by Lender unless Lender has reasonable grounds to believe that a Release of Hazardous Substances or a violation of Environmental Law has occurred (provided, that, the foregoing provisions of this subsection (f) shall not be deemed to apply to the environmental conditions which are the subject of the RAP unless Lender has reasonable grounds to believe that (I) there has been a material adverse change in such environmental conditions from the manner in which the same exist as of the date hereof or (II) the same are not being remediated in accordance with the terms hereof); (g) Borrower shall, at its sole cost and expense, comply with (x) any requirements of the RAP and (y) all reasonable written requests of Lender to (i) reasonably effectuate Remediation of any condition (including but not limited to a Release of a Hazardous Substance) in, on, under or from the Property (provided, that, the foregoing provisions of this subsection (g)(y)(i) shall not be deemed to apply to the environmental conditions which are the subject of the RAP unless Lender has reasonable grounds to believe that (I) there has been a material adverse change in such environmental conditions from the manner

in which the same exist as of the date hereof or (II) the same are not being remediated in accordance with the terms hereof); (ii) comply with any Environmental Law; (iii) comply with any directive from any governmental authority; and (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment; (h) Borrower shall not do or knowingly allow any tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; and (i) Borrower shall immediately notify Lender in writing of (A)(I) other than with respect to the environmental conditions which are the subject of the RAP, any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property and (II) with respect to the environmental conditions which are the subject of the RAP, any material adverse change in said conditions; (B) any non compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D)(I) other than with respect to the environmental conditions which are the subject of the RAP, any required or proposed Remediation of environmental conditions relating to the Property and (II) with respect to the environmental conditions which are the subject of the RAP, any material increase or other material change in the scope of the Remediation of the same from that which existed as of the date hereof; and (E) any written or oral notice or other communication which Borrower becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Substances or Remediation thereof affecting the Property, possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Article 12. Any failure of Borrower to perform its obligations pursuant to this Section 12.2 shall constitute bad faith waste with respect to the Property.

(II) With respect to the Environmental Agreement and the RAP (defined below), Borrower hereby covenants as follows: (a) Borrower shall not, without the prior consent of Lender (which such consent shall not be unreasonably withheld, conditioned or delayed), execute any amendments or modifications to the Environmental Agreement and/or the RAP if the same would have a Material Adverse Effect; (b) Borrower shall enforce, shall comply with, and shall use commercially reasonable efforts to cause each of the parties to the Environmental Agreement and the RAP to comply with all of the terms and conditions contained therein (including, without limitation, to continue to cause ARCADIS to (I) maintain the insurance coverages required under the Environmental Agreement for the term of the Environmental Agreement and (II) continue to include Lender as an additional insured on the Contractor's Pollution Liability insurance policy required to be maintained by ARCADIS pursuant to the Environmental Agreement); (c) Borrower shall deliver to Lender copies of all material notices sent by or delivered to Borrower pursuant to or otherwise in connection with the Environmental Agreement and/or the RAP; (d) Borrower shall not, without Lender's prior written consent (which such consent shall not be unreasonably withheld, conditioned or delayed), consent to or initiate any action under the RAP and/or the Environmental Agreement if the same would have a Material Adverse Effect and/or violate the terms of or otherwise impair the coverage provided by the Environmental Insurance; (e) Borrower shall, in good faith and in a timely manner, cause the remediation required under the RAP to be completed and paid for in full and a "No Further Action" letter or similar

confirmation of such completion issued by the applicable governmental authority; and (f) Borrower shall cause funds on deposit in the Remediation Account to be invested solely in Permitted Investments (as defined in the Cash Management Agreement). Lender's receipt of evidence reasonably satisfactory to Lender of Borrower satisfaction of the covenant contained in subsection (e) shall be referred to herein and in the other Loan Documents as the **"Remediation Completion"**.

Section 12.3. LENDER'S RIGHTS. Subject to the rights of quiet enjoyment of tenants under existing Leases, Lender and any other person or entity designated by Lender, including but not limited to any receiver, any representative of a governmental entity, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender. The costs and expenses of such assessments shall be borne by Lender except in instances where such report or assessment is performed due to Borrower's failure to comply with its obligations under Section 12.2(f), in which cases the costs and expenses of such assessments shall be paid for by Borrower.

Article 13. INDEMNIFICATION

Section 13.1. GENERAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to attorneys' fees and other costs of defense) (the "**Losses**") imposed upon or incurred by or asserted against any Indemnified Parties (defined below) and directly or indirectly arising out of or in any way relating to any one or more of the following which shall have occurred prior to the foreclosure of this Security Instrument (or delivery and acceptance of a deed in lieu of such foreclosure), except to the extent any of the following are attributable to the gross negligence or willful misconduct of an Indemnified Party: (a) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Note or any of the Other Security Documents, whether or not suit is filed in connection with same, or in connection with Borrower and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (e) the failure of any person other than an Indemnified Party to file timely with the Internal Revenue Service an accurate Form 1099 B, Statement for Recipients of

Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (f) any failure of the Property to be in compliance with any Applicable Laws; (g) the enforcement by any Indemnified Party of the provisions of this Article 13; (h) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (i) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the loan evidenced by the Note and secured by this Security Instrument; or (j) any misrepresentation made by Borrower in this Security Instrument or any Other Security Document. Any amounts payable to Lender by reason of the application of this Section 13.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. As used herein, the term "Indemnified Parties" means Lender and any person or entity who is or will have been involved in the origination of the loan evidenced by the Note, any person or entity who is or will have been involved in the servicing of the loan evidenced by the Note, any person or entity in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the loan evidenced by the Note (including, but not limited to, Investors (as defined herein) or prospective Investors in the Securities (as defined herein), as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the loan evidenced by the Note as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the loan evidenced by the Note or the Property, whether during the term of the loan evidenced by the Note or as a part of or following a foreclosure of the loan evidenced by the Note and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business).

Section 13.2. MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the Other Security Document, except for income taxes and franchise taxes (imposed in lieu of income taxes) imposed on an Indemnified Party as a result of a present or former connection between the jurisdiction of the government or taxing authority imposing such tax and the Indemnified Party (excluding a connection arising solely from the Indemnified Party having executed, delivered, or performed its obligations or received a payment under, or enforced, this Security Instrument, the Note and the Other Security Documents) or any political subdivision or taxing authority thereof or therein.

Section 13.3. ERISA INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction

or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Sections 4.2 or 5.9.

Section 13.4. ENVIRONMENTAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses and costs of Remediation (whether or not performed voluntarily), engineers' fees, environmental consultants' fees, and costs of investigation (including but not limited to sampling, testing, and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas) imposed upon or incurred by or asserted against any Indemnified Parties, and directly or indirectly arising out of or in any way relating to any one or more of the following (except to the extent that (i) any such claims, losses or costs arise from the gross negligence or willful misconduct of any Indemnified Parties or (ii) the same relate solely to Hazardous Substances first introduced to the Property by anyone other than Borrower, its agents or employees following the foreclosure of this Security Instrument (or the delivery and acceptance of a deed in lieu of such foreclosure) and the obtaining by the purchaser at such foreclosure sale or grantee under such deed of possession of the Property): (a) any presence of any Hazardous Substances in, on, above, or under the Property (including, without limitation, those which are the subject of the RAP); (b) any past, present or threatened Release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property in connection with the RAP or any other actual or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (e) any past, present or threatened non compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including but not limited to any failure by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property to comply with any order of any governmental authority in connection with any Environmental Laws; (f) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in Article 12 and this Section 13.4; (h) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including but not limited to costs to investigate and assess such injury, destruction or loss; (i) any acts of Borrower or other users of the Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Substances owned or possessed by such Borrower or other users, at any facility or incineration vessel owned or operated by another person or entity and containing such or similar Hazardous Materials; (j) any acts of Borrower or other users of the Property, in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites selected by Borrower or such other users, from which there is a Release, or a threatened

Release of any Hazardous Substance which causes the incurrence of costs for Remediation; (k) any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property, and arising out of a Release of any Hazardous Substance on, under or about the Property; and (l) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to Article 12.

Section 13.5. DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, if they reasonably believe that their interests are not properly being represented by the counsel selected by Borrower, engage their own attorneys and other professionals to defend them. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Article 14. WAIVERS

Section 14.1. WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any of the Other Security Documents, or the Obligations. The foregoing shall not be deemed a waiver of Borrower's right to assert in a separate proceeding any claim against Lender which otherwise would constitute a defense, setoff, counterclaim or crossclaim of any nature arising from and after the date hereof.

Section 14.2. MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Applicable Law.

Section 14.3. WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Trustee or Lender except with respect to matters for which this Security Instrument, the Note, or the Other Security Documents specifically and expressly provides for the giving of notice by Trustee or Lender to Borrower and except with respect to matters for which Trustee or Lender is required by Applicable Law to give notice, and Borrower hereby expressly waives the right to receive any notice from Trustee or Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Trustee or Lender to Borrower or as required by law.

Section 14.4. DETERMINATIONS BY LENDER. Except as otherwise specifically set forth in the Note, this Security Instrument, or the Other Security Documents, wherever pursuant to this Security Instrument (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be in the reasonable determination of Lender applied in good faith. All approvals of or waivers by Lender in respect of any of the terms, conditions or requirements of this Security Instrument must be in writing. No waiver with respect to any condition, breach or other matter shall extend to or be taken in any manner whatsoever to affect any other condition, breach or matter or affect Lender's rights resulting therefrom.

Section 14.5. SURVIVAL. The indemnifications made pursuant to Sections 13.3 and 13.4 and the representations and warranties, covenants, and other obligations arising under Article 12, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Note or any of the Other Security Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Note or the Other Security Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto. Notwithstanding the foregoing, upon a transfer of Borrower's fee interest in the Property permitted pursuant to Article 8 hereof, the transferring Borrower shall be released from any liability thereafter accruing under any such indemnification provision (other than as to matters which have already occurred).

Section 14.6. WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Article 15. EXCULPATION

Section 15.1. EXCULPATION. All rights and remedies of Lender under this Security Instrument and the Other Security Documents are expressly made subject to the limitations and exculpations set forth in Article 14 of the Note, the provisions of which are incorporated herein by this reference.

Article 16. NOTICES

Section 16.1. NOTICES. (a) All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (l) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower: Del Monte - POH, LLC
Del Monte - DMSJH, LLC
Del Monte - KMBC, LLC
Del Monte - DMCH, LLC
11455 El Camino Real, Suite 200
San Diego, California 92130
Attention: John W. Chamberlain and Robert Barton
Facsimile No.: (619) 350-2620

If to Lender: Column Financial, Inc.
One Madison Avenue
New York, New York 10019
Legal and Compliance Department
Attention: Casey McCutcheon

If to Trustee: First American Title Insurance Company
411 Ivy Street, San Diego, California 92101
Attention: Skip Santy - Senior National Underwriter
Facsimile No.: (619) 231-4629

or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Security Instrument, "**Business Day**" shall mean any day other than Saturday, Sunday or any other day on which banks are authorized or required to close in New York, New York.

Article 17. SERVICE OF PROCESS

Section 17.1. CONSENT TO SERVICE. (a) Borrower will maintain a place of business or an agent for service of process in San Diego County, California and give prompt notice to Lender of the address of such place of business and of the name and address of any new agent appointed by it, as appropriate. Borrower further agrees that the failure of its agent for service of process to give it notice of any service of process will not impair or affect the validity of such

service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of Borrower available to be served, and if it at that time has no place of business in San Diego County, California, then Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to the first paragraph hereof.

Section 17.2. Borrower initially and irrevocably designates John W. Chamberlain with offices on the date hereof at 11455 El Camino Real, Suite 200, San Diego, California 92130, to receive for and on behalf of Borrower service of process with respect to this Security Instrument.

Article 18. APPLICABLE LAW

Section 18.1. CHOICE OF LAW. THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF CALIFORNIA AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AND APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

Section 18.2. USURY LAWS. This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by Applicable Law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

Section 18.3. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

Article 19. SECONDARY MARKET

Section 19.1. TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Note, this Security Instrument and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage passthrough certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "**Securities**"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such Securities or any Rating Agency rating such Securities (collectively, the "**Investor**") and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt, Sponsor, Indemnitor and to Borrower, and the Property, whether furnished by Borrower, or otherwise, as Lender determines necessary or desirable. Borrower agrees to reasonably cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Security Instrument, including, without limitation, the delivery of an estoppel certificate in accordance therewith, and such other documents as may be reasonably requested by Lender. Borrower shall also furnish and Borrower consents to Lender furnishing to such Investors or such prospective Investors or Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower, Indemnitor or Sponsor as may be requested by Lender, any Investor or any prospective Investor or Rating Agency in connection with any sale, transfer or participation interest. Lender may retain or assign responsibility for servicing the Note, this Security Instrument, and the Other Security Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer; provided, however, in the event Lender exercises its right to split the Loan into parts as permitted hereunder and deposits such parts into more than one securitized pool, (I) Borrower shall only be required to deal with one primary servicer with respect to any consents, approvals, notices, required from, or to, Lender pursuant to the Loan Documents (it being understood that such primary servicer may need to consult with other persons that hold a portion of Lender's rights and obligations under the Loan or with the Rating Agencies in connection with any such consent, approval or notice), (II) the time periods for Lender approvals under the Loan Documents (to the extent applicable) shall not be increased and Borrower shall not be required to pay multiple fees and expenses if more than one servicer is consulted by the primary servicer and (III) other than Borrower's right to refuse to deal with multiple servicers and/or to pay the fees of multiple servicers in accordance with the foregoing, the failure of Lender or any servicer to comply with the provisions of this sentence shall not otherwise waive, abrogate or otherwise effect Borrower's other obligations hereunder or any of the other Loan Documents. Lender may make such assignment or delegation on behalf of the Investors if the Note is sold or this Security Instrument or the Other Security Documents are assigned. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

Section 19.2. CONVERSION TO REGISTERED FORM. At the request and the expense of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the "**Registrar**") reasonably acceptable to Lender which shall maintain, subject to such reasonable regulations as it shall provide, such books and records as are necessary for the registration and transfer of the Note in a manner that shall cause the Note to be considered to be in registered form for purposes of Section 163(f) of the Code. The option to convert the Note into registered form once exercised may not be revoked. Any agreement setting out the rights and obligation of the Registrar shall be subject to the reasonable approval of Lender. Borrower may revoke the

appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Borrower or Lender or any other lender in respect of transfers of the Note and Security Instrument (other than Taxes and governmental charges and fees).

Section 19.3. COOPERATION. Borrower acknowledges that Lender and its successors and assigns may (a) sell this Security Instrument, the Note and Other Security Documents to one or more third parties as a whole loan, (b) participate the Loan secured by this Security Instrument to one or more third parties, (c) deposit, through one or a series of transactions, this Security Instrument, the Note and Other Security Documents with one or more trusts, which trusts may sell certificates to third parties evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to third parties (The transaction referred to in clauses (a), (b), (c) and (d) shall hereinafter be referred to collectively as "**Secondary Market Transactions**" and the transactions referred to in clause (c) shall hereinafter be referred to as a "**Securitization**". Any certificates, notes or other securities issued in connection with a Securitization are hereinafter referred to as "**Securities**"). Borrower shall cooperate in good faith (provided such cooperation will not result in expense or additional potential liability to Borrower or any Indemnitor or diminish any of their rights in any material respect) with Lender in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by any Rating Agency issuing any statistical rating in any Secondary Market Transaction or the requirements of potential investors in any Secondary Market Transaction. Borrower agrees to make upon Lender's written request, and at no material cost to Borrower, without limitation, all structural or other changes to the Loan (including delivery of one or more new component notes to replace any original Individual Note or modify any original Individual Note to reflect multiple components of the Loan and such new notes or modified note may have different interest rates and amortization schedules), modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to the Rating Agencies or potential investors and addressing such matters as the Rating Agencies or potential investors may require; provided, however, notwithstanding anything to the contrary in this Security Instrument, the Note, or the Other Security Documents, Borrower shall not be required to modify any documents evidencing or securing the Loan (or otherwise take any action) which would modify (i) the initial weighted average interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the aggregate amortization of principal of the Note, (iv) any other material economic term of the Loan, (v) decrease the time periods during which Borrower is permitted to perform its obligations under this Security Instrument or any of the Other Security Documents, or (vi) otherwise increase Borrower's or Indemnitor's obligations or decrease any of their rights under the Note, this Security Instrument or any of the other Security Documents (or subject them to greater potential liability) except as otherwise expressly permitted herein. Borrower shall provide such information and documents relating to Borrower, Indemnitor, Sponsor, the Property and any tenants of the Improvements as Lender may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to prospective investors or Rating Agencies any information in its possession, including, without limitation, financial statements relating to Borrower, Sponsor, Indemnitor, the Property and any tenant of the Improvements. Borrower acknowledges that certain information regarding the Loan and the parties thereto, Sponsor and the Property may be included in disclosure documents in connection with the Securitization, including an offering circular, a prospectus, prospectus supplement, private placement memorandum or other offering document (each, an "**Disclosure**

Document") and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), and may be made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization.

Section 19.4. MEZZANINE OPTION. Lender shall have the right (the "**Mezzanine Option**") at any time to divide the loan into two parts, a mortgage loan and a mezzanine loan, provided, that (i) the total loan amounts for such mortgage loan and such mezzanine loan shall equal the then outstanding amount of the Loan immediately prior to Lender's exercise of the Mezzanine Option and (ii) the weighted average interest rate of such mortgage loan and mezzanine loan shall equal the Interest Rate. Borrower shall cooperate with Lender in Lender's exercise of the Mezzanine Option in good faith and in a timely manner, which such cooperation shall include, but not be limited to, (i) executing such amendments to the Loan Documents and Borrower or any SPE Component Entity's organizational documents as may be reasonably requested by Lender or requested by the Rating Agencies (which such amendments shall include, without limitation, (1) providing that the Equity Collateral (defined below) be certificated (such that the holder of such certificated Equity Collateral would have "protected purchaser" status under Article 8 of the Uniform Commercial Code) and/or (2) providing that any restrictions on the actions of Mezzanine Borrower, any SPE Component Entity and/or Borrower (such as the need to obtain the consent of any constituent parties of Mezzanine Borrower prior to taking any actions) shall be of no further force or effect upon a foreclosure of the Equity Collateral), (ii) creating a single purpose, bankruptcy remote entity satisfying the requirements of 4.3 hereof and of the Rating Agencies (the "**Mezzanine Borrower**"), which such Mezzanine Borrower shall (A) own, directly or indirectly, 100% of the equity ownership interests in Borrower (the "**Equity Collateral**"), and (B) together with such constituent equity owners of such Mezzanine Borrower or Borrower as may be designated by Lender, execute such agreements, instruments and other documents as may be required by Lender in connection with the mezzanine loan (including, without limitation, a promissory note evidencing the mezzanine loan and a pledge and security agreement pledging the Equity Collateral to Lender as security for the mezzanine loan); and (iii) delivering such opinions, title endorsements, UCC title insurance policies and other materials as may be required by Lender or the Rating Agencies. Lender hereby acknowledges and agrees that, notwithstanding anything to the contrary contained herein, (i) the exercise of the Mezzanine Option may not change the amount of aggregate amount of monthly debt service payments due under the Loan or the amortization term of the Loan and shall not require Borrower to further subdivide the Property, (ii) the institution of the Mezzanine Option (and the documentation relating thereto) may not diminish any of Borrower's (or Guarantor's) rights or increase any potential costs or liabilities of Borrower (or Guarantor) other than to the extent the aforesaid rights, costs or liabilities would be affected if the Loan were divided into a mortgage loan portion and a mezzanine loan portion (as contemplated hereby) as of the date of closing of the Loan and (iii) with respect to the foregoing provisions of this Section 19.4, the same are (A) restrictions and requirements customarily imposed by Lender in connection with commercial loans similar to the Loan and (B) intended to be restrictions and requirements which are "consistent with customary commercial lending practices" within the meaning of the applicable provisions of Revenue Procedure 2002-22. Lender will pay its own and Borrower's reasonable fees and expenses incurred in connection with the exercise of the Mezzanine Option.

Article 20. COSTS

Section 20.1. PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Lender may, subject to any express limitations contained herein and in the other Loan Documents, impose certain reasonable administrative, processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of its loan, (b) the release or substitution of collateral therefor, (c) if the servicer, in its reasonable determination, anticipates that there will occur an Event of Default and the Loan is transferred to a special servicer, (d) obtaining certain consents, waivers and approvals required hereunder (including, without limitation, Rating Agency Confirmations), and/or (e) the review of any Major Lease, proposed Major Lease or any other Lease for which Lender's approval is required hereunder or the preparation or review of any subordination, non disturbance agreement. Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof required by law, regulation, any governmental or quasi governmental authority. Subject to the limitations on cost and expense in Section 19.3 above, Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such reasonable fees (as the same may be increased or decreased from time to time), and any additional reasonable fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event of Default. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all reasonable legal fees and disbursements of Lender, whether retained firms, the reimbursement for the expenses of in house staff or otherwise. Whenever it is provided herein or in any other Loan Document that a Rating Agency Confirmation (or similar approval) by any Rating Agency is required hereunder (or under any other Loan Document), Borrower shall be responsible for the reasonable fees and other charges imposed by any Rating Agency in connection therewith as well as Lender's reasonable costs and expenses incurred in connection therewith.

Section 20.2. ATTORNEYS' FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with the items set forth in Section 20.1 above, and (b) Borrower shall pay to Trustee or Lender on demand any and all expenses, including legal expenses and attorneys' fees, reasonably incurred or paid by Trustee or Lender in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Trustee or Lender until such expenses are paid by Borrower.

Article 21. DEFINITIONS

Section 21.1. GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower, each party comprising Borrower (if Borrower consists of more than one person or entity) and any subsequent owner or owners of the Property or any part thereof or any interest therein"; the word "Lender" shall mean "Lender and any subsequent holder of the

Note"; the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument"; the word "person" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Article 22. MISCELLANEOUS PROVISIONS

Section 22.1. NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 22.2. LIABILITY. If there is more than one Borrower, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 22.3. INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

Section 22.4. HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 22.5. DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 22.6. NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 22.7. SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are

not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and the Other Security Documents and the performance and discharge of the Other Obligations.

Section 22.8. ENTIRE AGREEMENT. The Note, this Security Instrument and the Other Security Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, this Security Instrument and the Other Security Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, this Security Instrument and the Other Security Documents.

Section 22.9. TAX DISCLOSURE. Notwithstanding anything herein or in any other Loan Document to the contrary, except as reasonably necessary to comply with applicable securities laws, each party (and each employee, representative or other agent of each party) hereto may disclose to any and all Persons, without limitation of any kind, any information with respect to the United States federal income "tax treatment" and "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such parties (or their representatives) relating to such tax treatment and tax structure; provided, that with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transaction as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to the United States federal income tax treatment or tax structure of the transactions contemplated hereby.

Section 22.10. APPLICATION OF PROCEEDS. Notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event that Lender or Trustee, in the exercise of its rights or remedies hereunder or under any other Loan Document, elects to apply any sums realized by Lender or Trustee as a result of such exercise of rights or remedies to any amounts due under the Note in accordance with the applicable terms and conditions hereof and of the other Loan Documents, such sums shall be deemed to be applied to each Individual Note in an amount equal to (1) the total amount of sums to be applied, *multiplied by* (2) the Proportionate Share (hereafter defined) allocated to such Individual Note. As used herein, the term **"Proportionate Share"** shall mean the amount obtained by dividing (i) the original principal amount of each applicable Individual Note *by* (ii) the original principal amount of the Loan as evidenced by all of the Individual Notes.

[PROVISIONS CONTINUE ON FOLLOWING PAGE]

Section 22.11. DUE ON SALE/ENCUMBRANCE. Borrower expressly agrees that upon a violation of Article 8 of this Security Instrument by Borrower and acceleration of the principal balance of the Note because of such violation, Borrower will pay all sums required to be paid in connection with a prepayment, if any, as described in the Note, herein imposed on prepayment after an Event of Default and acceleration of the principal balance. Borrower expressly acknowledges that Borrower has received adequate consideration for the foregoing agreement.

DEL MONTE - POH, LLC, a Delaware limited liability company

By: /s/ Robert F. Barton
Name: Robert F. Barton
Title: CFO

DEL MONTE - DMSJH, LLC, a Delaware limited liability company

By: /s/ Robert F. Barton
Name: Robert F. Barton
Title: CFO

DEL MONTE - KMBC, LLC, a Delaware limited liability company

By: /s/ Robert F. Barton
Name: Robert F. Barton
Title: CFO

DEL MONTE - DMCH, LLC, a Delaware limited liability company

By: /s/ Robert F. Barton
Name: Robert F. Barton
Title: CFO

[NO FURTHER TEXT ON THIS PAGE]

Section 22.12. SPECIAL STATE OF CALIFORNIA PROVISIONS.

(a) In the event of any conflict between the provisions of this Section 22.12 and any provision of this Security Instrument, then the provisions of this Section 22.12 shall control.

(b)

(i) Should Lender elect to foreclose by exercise of the power of sale contained herein, Lender shall notify Trustee and shall, if required, deposit with Trustee the Note, the original or a certified copy of this Security Instrument, and such other documents, receipts and evidences of expenditures made and secured hereby as Trustee may require. Upon receipt of such notice from Lender, Trustee shall cause to be recorded and delivered to Borrower such notice as may then be required by law and by this Security Instrument. Trustee shall, without demand on Borrower, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale has been given as required by law, sell the Property at the time and place of sale fixed by it in said notice of sale, either as a whole or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to the purchaser or purchasers at such sale its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Borrower, Trustee or Lender, may purchase at such sale, and Borrower hereby covenants to warrant and defend the title of such purchaser or purchasers.

(ii) After deducting all costs, fees and expenses of Trustee and of this Security Instrument, including, without limitation, costs of evidence of title and actual and customary attorneys' fees of Trustee or Lender in connection with a sale as provided in subparagraph (a) above, Trustee shall apply the proceeds of such sale (i) first, to the payment of all sums expended by Lender under the terms of any of the Other Security Documents and not yet repaid, together with interest on such sums at the Default Rate as set forth in the Note, (ii) second, to the payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate of interest equal to the rate then in effect under the Note, or if the Note has been repaid, the rate that would have been in effect under the Note, (iii) third, to the payment of all other sums then secured hereby, and (iv) fourth, the remainder, if any, to the person or persons legally entitled thereto.

(c) Lender may from time to time rescind any Notice of Default or Notice of Sale before any Trustee's sale in accordance with the laws of the State of California. The exercise by Lender of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Lender to execute and deliver to Trustee, as above provided, other declarations or notices of default to satisfy the obligations of this Security Instrument or secured hereby, nor otherwise affect any provision, covenant or condition of any Loan Document or any of the rights, obligations or remedies of Trustee or Lender hereunder or thereunder.

(d) Upon written request of Lender stating that all sums secured hereby have been paid, upon surrender to Trustee of the Note and the original or a certified copy of this Security Instrument for cancellation and retention, and upon payment of its fees, Trustee shall fully re-convey, without warranty, the entire remaining Property then held hereunder. The recitals in such re-conveyance of any matters of facts shall be conclusive proof of the truthfulness thereof. The grantee in such re-conveyance may be described as "the person or persons legally entitled thereto."

(e) This Security Instrument constitutes a financing statement filed as a fixture filing pursuant to the provisions of Article 9 of the Uniform Commercial Code with respect to those portions of the Property consisting of goods which are or are to become fixtures relating to the Property.

(f) Borrower represents and warrants that the Property has not been designated as Border Zone Property under the provisions of California Health and Safety Code, Sections 25220 et seq. or any regulation adopted in accordance therewith, and there has been no occurrence or condition on any real property adjoining or in the vicinity of the Property that is reasonably likely to cause the Property or any part thereof to be designated as Border Zone Property.

(g) With respect to fixtures, Lender or Trustee may elect to treat same as either real property or personal property and proceed to exercise such rights and remedies applicable to the categorization so chosen. Lender may proceed against the items of real property and any items of Property separately or together in any order whatsoever, without in any way affecting or waiving Lender's rights and remedies under the Uniform Commercial Code, this Security Instrument or the Note. Borrower acknowledges and agrees that Lender's rights and remedies under this Security Instrument and the Note shall be cumulative and shall be in addition to every other right and remedy now or hereafter existing at law, in equity, by statute or by agreement of the parties.

(h) Borrower agrees that this Security Instrument constitutes a financing statement filed as a fixture filing in the Recorder's Office with respect to any and all fixtures included within the term "Land" or "Property" as used herein and with respect to any goods and other personal property that may now be or hereafter become fixtures. The names and mailing addresses of the debtor (Borrower) and the secured party (Lender) are set forth on the introductory paragraph of this Security Instrument. Borrower is the record owner of the Property. The personal property described above is the collateral covered by this financing statement. Any reproduction of this Security Instrument or any other security agreement or financing statement shall be sufficient as a financing statement.

(i) The following statutes are hereby deemed to be included in the definition of Environmental Law as that term is used throughout this Security Instrument: the Porter-Cologne Water Control Act; the Waste Management Act of 1980; the Toxic Pit Cleanup Act; the Underground Tank Act of 1984; the California Water Quality Improvement Act; and California Health and Safety Codes §§ 25117 and 25316.

(j) Borrower hereby requests that a copy of a Notice of Default and a copy of any Notice of Sale given pursuant to this Security Instrument be mailed to Borrower at the address set forth herein. Borrower may, from time to time, change the address to which Notice of Default and Notice of Sale hereunder shall be sent by both filing a request therefore, in the manner provided by California Civil Code, Section 2924b, and sending a copy of such request to Lender in accordance with the provisions of Article 16 hereof.

Article 23. TRUSTEE PROVISIONS

Section 23.1. CONCERNING THE TRUSTEE. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Borrower and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 23.2. TRUSTEE'S FEES. Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 23.3. CERTAIN RIGHTS. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the Other Security Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or

accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 23.4. RETENTION OF MONEY. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 23.5. PERFECTION OF APPOINTMENT. Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute trustee to more fully and certainly vest in and confirm to Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

Section 23.6. SUCCESSION INSTRUMENTS. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in Trustee's place.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

DEL MONTE - POH, LLC, a Delaware limited liability company

By: /s/ Robert F. Barton
Name: Robert F. Barton
Title: CFO

DEL MONTE - DMSJH, LLC, a Delaware limited liability company

By: /s/ Robert F. Barton
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DEL MONTE - KMBC, LLC, a Delaware limited liability company

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Schedule 1

"**Debt Service Coverage Ratio**" means the ratio of (a) Net Operating Income, to (b) Annual Debt Service, all as determined by Lender.

"**Annual Debt Service**" means an amount equal to twelve (12) times the then applicable Monthly Payment (as defined in the Note) payable under the Note.

"**Net Operating Income**" means for the 12-month period immediately preceding the date of calculation, (A) all sustainable Rents and other income received from the Property received from tenants during such 12-month period, less (B) all Operating Expenses for such 12-month period and any Extraordinary Expenses approved by Lender and applicable to such 12-month period.

"**Operating Expenses**" means the aggregate of the following items: (a) real estate taxes, general and special assessments or similar charges, other than Taxes; (b) sales, use and personal property taxes; (c) management fees of not less than 4% of the gross income derived from the operation of the Property and disbursements for management services whether such services are performed at the Property or off-site; (d) wages, salaries, pension costs and all fringe and other employee-related benefits and expenses, of all employees up to and including (but not above) the level of the on-site manager, engaged in the repair, operation and maintenance of the Property and service to tenants and on-site personnel engaged in audit and accounting functions performed by Borrower; (e) insurance premiums including, but not limited to, casualty, liability, rent and fidelity insurance premiums, other than Insurance Premiums; (f) cost of all electricity, oil, gas, water, steam, HVAC and any other energy, utility or similar item and overtime services, the cost of building and cleaning supplies, and all other administrative, management, ownership, operating, advertising, marketing and maintenance expenses incurred by Borrower (and not paid directly by any tenant) in connection with the operation of the Property; (g) costs of necessary cleaning, repair, replacement, maintenance, decoration or painting of existing improvements on the Property (including, without limitation, parking lots and roadways), of like kind or quality or such kind or quality which is necessary to maintain the Property to the same standards as competitive properties of similar size and location of the Property; (h) the cost of such other maintenance materials, HVAC repairs, parts and supplies, and all equipment to be used in the ordinary course of business, which is not capitalized in accordance with approved accounting method; (i) legal, accounting and other professional expenses incurred in connection with the Property; (j) casualty losses to the extent not reimbursed by a third party; and (k) to the extent not already included in any of (f)-(h) above, a reserve for structural repairs, normalized leasing commissions and tenant improvements equal to the minimum requirements of any Rating Agency therefore. The Operating Expenses shall be based on the above-described items actually incurred or payable on an accrual basis in accordance with the Approved Accounting Method by Borrower during the twelve (12) month period ending one month prior to the date on which the Net Operating Income is to be calculated, with customary adjustments for items such as taxes and insurance which accrue but are paid periodically, as adjusted by Lender to reflect projected adjustments for only those items which are definitively ascertainable and of a fixed amount (for example, real estate taxes) for the subsequent twelve (12) month period beginning on the date on which the Net Operating Income is to be calculated. Notwithstanding the foregoing, the term "Operating Expenses" shall not include (i) depreciation or amortization or any other non-cash item of expense unless approved by Lender, (ii) interest, principal, fees, costs and expense

reimbursements of Lender in administering the Loan or exercising remedies under the Note, this Security Instrument or the Other Security Documents; or (iii) any expenditure properly treated as a capital item under the Approved Accounting Method.

"**Extraordinary Expenses**" means expenses incurred in connection with necessary capital improvements or operating expenses of the Property which were not reasonably anticipated in the annual budget for the Property, in each case as reasonably approved by Lender; provided, that, Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense prior to Lender's approval thereof.

Schedule 2

REMEDIAL ACTION PLAN

Remedial Action Plan, Del Monte Shopping Center, 1410 Del Monte Shopping Center Drive, Monterey, California dated January 24, 2000, as approved by the California Regional Water Quality Control Board-Central Region in a letter dated March 15, 2000, together with the following supplemental and/or related documentation:

(a) Phase II Soil and Groundwater Investigation Report, Del Monte Shopping Center, 1410 Del Monte Center, Monterey, California dated January 17, 1997;

(b) Letter from California Regional Water Quality Control Board-Central Region re: 1410 Del Monte Shopping Center Drive, Del Monte Center, Monterey, Monterey County; Ground Water Monitoring and Reporting Program dated August 31, 1998;

(c) Remediation System Installation and Startup Report with Second Quarter Monitoring Results, Del Monte Center, Monterey, California dated July 19, 2000;

(d) Third Quarter 2002 Groundwater Monitoring Report, Del Monte Center, Monterey, California" dated October 22, 2002;

(e) Letter from California Regional Water Quality Control Board-Central Region re: 1410 Del Monte Shopping Center Drive, Del Monte Center, Monterey, Monterey County; Work Plan Request dated November 25, 2002;

(f) Third Quarter 2003 Groundwater Monitoring Report, Del Monte Center, Monterey, California dated October 20, 2003;

(g) Work Plan for Additional Investigation and Remediation, Del Monte Center, Monterey, California dated April 14, 2003;

(h) Second Quarter 2004 Groundwater Monitoring Report, Del Monte Center, Monterey, California dated July 30, 2004;

(i) Soil Excavation Work Plan, Del Monte Center, Monterey, California dated January 3, 2005; and

(j) Re-Evaluation of Potential Indoor Air Risks, Del Monte Center, Monterey, California dated June 13, 2005.

EXHIBIT A

LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY OF MONTEREY, COUNTY OF MONTEREY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL I:

COMMENCING AT A 2" IRON PIPE MARKED "D.M.P. 100", AS SAID PIPE IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY MAP FILED AUGUST 6, 1962 IN VOLUME 6 OF "SURVEYS", AT PAGE 139, MONTEREY COUNTY RECORDS; AND THENCE

(A) SOUTH 59° 29' 44" EAST AND ALONG THE LINE BETWEEN SAID MONUMENT "D.M.P. 100" AND MONUMENT "D.M.P. 101", AS SHOWN AND SO DESIGNATED ON SAID MAP HEREIN BEFORE REFERRED TO, A DISTANCE OF 283.01 FEET TO THE MOST EASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DEEDED BY DEL MONTE PROPERTIES COMPANY, A CORPORATION TO THE CITY OF MONTEREY, A MUNICIPAL CORPORATION, BY DEED DATED JANUARY 2, 1957 AND RECORDED FEBRUARY 14, 1957 IN VOLUME 1770 OF OFFICIAL RECORDS OF MONTEREY COUNTY AT PAGE 483, (SAID DEED SHOWN SOUTH 59º 38' EAST, 283.00 FEET) AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE

(1) SOUTH 59º 29' 44" EAST, 943.18 FEET AND ALONG THE LINE BETWEEN SAID MONUMENTS "D.M.P. 100" AND "D.M.P. 101" TO SAID MONUMENT "D.M.P. 101"; THENCE

(2) NORTH 52º 32' 41" EAST, 366.40 FEET AND ALONG THE LINE BETWEEN MONUMENTS "D.M.P. 101" AND "D.M.P. 102" (SAID MAP SHOWS SOUTH 52° 31' 02" WEST, 366.30 FEET) SAID MONUMENT "D.M.P. 102"; THENCE

(3) SOUTH 81° 39' 48" EAST, 385.94 FEET (SOUTH 81º 39' 42" EAST, 386.00 FEET PER RECORD) TO AN ANGLE POINT; THENCE

(4) SOUTH 05º 45' 27" EAST, 782.28 FEET (SOUTH 05° 43' 26" EAST, 782.78 FEET PER RECORD) TO A POINT ON COURSE NUMBERED (13) AS SHOWN IN THAT CERTAIN DEED FROM DEL MONTE PROPERTIES COMPANY, A CORPORATION TO THE STATE OF CALIFORNIA, DATED OCTOBER 24, 1960 AND RECORDED DECEMBER 12, 1960 IN VOLUME 2105 OF OFFICIAL RECORDS OF MONTEREY COUNTY AT PAGE 396; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL OF LAND SO DEEDED TO THE STATE OF CALIFORNIA, THE FOLLOWING COURSES AND DISTANCES:

(5) SOUTH 70° 06' 46" WEST, 334.35 FEET (DEED SHOWS NORTH 71° 53' 28" EAST, 334.55 FEET); THENCE

(6) SOUTH 79° 33’ 54” WEST, 405.02 FEET (DEED SHOWS NORTH 81° 21’ 12” EAST); THENCE

(7) NORTH 89° 59’ 46” WEST, 193.24 FEET (DEED SHOWS NORTH 88° 12’ 34” WEST, 193.20 FEET); THENCE

(8) SOUTH 75° 56’ 01” WEST, 551.12 FEET (DEED SHOWS SOUTH 77º 42’ 44” WEST); THENCE

(9) SOUTH 79º 33’ 54” WEST, 350.03 FEET (DEED SHOWS SOUTH 81° 21’ 12” WEST, 350.00 FEET); THENCE

(10) NORTH 50° 16’ 28” WEST, 562.64 FEET (DEED SHOWS NORTH 48° 26’ 41” WEST, 561.50 FEET) TO THE INTERSECTION ON SAID NORTHERLY LINE OF SAID PARCEL SO DEEDED TO THE STATE OF CALIFORNIA WITH THE SOUTHEASTERLY LINE OF SAID PARCEL SO DEEDED TO THE CITY OF MONTEREY; THENCE LEAVING THE NORTHERLY LINE OF SAID PARCEL SO DEEDED TO THE STATE OF CALIFORNIA,

(11) NORTH 30º 22’ 51” EAST AND ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL SO DEEDED TO THE CITY OF MONTEREY, 1292.55 FEET (DEED SHOWS NORTH 30° 22’ EAST) TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT CERTAIN PROPERTY LYING WITHIN THE ABOVE PARCEL I, DESCRIBED AS FOLLOWS:

COMMENCING AT A 2” IRON PIPE MARKED “D.M.P. 100”, AS SAID PIPE IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY MAP FILED AUGUST 6, 1962 IN VOLUME 6 OF “SURVEYS”, AT PAGE 139, MONTEREY COUNTY RECORDS; THENCE

(A) SOUTH 59° 29’ 44” EAST AND ALONG THE LINE BETWEEN SAID MONUMENT “D.M.P. 100” AND MONUMENT “D.M.P. 101” AS SHOWN ON SAID MAP, 1226.19 FEET (SHOWN AS 1225.50 FEET ON SAID MAP) TO SAID MONUMENT “D.M.P. 101”; THENCE LEAVING SAID LINE,

(B) SOUTH 5° 00’ WEST, 154.08 FEET TO THE TRUE POINT OF BEGINNING; THENCE

(1) NORTH 85° 00’ WEST, 270.00 FEET; THENCE

(2) SOUTH 5° 00’ WEST, 250.70 FEET; THENCE

(3) SOUTH 85° 00’ EAST, 300.70 FEET; THENCE

(4) NORTH 5° 00’ EAST, 250.70 FEET; THENCE

(5) NORTH 85° 00’ WEST, 30.70 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM ALL THAT CERTAIN PROPERTY LYING WITHIN THE ABOVE PARCEL I, DESCRIBED AS FOLLOWS:

COMMENCING AT A 2” IRON PIPE MARKED “D.M.P. 100”, AS SAID PIPE IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY MAP FILED AUGUST 6, 1962 IN VOLUME 6 OF “SURVEYS”, AT PAGE 139, MONTEREY COUNTY RECORDS; THENCE

(A) SOUTH 59° 29’ 44” EAST AND ALONG THE LINE BETWEEN SAID MONUMENT “D.M.P. 100” AND MONUMENT “D.M.P. 101” AS SHOWN ON SAID MAP, 1226.19 FEET (SHOWN AS 1225.50 FEET ON SAID MAP) TO SAID MONUMENT “D.M.P. 101”; THENCE LEAVING SAID LINE,

(B) SOUTH 85º 00’ EAST, 239.25 FEET; THENCE

(C) SOUTH 5° 00’ WEST, 208.43 FEET TO THE TRUE POINT OF BEGINNING; THENCE

(1) SOUTH 85° 00’ EAST, 230.00 FEET; THENCE

(2) SOUTH 5° 00’ WEST, 158.30 FEET; THENCE

(3) SOUTH 50° 00’ WEST, 42.00 FEET; THENCE

(4) NORTH 85º 00’ WEST, 170.60 FEET; THENCE

(5) NORTH 40° 00’ WEST, 42.00 FEET; THENCE

(6) NORTH 5° 00’ EAST, 158.30 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF SAID PROPERTY SET FORTH IN THAT CERTAIN

FINAL ORDER (JUDGMENT) OF CONDEMNATION ACTION IN EMINENT DOMAIN, SUPERIOR COURT, COUNTY OF MONTEREY, CASE NO. M17042, RECORDED MAY 10, 1991 IN REEL 2641, PAGE 668, OFFICIAL RECORDS.

PARCEL II:

AN EASEMENT FOR A BRIDGE AND ROAD PURPOSES OVER THAT PORTION OF THE RANCHO AGUAJITO, IN THE CITY OF MONTEREY, COUNTY OF MONTEREY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A 2" IRON PIPE MARKED "D.M.P. 100", IN THE SOUTHEASTERLY BOUNDARY OF MUNRAS AVENUE AT THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO THE CITY OF MONTEREY, RECORDED FEBRUARY 14, 1957 IN VOLUME 1770, PAGE 482, OFFICIAL RECORDS; THENCE ALONG THE NORTHWESTERLY LINE OF SAID LAND AND THE SOUTHEASTERLY BOUNDARY OF MUNRAS AVENUE,

(1) SOUTH 24° 22' WEST, 108.00 FEET; THENCE LEAVING SAID LINE AND BOUNDARY,

(2) SOUTH 80º 05' 30" EAST, 65.79 FEET; THENCE

(3) SOUTH 52º 38' EAST, 211.65 FEET TO THE SOUTHEASTERLY LINE OF SAID LAND DESCRIBED IN THE DEED TO THE CITY OF MONTEREY; THENCE ALONG SAID SOUTHEASTERLY LINE,

(4) NORTH 30º 22' EAST, 62.46 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE AND RUNNING PARALLEL WITH AND 62.00 FEET MEASURED AT RIGHT ANGLES FROM COURSE (3), HEREIN ABOVE,

(5) NORTH 52° 38' WEST, 204.03 FEET; THENCE

(6) NORTH 43º 46' WEST, 83.68 FEET TO THE POINT OF BEGINNING.

PARCEL III:

AN EASEMENT FOR THE WIDENING OF MUNRAS AVENUE DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF THAT CERTAIN 6.626 ACRE PARCEL DESCRIBED IN DEED FROM DEL MONTE PROPERTIES COMPANY TO THE CITY OF MONTEREY, DATED FEBRUARY 8, 1957 AND RECORDED FEBRUARY 14, 1957 IN VOLUME 1770 OF OFFICIAL RECORDS OF MONTEREY COUNTY AT PAGE 482; RUNNING THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL WHICH IS ALSO THE SOUTHEASTERLY BOUNDARY OF MUNRAS AVENUE AS DESCRIBED IN SAID DEED,

(1) NORTH 24° 22' EAST, 650.33 FEET (AT 80.33 FEET A 2" IRON PIPE); THENCE LEAVING SAID LINE AND BOUNDARY,

(2) SOUTH 65° 38' EAST, 20.00 FEET; THENCE

(3) SOUTH 24° 22' WEST, 159.00 FEET; THENCE

(4) SOUTH 21° 52’ WEST, 529.77 FEET TO THE CORPORATE LIMIT LINE OF THE CITY OF MONTEREY AS DESCRIBED IN SAID DEED; THENCE ALONG SAID CORPORATE LIMIT LINE,

(5) NORTH 24° 17’ WEST, 57.43 FEET TO THE POINT OF BEGINNING.

PARCEL IV:

AN EASEMENT FOR ROAD PURPOSES OVER THAT PORTION OF THE RANCHO AGUAJITO, IN THE CITY OF MONTEREY, COUNTY OF MONTEREY, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO THE CITY OF MONTEREY, RECORDED FEBRUARY 14, 1957 IN VOLUME 1770, PAGE 482, OFFICIAL RECORDS, WHICH POINT BEARS SOUTH 30° 22’ WEST, 683.22 FEET DISTANT FROM THE MOST EASTERLY CORNER THEREOF; THENCE ALONG SAID SOUTHEASTERLY LINE,

(1) SOUTH 30° 22’ WEST, 112.62 FEET; THENCE LEAVING SAID LINE,

(2) NORTH 65° 38’ WEST, 158.25 FEET; THENCE

(3) SOUTH 69º 22’ WEST, 28.28 FEET; THENCE

(4) NORTH 24° 22’ EAST, 132.00 FEET; THENCE

(5) SOUTH 65° 38’ EAST, PARALLEL TO AND 112 FEET MEASURED AT RIGHT ANGLES FROM COURSE NO. 2, HEREIN ABOVE, 190.02 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH A RIGHT TO CONSTRUCT SLOPES OVER A STRIP OF LAND 30 FEET WIDE LYING ALONG, ADJACENT TO AND NORTHEASTERLY OF THE AFOREMENTIONED COURSE (5), ALSO TOGETHER WITH A RIGHT TO CONSTRUCT SLOPES OVER A STRIP OF LAND 20 FEET WIDE LYING ALONG, ADJACENT TO AND SOUTHWESTERLY OF THE AFOREMENTIONED COURSES (2).

PARCEL V:

COMMENCING AT A 2” IRON PIPE MARKED “D.M.P. 100”, AS SAID PIPE IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY MAP FILED AUGUST 6, 1962 IN VOLUME 6 OF “SURVEYS”, AT PAGE 139, MONTEREY COUNTY RECORDS; THENCE

(A) SOUTH 59° 29’ 44”’ EAST AND ALONG THE LINE BETWEEN SAID MONUMENT “D.M.P. 100” AND MONUMENT “D.M.P. 101” AS SHOWN ON SAID MAP, 1226.19 FEET (SHOWN AS 1225.50 FEET ON SAID MAP) TO SAID MONUMENT “D.M.P. 101”; THENCE LEAVING SAID LINE,

(B) SOUTH 5° 00’ WEST, 154.08 FEET TO THE TRUE POINT OF BEGINNING; THENCE

(1) NORTH 85º 00’ WEST, 270.00 FEET; THENCE

(2) SOUTH 5° 00’ WEST, 250.70 FEET; THENCE

(3) SOUTH 85° 00’ EAST, 300.70 FEET; THENCE

(4) NORTH 5° 00’ EAST, 250.70 FEET; THENCE

(5) NORTH 85° 00’ WEST, 30.70 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL VI:

COMMENCING AT A 2” IRON PIPE MARKED “D.M.P. 100”, AS SAID PIPE IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY MAP FILED AUGUST 6, 1962 IN VOLUME 6 OF “SURVEYS”, AT PAGE 139, MONTEREY COUNTY RECORDS; THENCE

(A) SOUTH 59° 29’ 44” EAST AND ALONG THE LINE BETWEEN SAID MONUMENT “D.M.P. 100” AND MONUMENT “D.M.P. 101” AS SHOWN ON SAID MAP, 1226.19 FEET (SHOWN AS 1225.50 FEET ON SAID MAP) TO SAID MONUMENT “D.M.P. 101; THENCE LEAVING SAID LINE,

(B) SOUTH 85º 00’ EAST, 239.25 FEET; THENCE

(C) SOUTH 5° 00’ WEST, 208.43 FEET TO THE TRUE POINT OF BEGINNING; THENCE

(1) SOUTH 85º 00’ EAST, 230.00 FEET; THENCE

(2) SOUTH 5° 00’ WEST, 158.30 FEET; THENCE

(3) SOUTH 50° 00’ WEST, 42.00 FEET; THENCE

(4) NORTH 85° 00’ WEST, 170.60 FEET; THENCE

(5) NORTH 40º 00’ WEST, 42.00 FEET, THENCE

(6) NORTH 5° 00’ EAST, 158.30 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT B

FORM OF SNDA

(attached hereto)

[_____]
(Lender)

- and -

[_____]
(Tenant)

- and -

[_____]
(collectively, Landlord)

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

Dated:

Location:

Section:
Block:
Lot:
County:

PREPARED BY AND UPON RECORDATION RETURN TO:

_____
_____
_____
Attention: _____

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made as of the _____ day of _____, 200[__] by and among **[_____]** (together with its successors and assigns, "**Lender**"), [_____] ("**Tenant**") and **[_____] ("Landlord"**).

RECITALS:

A. Lender is the present owner and holder of a certain Deed of Trust and Security Agreement (the "**Security Instrument**") given by Landlord to Lender which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "**Property**") and which secures the payment of certain indebtedness owed by Landlord to Lender evidenced by the Note (as defined in the Security Instrument);

B. Tenant is the holder of a leasehold estate in a portion of the Property under and pursuant to the provisions of a certain [Lease] dated [_____, 200[__] between Landlord, as landlord, and Tenant, as tenant (the "**Lease**"); and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

For good and valuable consideration, Tenant, Lender and Landlord agree as follows:

1. Subordination. The Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate to the lien and terms of the Security Instrument, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. Non-Disturbance. If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note or the Security Instrument shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the term of the Lease shall have commenced pursuant to the provisions thereof, (b) Tenant shall be in possession of the premises demised under the Lease, (c) the Lease

shall be in full force and effect and (d) Tenant shall not be in default beyond any applicable notice and cure period under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed.

3. Attornment. If Lender or any other subsequent purchaser of the Property shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter referred as "**Purchaser**"), and the conditions set forth in Section 2 above have been met at the time Purchaser becomes owner of the Property, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Property shall be deemed to have agreed to accept such attornment, provided, however, that Purchaser shall not be (a) liable for the failure of any prior landlord (any such prior landlord, including Landlord and any successor landlord, being hereinafter referred to as a "**Prior Landlord**") to perform any of its obligations under the Lease which have accrued prior to the date on which Purchaser shall become the owner of the Property, provided that the foregoing shall not limit Purchaser's obligations under the Lease to correct any conditions of a continuing nature that (i) existed as of the date Purchaser shall become the owner of the Property and (ii) violate Purchaser's obligations as landlord under the Lease; provided further, however, that Purchaser shall have received written notice of such omissions, conditions or violations and has had a reasonable opportunity to cure the same, all pursuant to the terms and conditions of the Lease, (b) subject to any offsets, defenses, abatements or counterclaims which shall have accrued in favor of Tenant against any Prior Landlord prior to the date upon which Purchaser shall become the owner of the Property, except for those that are specifically provided for in the Lease, (c) liable for the return of rental security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by Purchaser, (d) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser or (ii) such prepayment shall have been expressly approved of by Purchaser, (e) unless set forth in any instrument or document provided to Lender prior to Lender's execution hereof, bound by any agreement terminating or amending or modifying the rent, term, commencement date or other material term of the Lease, or any voluntary surrender of the premises demised under the Lease, made without Lender's or Purchaser's prior written consent prior to the time Purchaser succeeded to Landlord's interest (provided, however, Purchaser's consent is not required for a termination of the Lease exercised pursuant to the original terms of the Lease) or (f) bound by any assignment of the Lease or sublease of the Property, or any portion thereof, made prior to the time Purchaser succeeded to Landlord's interest other than if pursuant to the provisions of the Lease. In the event that any liability of Purchaser does arise pursuant to this Agreement, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such interest. Alternatively, upon the written request of Lender or its successors or assigns, Tenant shall enter into a new lease of the Premises with Lender or such successor or assign for the then remaining term of the Lease, upon the same terms and conditions as contained in the Lease (including without limitation any renewal options), except as otherwise specifically provided in this Agreement.

4. Notice to Tenant. After notice is given to Tenant by Lender that the Landlord is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.

5. Intentionally Omitted.

6. Notice to Lender and Right to Cure. Tenant shall notify Lender of any default by Landlord under the Lease if the default is of such a nature as to give Tenant a right to terminate the Lease, reduce the rent or to credit or offset any amounts against future rents, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of an abatement shall be effective unless Lender shall have received notice of default giving rise to such cancellation or abatement and (i) in the case of any such default that can be cured by the payment of money, until thirty (30) days shall have elapsed following the giving of such notice or (ii) in the case of any other such default, until a reasonable period for remedying such default shall have elapsed following the giving of such notice, provided Lender, with reasonable diligence, shall have commenced and continued to remedy such default or cause the same to be remedied. Notwithstanding the foregoing, (i) Lender shall have no obligation to cure any such default and (ii) in the event that any aforesaid default cannot, by its nature, be cured by Lender prior to Lender's gaining possession of Landlord's interest in the Property, the aforesaid "reasonable period for remedying such default" shall be deemed to include such time as is required for Lender to gain possession of Tenant's interest in the Property.

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for one (1) day overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: [_____
_____]

If to Lender: [_____
_____]

With a copy to: c/o American Assets, Inc.
11455 El Camino Real, Suite 200
San Diego, California 92130

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 7, the term "Business Day" shall mean a day on which commercial

banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.

9. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

10. Miscellaneous. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

11. Joint and Several Liability. If there is more than one Tenant under the Lease, the obligations and liabilities of each hereunder shall be joint and several.

12. Definitions. The term “Lender” as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term “Landlord” as used herein shall mean and include the present landlord under the Lease and such landlord’s predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term “Property” as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Security Instrument.

13. Limitations on Purchaser’s Liability. In no event shall the Purchaser, nor any heir, legal representative, successor, or assignee of the Purchaser have any personal liability for the obligations of Landlord under the Lease and should the Purchaser succeed to the interests of the Landlord under the Lease, Tenant shall look only to the estate and property of any such Purchaser in the Property for the satisfaction of Tenant’s remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by any Purchaser as landlord under the Lease, and no other property or assets of any Purchaser shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant’s remedies under or with respect to the Lease; provided, however, that the Tenant may exercise any other right or remedy provided thereby or by law in the event of any failure by Landlord to perform any such material obligation. Notwithstanding the foregoing, Tenant may offset against rent due under the Lease the amount of any judgment obtained against any Purchaser.

14. Estoppel Certificate. Tenant, shall, from time to time, within ten (10) Business Days after request by Lender, execute, acknowledge and deliver to Lender a statement by Tenant certifying (a) that the Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) the amounts of fixed rent, additional rent, or other sums, if any, which are payable in respect of the Lease and the commencement date and expiration date of the Lease, (c) the dates to which the fixed rent, additional rent, and other sums which are payable in respect to the Lease have been paid, (d) whether or not Tenant is entitled to any then presently accrued credits or offsets against rent, and, if so, the reasons therefor and the amount thereof, (e) that to Tenant's actual knowledge (without investigation) it is not in default in the performance of any of its obligations under the Lease and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute such a default or, if so, specifying the nature of such default, (f) whether or not, to the actual knowledge (without investigation) of the person certifying on behalf of Tenant, Landlord is in default in the performance of any of its obligations under the Lease, and, if so, specifying the same, and (g) whether or not, to the actual knowledge (without investigation) of such person, Tenant has any then presently accrued claims, defenses or counterclaims against Landlord under the Lease, and, if so, specifying the same, it being intended that any such statement delivered pursuant hereto shall be deemed a certification by Tenant to be relied upon by Lender and by others with whom Lender may be dealing. Tenant also shall include in any such statement such other information concerning the status of the Lease as Lender may reasonably request.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Lender, Tenant and Landlord have duly executed this Agreement as of the date first above written.

TENANT:

[_____]

By: _____
Name:
Title:

LANDLORD:

[_____]

By: _____
Name:
Title:

LENDER:

[_____]

By: _____

Name:

Title:

EXHIBIT A

[Attach Legal Description of Property]

Exhibit 10.26

PROMISSORY NOTE A-[ ]

$[_____]

San Diego, California
June [__], 2005

FOR VALUE RECEIVED, [_____]**,** a [_____], having an address at [_____] (**"Borrower"**), as maker, hereby unconditionally promises to pay to the order of **COLUMN FINANCIAL, INC.**, a Delaware corporation, having an address at 11 Madison Avenue, New York, New York 10010 (together with its successors and assigns, **"Lender**") or at such other place as the holder hereof may from time to time designate in writing, the aggregate principal sum of [_____] DOLLARS ($[_____]), in lawful money of the United States of America, with interest thereon to be computed from the date of this Note at the Applicable Interest Rate (defined below), and to be paid in installments as follows:

ARTICLE 1: PAYMENT TERMS

(a) A payment on the date hereof on account of all interest that will accrue on the principal amount of the Loan from and after the date hereof through and including the [____] ([__]) day of June, 2005;

(b) A payment (the "**Monthly Payment**") equal to the amount of interest which has accrued during the preceding Interest Accrual Period (defined below) computed at the Applicable Interest Rate (defined below) on the [____] ([__]) day of August, 2005 and on the **[____] ([__]**) day of each calendar month thereafter (each such date to be hereinafter referred to as a "**Monthly Payment Date**") up to and including the [____] ([__]) day of June, 2015, with each Monthly Payment to be applied to the payment of interest which has accrued during the preceding Interest Accrual Period;

(c) The balance of the principal sum and all interest thereon shall be due and payable on July [__], 2015 (the "**Maturity Date**").

(d) Interest on the principal sum of this Note shall be calculated by multiplying the actual number of days elapsed in the period for which interest is being calculated by a daily rate based on a 360-day year.

(e) As used herein, the term **"Interest Accrual Period"** shall mean (i) for the first such period, the period beginning on the date hereof and ending on (but including) the [____] ([__]) day of July, 2005, and (ii) with respect subsequent period beginning with the period immediately following the period described in subsection (i) above, the period beginning on the [____] ([__]) day of each calendar month during the term hereof and ending on (but including) the [____] ([__]) day of the following calendar month.

(f)

ARTICLE 2: INTEREST

The term "**Applicable Interest Rate**" for the purposes hereof and each other Loan Document shall mean an interest rate equal to 4.9256% per annum.

ARTICLE 3: DEFAULT AND ACCELERATION

(a) The whole of the principal sum of this Note and the Other Note (defined below), (b) interest, default interest, late charges and other sums, as provided in this Note, the Other Note, the Security Instrument or the Other Security Documents (defined below), (c) all other monies agreed or provided to be paid by Borrower in this Note, the Other Note, the Security Instrument or the Other Security Documents, (d) all sums advanced pursuant to the provisions of the Security Instrument to protect and preserve the Property (defined below) and the lien and the security interest created thereby, and (e) all reasonable sums advanced and costs and expenses incurred by Lender pursuant to the provisions of this Note, the Other Note, the Security Instrument or the Other Security Documents in connection with the Debt (defined below) or any part thereof, any renewal, extension or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender (all the sums referred to in (a) through (e) above shall collectively be referred to as the "**Debt**") shall without notice become immediately due and payable at the option of Lender if (i) any payment required in this Note or the Other Note is not paid on or before the date the same is due, or (ii) Borrower commits any other default, and fails to cure same prior to the expiration of any applicable notice and grace periods, herein or under the terms of the Security Instrument or any of the Other Security Documents (collectively, an "**Event of Default**").

ARTICLE 4: DEFAULT INTEREST

Borrower does hereby agree that upon the occurrence of an Event of Default, Lender shall be entitled to receive and Borrower shall pay interest on the entire unpaid principal sum at a rate equal to the lesser of (a) four percent (4%) plus the Applicable Interest Rate and (b) the maximum interest rate which Borrower may by law pay (the "**Default Rate**"). The Default Rate shall be computed from the occurrence of the Event of Default until the earlier of the date upon which the Event of Default is cured or waived or the date upon which the Debt is paid in full. Interest calculated at the Default Rate shall be added to the Debt, and shall be deemed secured by the Security Instrument. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default. Notwithstanding the foregoing, in the event Borrower becomes liable for interest at the Default Rate under this Article 4 due to the occurrence of an Event of Default which cannot reasonably be cured by Borrower and which, in Lender's good faith, reasonable determination, (i) was not committed intentionally and knowingly by Borrower to circumvent the requirements of this Note, the Security Instrument, and/or the other Loan Documents, and (ii) does not have a Material Adverse Effect (as defined in the Security Instrument), Borrower shall only be liable for interest at such Default Rate for a period not to exceed six (6) months unless Lender is in the process of actively pursuing a foreclosure action (or non-judicial foreclosure) as a result of such Event of Default.

ARTICLE 5: PREPAYMENT; DEFEASANCE

Except as otherwise expressly permitted by this Article 5, no voluntary prepayments, whether in whole or in part, of the Loan or any other amount at any time due and owing under this Note or the Other Note can be made by Borrower or any other Person without the express written consent of Lender.

(a) Lockout Period. Borrower has no right to make, and Lender shall have no obligation to accept, any voluntary prepayment, whether in whole or in part, of the Loan during the Lockout Period (defined below). Notwithstanding the foregoing, if either (i) Lender, in its sole and absolute discretion, accepts a full or partial voluntary prepayment during the Lockout Period or (ii) there is an involuntary prepayment during the Lockout Period, then, in either case, Borrower shall, in addition to any portion of the Loan prepaid (together with all interest accrued and unpaid thereon), pay to Lender a prepayment premium in an amount calculated in accordance with subsection (c) below. The term "**Lockout Period**" shall mean the period commencing on the date hereof and ending on the Monthly Payment Date first occurring after the date which is six (6) months prior to the Maturity Date.

(b) Defeasance.

(i) Notwithstanding any provisions of this Article 5 to the contrary, including, without limitation, subsection (a) of this Article 5, at any time other than during a REMIC Prohibition Period (defined below), Borrower may cause the release of the Property from the lien of the Security Instrument and the other Loan Documents (and, subject to Borrower's satisfaction of clause (iii) under this subsection (b), a release of Borrower and Indemnitor (as defined in that certain Indemnity Agreement dated as of the date hereof among Borrower, American Assets, Inc. and Lender (the **"Indemnity Agreement"**)) from any further liability or obligation under this Note, the Security Instrument or the Other Security Documents other than a liability or obligation in connection with a provision of this Note, the Security Instrument or Other Security Document which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument upon the satisfaction of the following conditions:

(A) no Event of Default shall exist under any of the Loan Documents;

(B) not less than sixty (60) (or such shorter period as may be agreed to by Lender in its reasonable discretion) (but not more than ninety (90)) days prior written notice shall be given to Lender specifying a date on which the Defeasance Collateral (as hereinafter defined) is to be delivered (the "**Release Date**"), such date being on a Monthly Payment Date; provided, however, that Borrower shall have the right (i) to cancel such notice by providing Lender with notice of cancellation ten (10) days prior to the scheduled Release Date, or (ii) to extend the

scheduled Release Date until the next Monthly Payment Date; provided that in each case, Borrower shall pay all of Lender's costs and expenses incurred as a result of such cancellation or extension;

(C) all accrued and unpaid interest and all other sums due under this Note, the Other Note, the Security Instrument and under the Other Security Documents up to the Release Date, including, without limitation, all reasonable fees, costs and expenses incurred by Lender and its agents in connection with such release (including, without limitation, legal fees and expenses for the review and preparation of the Defeasance Security Agreement (as hereinafter defined) and of the other materials described in subsection (b)(i)(D) below and any related documentation, and any servicing fees, Rating Agency (as defined in the Security Instrument) fees or other reasonable costs related to such release), shall be paid in full on or prior to the Release Date;

(D) Borrower shall deliver to Lender on or prior to the Release Date:

(1) a pledge and security agreement, in form and substance satisfactory to a prudent lender, creating a first priority security interest in favor of Lender in the Defeasance Collateral (the "**Defeasance Security Agreement**"), which shall provide, among other things, that any excess amounts received by Lender from the Defeasance Collateral over the amounts payable by Borrower on a given Monthly Payment Date, which excess amounts are not required to cover all or any portion of amounts payable on a future Monthly Payment Date, shall be refunded to Borrower (which may be the original Borrower hereunder provided Successor Borrower affirmatively assigns such receivable rights in writing to such original Borrower) promptly after each such Monthly Payment Date;

(2) direct non-callable obligations of the United States of America or other obligations which are "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940 (to the extent the applicable Rating Agencies rating the Securities have confirmed in writing that the same will not cause a downgrade, withdrawal or qualification of the initial, or, if higher, then applicable ratings of the Securities) that provide for payments prior and as close as possible to (but in no event later than) all successive Monthly Payment Dates occurring after the Release Date, with each such payment being equal to or greater than the amount of the corresponding Monthly Payment required to be paid under this Note and the Other Note (including all amounts due on the Maturity Date) for the balance of the term hereof (the "**Defeasance Collateral**"), each of which shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance wholly satisfactory to Lender in its sole discretion (including, without limitation, such certificates, documents and instruments as may be required by the depository institution holding such securities or the issuer thereof, as the case may be, to effectuate book-entry

transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the Defeasance Security Agreement the first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing granting of such security interests;

(3) a certificate of Borrower certifying that all of the requirements set forth in this subsection (b)(i) have been satisfied;

(4) one or more opinions of counsel for Borrower in form and substance and delivered by counsel which would be satisfactory to a prudent lender stating, among other things, that (i) Lender has a perfected first priority security interest in the Defeasance Collateral and that the Defeasance Security Agreement is enforceable against Borrower in accordance with its terms, (ii) in the event of a bankruptcy proceeding or similar occurrence with respect to Borrower, none of the Defeasance Collateral nor any proceeds thereof will be property of Borrower's estate under Section 541 of the U.S. Bankruptcy Code or any similar statute and the grant of security interest therein to Lender should not constitute an avoidable preference under Section 547 of the U.S. Bankruptcy Code or applicable state law, (iii) the release of the lien of the Security Instrument and the pledge of Defeasance Collateral will not directly or indirectly result in or cause any "real estate mortgage investment conduit" within the meaning of Section 860D of the Internal Revenue Code that holds this Note and the Other Note (a "**REMIC Trust**") to fail to maintain its status as a REMIC Trust and (iv) the defeasance will not cause any REMIC Trust to be an "investment company" under the Investment Company Act of 1940;

(5) a certificate in form and scope acceptable to Lender in its sole discretion from an Acceptable Accountant (defined below) certifying that the Defeasance Collateral will generate amounts sufficient to make all payments of principal and interest due under this Note and the Other Note (including the scheduled outstanding principal balance of the Loan due on the Maturity Date). The term "**Acceptable Accountant**" shall mean a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender; and

(6) such other certificates, documents and instruments as Lender may reasonably require; and

(E) in the event the Loan is held by a REMIC Trust, Lender has received written confirmation from each Rating Agency rating any Securities (as defined in the Security Instrument) that substitution of the Defeasance Collateral will not result in a downgrade, withdrawal, or qualification of the ratings then assigned to any of the Securities.

(ii) Upon compliance with the requirements of subsection (b)(i), the Property shall be released from the lien of the Security Instrument and the Other Security Documents, and the Defeasance Collateral shall constitute the sole collateral which shall secure this Note and the Other Note and all other obligations under the Loan Documents. Lender will, at Borrower's expense, execute and deliver any agreements reasonably requested by Borrower to release the lien of the Security Instrument and the Other Security Documents from the Property and will, subject to Borrower's satisfaction of clause (iii) under this subsection (b), cause a release of Borrower and Indemnitor from any further liability or obligation under this Note, the Security Instrument or the Other Security Documents other than a liability or obligation in connection with a provision of this Note, the Security Instrument or Other Security Document which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument.

(iii) Upon the release of the Property in accordance with this subsection (b), Borrower shall assign all its obligations and rights under this Note and the Other Note, together with the pledged Defeasance Collateral, to a successor entity designated and approved by Lender in its reasonable discretion ("**Successor Borrower**"). Successor Borrower shall execute an assignment and assumption agreement (the "**Defeasance Assumption Agreement**") in form and substance satisfactory to Lender in its sole and absolute discretion pursuant to which it shall assume Borrower's obligations under this Note, the Other Note and the Defeasance Security Agreement. As conditions to such assignment and assumption, Borrower shall (A) deliver to Lender one or more opinions of counsel in form and substance and delivered by counsel which would be satisfactory to a prudent Lender stating, among other things, that such Defeasance Assumption Agreement is enforceable against Borrower and the Successor Borrower in accordance with its terms and that this Note, the Other Note, the Defeasance Security Agreement and the other Loan Documents, as so assigned and assumed, are enforceable against the Successor Borrower in accordance with their respective terms, and opining to such other matters relating to Successor Borrower and its organizational structure as Lender may reasonably require, and (B) pay all fees, costs and expenses incurred by Lender or its agents in connection with such assignment and assumption (including, without limitation, legal fees and expenses and for the review of the proposed transferee and the preparation of the assignment and assumption agreement and related certificates, documents and instruments and any fees payable to any Rating Agencies and their counsel in connection with the issuance of the confirmation referred to in subsection (b)(i)(E) above). Upon such assignment and assumption, Borrower and Indemnitor shall be relieved of their obligations under this Note, under the Other Note, under the other Loan Documents and under the Defeasance Security Agreement, except for any liability or obligation in connection with a provision of this Note, the Other Note, the Security Instrument or any Other Security Document which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument.

(iv) For purposes of this Article 5, "**REMIC Prohibition Period**" means the period commencing on the date hereof and ending on the earlier to occur of (i) the first

Monthly Payment Date occurring after the second anniversary of the "startup day" within the meaning of Section 860G(a)(9) of the Code of any REMIC Trust that holds this Note and the Other Note and (ii) the first Monthly Payment date occurring after the fourth anniversary of the date hereof. In no event shall Lender have any obligation to notify Borrower that a REMIC Prohibition Period is in effect with respect to the Loan, except that Lender shall notify Borrower if any REMIC Prohibition Period is in effect with respect to the Loan after receiving any notice described in subsection (b)(i)(B); provided, however, that the failure of Lender to so notify Borrower shall not impose any liability on Lender or grant Borrower any right to defease the Loan during any such REMIC Prohibition Period.

(c) Involuntary Prepayment During the Lockout Period. During the Lockout Period, in the event of any involuntary prepayment of the Loan or any other amount under this Note, whether in whole or in part, in connection with or following Lender's acceleration of this Note and the Other Note or otherwise, and whether the Security Instrument is satisfied or released by foreclosure (whether by power of sale or judicial proceeding), deed in lieu of foreclosure or by any other means, including, without limitation, repayment of the Loan by Borrower or any other Person pursuant to any statutory or common law right of redemption, Borrower shall, in addition to any portion of the principal balance of the Loan prepaid (together with all interest accrued and unpaid thereon and in the event the prepayment is made on a date other than a Monthly Payment Date, a sum equal to the amount of interest which would have accrued under this Note and the Other Note on the amount of such prepayment if such prepayment had occurred on the next Monthly Payment Date), pay to Lender a prepayment premium in an amount equal to the Yield Maintenance Premium (hereafter defined). As used above, the term **"Yield Maintenance Premium"** shall mean an amount equal to the greater of (i) 1% of the principal amount of the Loan being prepaid and (ii) an amount equal to the excess of (A) the sum of the present values of a series of payments payable at the times and in the amounts equal to the debt service payments (including, but not limited to the principal and interest payable on the Maturity Date) which would have been scheduled to be payable relative to the principal amount of the Loan being prepaid after the date of such tender under the Loan had the Notes not been prepaid, with each such payment discounted to its present value at the date of such tender at the rate which when compounded monthly is equivalent to the Prepayment Rate (as hereinafter defined), over (B) the principal amount of the Loan being prepaid. The term "**Prepayment Rate**" shall mean the bond equivalent yield (in the secondary market) on the United States Treasury Security that as of the Prepayment Rate Determination Date (hereinafter defined) has a remaining term to maturity closest to, but not exceeding, the remaining term to the Maturity Date, as most recently published in the "Treasury Bonds, Notes and Bills" section in The Wall Street Journal as of the date of the related tender of payment. If more than one issue of United States Treasury Securities has the remaining term to the Maturity Date referred to above, the "**Prepayment Rate**" shall be the yield on the United States Treasury Security most recently issued as of such date. The term "**Prepayment Rate Determination Date**" shall mean the date which is five (5) Business Days prior to the prepayment date. The rate so published shall control absent manifest error. If the publication of the Prepayment Rate in The Wall Street Journal is discontinued, Lender shall determine the Prepayment Rate on the basis of "Statistical Release H.15 (519), Selected Interest Rates," or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Lender may reasonably select.

(d) Insurance and Condemnation Proceeds; Excess Interest. Notwithstanding any other provision herein to the contrary, and provided no Event of Default exists, Borrower shall not be required to pay any prepayment premium in connection with any prepayment occurring solely as a result of (i) the application of insurance proceeds or condemnation proceeds pursuant to the terms of the Loan Documents, (ii) the application of any interest in excess of the maximum rate permitted by applicable law to the reduction of the Loan, or (iii) the exercise by Lender of any other right under the Loan Documents to apply an amount received by Lender to the principal balance of this Note or the Other Note, other than any exercise in connection with an Event of Default, which shall be controlled by the preceding paragraph (c).

(e) Intentionally Omitted.

(f) Limitation on Partial Prepayments. In no event shall Lender have any obligation to accept a partial prepayment.

(g) Prepayment and Defeasance of this Note and the Other Note. Notwithstanding anything to the contrary contained herein, any defeasance or prepayment permitted hereunder and consummated in accordance with the terms and conditions contained herein must occur simultaneously with a defeasance or prepayment permitted by (and consummated in accordance with the applicable terms and conditions of) the Other Note. Lender shall have no obligation to accept any payment or defeasance of this Note in accordance with the terms and provisions of this Note unless the Other Note is simultaneously prepaid or defeased, as applicable, in accordance with the terms and conditions of the Other Note.

ARTICLE 6: SECURITY

This Note is secured by the Security Instrument and the Other Security Documents. The term "**Security Instrument**" as used in this Note and the Other Note shall mean the Deed of Trust and Security Agreement dated as of the date hereof given by Borrower (among others) to Lender covering the fee simple estate of Borrower in certain premises located in Monterey, California, and other property, as more particularly described therein (collectively, the "**Property**") and intended to be duly recorded in the county in which the Property is located. The term "**Other Security Documents**" as used in this Note shall mean all and any of the documents other than this Note, the Other Note or the Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guarantee payment of this Note. Whenever used, the singular number shall include the plural, the plural number shall include the singular, and the words "Lender" and "Borrower" shall include their respective successors, assigns, heirs, executors and administrators. The term "**Other Note**" as used herein shall refer, individually or collectively (as the context requires), to each Individual Note (as defined in the Security Instrument) other than this Note. Lender by acceptance of this Note hereby agrees to pursue its remedies under each Note executed by Borrower jointly and in a manner which is not more detrimental to Borrower than if Borrower executed only one Note.

All of the terms, covenants and conditions contained in the Other Note, the Security Instrument and the Other Security Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein.

ARTICLE 7: SAVINGS CLAUSE

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

ARTICLE 8: LATE CHARGE

If any monthly installment of principal and interest payable under this Note is not paid on the date on which it was due, Borrower shall pay to Lender upon demand an amount equal to the lesser of two and one half percent (2.5%) of the unpaid sum or the maximum amount permitted by applicable law to defray the expenses incurred by Lender in handling and processing the delinquent payment and to compensate Lender for the loss of the use of the delinquent payment and the amount shall be secured by the Security Instrument and the Other Security Documents.

ARTICLE 9: NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 10: JOINT AND SEVERAL LIABILITY

If there is more than one Borrower, the obligations and liabilities of each such person or party shall be joint and several.

ARTICLE 11: WAIVERS

Except as otherwise provided herein, in the Other Note, in the Security Instrument, or in the Other Security Documents, Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof or the Other Note or any installment thereof, and no alteration, amendment or waiver of any provision of this Note, the Other Note, the Security Instrument or the Other Security Documents made by agreement between Lender or any other person or party

shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other person or entity who may become liable for the payment of all or any part of the Debt, under this Note, the Other Note, the Security Instrument or the Other Security Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Other Note, the Security Instrument or the Other Security Documents. If Borrower is a partnership, the agreements herein contained shall remain in force and applicable, notwithstanding any changes in the individuals comprising the partnership. If Borrower is a corporation, the agreements contained herein shall remain in full force and applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation. If Borrower is a limited liability company, the agreements contained herein shall remain in full force and applicable notwithstanding any changes in the members comprising, or the managers, officers or agents relating to, the limited liability company. The term "Borrower", as used herein, shall include any alternate or successor partnership, corporation, limited liability company or other entity or person to the Borrower named herein, but any predecessor partnership (and their partners), corporation, limited liability company, other entity or person shall not thereby be released from any liability except as otherwise provided in the Security Instrument or Other Security Documents. Nothing in this Article 11 shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership which may be set forth in the Security Instrument or any Other Security Document.

ARTICLE 12: INTENTIONALLY OMITTED

ARTICLE 13: WAIVER OF TRIAL BY JURY

BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THIS NOTE AND THE OTHER NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THIS NOTE AND THE OTHER NOTE, THIS NOTE, THE OTHER NOTE THE SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

ARTICLE 14: EXCULPATION

(a) Notwithstanding any contrary provisions contained herein or in the Other Note, the Security Instrument or the Other Security Documents (other than a provision herein or therein which expressly states that it is intended to override any exculpatory provisions of this Note or the Other Note), Lender shall not enforce the liability and obligation of Borrower, to perform and observe the obligations contained in this Note, the Other Note, the Security Instrument or the Other Security Documents by any action or proceeding wherein a money judgment shall be sought against Borrower or any partner or member of Borrower, except that Lender may bring a foreclosure action (where no deficiency judgment is sought against Borrower or any partner or member of Borrower), an action for specific performance or any

other appropriate action or proceeding to enable Lender to enforce and realize upon this Note, the Other Note, the Security Instrument, the Other Security Documents, and the interests in the Property; and any other collateral given to Lender pursuant to the Security Instrument and the Other Security Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall not be enforceable against Borrower (or any partner or member of Borrower) except to the extent of Borrower's interest in the Property and in any other collateral given to Lender as security, and Lender, by accepting this Note, the Security Instrument and the Other Security Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower (or any partner or member of Borrower) in any such action or proceeding, under or by reason of or in connection with this Note, the Other Note, the Security Instrument or the Other Security Documents. The provisions of this paragraph shall not, however, (1) constitute a waiver, release or impairment of any obligation evidenced or secured by this Note, the Other Note, the Security Instrument or the Other Security Documents; (2) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument, where Lender is required to do so in order to properly pursue such action (and subject to the above-described prohibition on suing for, seeking or demanding any deficiency judgment); (3) affect the validity or enforceability of any guaranty or indemnity made in connection with this Note, the Other Note, the Security Instrument or the Other Security Documents; (4) impair the right of Lender to obtain the appointment of a receiver; (5) impair the enforcement of any assignment; or (6) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any losses suffered by Lender arising out of the following:

(i) fraud or intentional misrepresentation by Borrower in connection with this Note, the Other Note, the Security Instrument or the Other Security Documents;

(ii) any material inaccuracy, error or omission contained in the rent roll of the Property certified to by Borrower in that certain Borrower's Certification executed in connection with the Loan

(iii) the failure of Borrower or Sponsor to remedy (after thirty (30) days notice thereof from Lender referencing this provision) any failure to provide financial information when and as required by the Security Instrument;

(iv) Willful Misconduct (as defined below) of Borrower in connection with Borrower's operation of the Property. As used herein, the term "**Willful Misconduct**" shall mean, and refer to, any affirmative act by Borrower (1) during the existence of any event which, with the passage or time, the giving of notice, or both would constitute an Event of Default, or (2) that is the cause of such Event of Default which, in either case, is undertaken by Borrower with the express intention of causing waste or physical damage to the Property and that actually results in physical damage or waste to the Property;

(v) the breach of provisions in this Note, the Other Note, the Security Instrument or the Other Security Documents concerning Environmental Laws and Hazardous Substances and any indemnification of Lender with respect thereto in any document;

(vi) the removal or disposal of any portion of the Property by Borrower after the occurrence and during the continuance of an Event of Default under this Note, the Other Note, the Security Instrument or the Other Security Documents;

(vii) the misapplication or conversion by Borrower of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Property, (B) any awards or other amounts received in connection with the condemnation of all or a portion of the Property, or (C) any Rents (other than as permitted by the Cash Management Agreement) after the occurrence and during the continuance of an Event of Default under this Note, the Other Note, the Security Instrument or the Other Security Documents;

(viii) any security deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to such foreclosure or action in lieu thereof;

(ix) the violation by Borrower of the representations or covenants contained in Section 4.3 of the Security Instrument;

(x) any matters set forth in Section 13.4 of the Security Instrument; or

(xi) Borrower's failure to make any required deposit to the Escrow Fund as required pursuant to the Security Instrument.

(b) Notwithstanding anything to the contrary in this Note, the Other Note, the Security Instrument or the Other Security Documents, the agreement of Lender not to pursue recourse liability as set forth in subsection (a) above SHALL BECOME NULL AND VOID and shall be of no further force and effect and the Debt shall be fully recourse to Borrower in the event that: (A) the first full Monthly Payment is not paid when due; (B) a Prohibited Transfer (as defined in the Security Instrument) occurs in violation of Article 8 of the Security Instrument; (C) an Event of Default occurs and is continuing and the Remediation Completion has not yet occurred (provided, that, (I) Borrower shall only be liable under this subsection (C) to the extent that, as of the date of the applicable Event of Default, either (1) the Environmental Insurance is no longer in place or (2) less than two (2) years remain of the term of the Environmental Insurance and (II) Borrower's liability under this subsection (C) shall not exceed $10,000,000); and/or (D) if (I) an involuntary petition (other than the collusive involuntary petitions described in the following clause (II)) is filed against Borrower under the U.S. Bankruptcy Code or any other federal or state bankruptcy or insolvency law (collectively, the **"Insolvency Laws**") and is not dismissed within one hundred twenty (120) days of the filing thereof, or (II) Borrower files or consents to the filing against Borrower of a petition, voluntary or involuntary, under applicable Insolvency Laws, or any partner, member or equivalent person of Borrower, or any person acting in concert with Borrower or any of the foregoing persons, files or joins in the filing against Borrower of an involuntary petition under applicable Insolvency Laws.

(c) Nothing herein shall be deemed to be a waiver of any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with this Note, the Security Instrument or the Other Security Documents.

ARTICLE 15: AUTHORITY

Borrower (and the undersigned representative of Borrower, if any) represents that Borrower has full power, authority and legal right to execute and deliver this Note, the Other Note, the Security Instrument and the Other Security Documents and that this Note, the Other Note, the Security Instrument and the Other Security Documents constitute valid and binding obligations of Borrower, except as may be limited by (i) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and (ii) general principles of equity.

ARTICLE 16: APPLICABLE LAW

This Note shall be deemed to be a contract entered into pursuant to the laws of the State of California and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of California and applicable laws of the United States of America.

ARTICLE 17: SERVICE OF PROCESS

(a) Borrower will maintain a place of business or an agent for service of process in San Diego, California and give prompt notice to Lender of the address of such place of business and of the name and address of any new agent appointed by it, as appropriate. Borrower further agrees that the failure of its agent for service of process to give it notice of any service of process will not impair or affect the validity of such service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of Borrower available to be served, and if it at that time has no place of business in San Diego, California then Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to the first paragraph hereof.

(b) Borrower initially designates John W. Chamberlain, with offices on the date hereof at 11455 El Camino Real, Suite 200, San Diego, California 92130, to receive for and on behalf of Borrower service of process with respect to this Note and the other Loan Documents.

ARTICLE 18: COUNSEL FEES

In the event that it should become necessary to employ counsel to collect the Debt or to protect or foreclose the security therefor, Borrower also agrees to pay all reasonable fees and expenses of Lender, including, without limitation, reasonable attorney’s fees for the services of such counsel whether or not suit be brought.

ARTICLE 19: NOTICES

All notices or other written communications to Borrower or Lender hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the

U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Borrower or Lender at their addresses set forth in the Security Instrument or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

ARTICLE 20: MISCELLANEOUS

Except as otherwise specified herein (or in the Other Note, the Security Instrument or the Other Security Documents), wherever pursuant to this Note (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the reasonable determination of Lender applied in good faith. All approvals of or waivers by Lender in respect of any of the terms, conditions or requirements of this Note must be in writing. No waiver with respect to any condition, breach or other matter shall extend to or be taken in any manner whatsoever to affect any other condition, breach or matter or affect Lender's rights resulting therefrom. Whenever any payment to be made hereunder or under any other Loan Document shall be stated to be due on a day which is not a Business Day, the due date thereof shall be deemed to be the immediately succeeding Business Day, provided, however, with respect to the balloon payment due hereunder on the Maturity Date, if the Maturity Date does not occur on a Business Day, the Maturity Date shall be deemed to occur on the immediately preceding Business Day.

ARTICLE 21: DEFINITIONS

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Security Instrument and the Other Security Documents.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

BORROWER:

[_____], a [_____]

By: _____
Name:
Title:

ADDENDUM TO NOTE

BY SIGNING BELOW, BORROWER EXPRESSLY ACKNOWLEDGES AND UNDERSTANDS THAT, PURSUANT TO THE TERMS OF THIS NOTE, BORROWER HAS AGREED THAT IT HAS NO RIGHT TO PREPAY THIS NOTE PRIOR TO THE MATURITY DATE (EXCEPT AS EXPRESSLY SET FORTH TO THE CONTRARY HEREIN) OR IN THE SECURITY INSTRUMENT, AND THAT IT SHALL BE LIABLE FOR THE PAYMENT OF THE PREPAYMENT PREMIUM FOR PREPAYMENT OF THIS NOTE UPON ACCELERATION OF THIS NOTE IN ACCORDANCE WITH ITS TERMS EXCEPT AS EXPRESSLY SET FORTH IN THE HEREIN OR IN THE SECURITY INSTRUMENT. FURTHER, BY SIGNING BELOW, BORROWER WAIVES ANY RIGHTS IT MAY HAVE UNDER SECTION 2954.10 OF THE CALIFORNIA CIVIL CODE, OR ANY SUCCESSOR STATUTE, AND EXPRESSLY ACKNOWLEDGES AND UNDERSTANDS THAT LENDER HAS MADE THE LOAN IN RELIANCE ON THE AGREEMENTS AND WAIVER OF BORROWER AND THAT LENDER WOULD NOT HAVE MADE THE LOAN WITHOUT SUCH AGREEMENTS AND WAIVER OF BORROWER.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Addendum to Note as of the day and year first above written.

[_____], a [_____]

By: _____

Name:

Title:

Exhibit 10.27

LOAN NO. 59227
SERVICING NO. 3206596

LOAN AGREEMENT

Dated as of August 5, 2005

Between

FIRST STATES INVESTORS 239, LLC,

as Borrower

and

BANK OF AMERICA, N.A.,

as Lender

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LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of August 5, 2005 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement**"), between BANK OF AMERICA, N.A., a national banking association, having an address at 214 North Tryon Street, Charlotte, North Carolina 28255 (together with its successors and/or assigns, "**Lender**") and FIRST STATES INVESTORS 239, LLC, a Delaware limited liability company having an address at c/o American Financial Realty Trust, 680 Old York Road, Suite 200, Jenkintown, Pennsylvania 19046 (together with its successors and/or assigns, "**Borrower**").

RECITALS:

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

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

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

ARTICLE 1
DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1. Definitions.

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

"**Acceptable Accountant**" shall mean a "Big Four" accounting firm or other independent certified public accountant reasonably acceptable to Lender.

"**Account Collateral**" shall mean (i) the Accounts, and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in the Accounts; (ii) any and all amounts in or credited to the Accounts invested in Permitted Investments; (iii) all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing; and (iv) to the extent not covered by clauses (i)—(iii) above, all "proceeds" (as defined under the UCC as in effect in the State in which the Accounts are located) of any or all of the foregoing.

"**Accounts**" shall mean the Lockbox Account, the Cash Management Account, the Tax and Insurance Reserve Account, the Replacement Reserve Account, the Leasing Reserve Account and any other account or sub-account established by this Agreement, the Mortgage, or the other Loan Documents.

"**Accrued Interest**" shall have the meaning set forth in Section 2.2(g) hereof.

"**Acquired Property**" shall have the meaning set forth in Section 5.11(c)(i)(A) hereof.

"**Acquired Property Statements**" shall have the meaning set forth in Section 5.11(c)(i)(A) hereof.

"**Act**" shall have the meaning set forth in Section 6.1(c).

"**Acts of Terror**" shall have the meaning set forth in Section 8.1(a) hereof.

"**Actual Operating Expenses**" shall mean, with respect to a given period of time, the portion of Operating Expenses actually payable with respect to the operation of the Property.

"**Additional Replacement**" shall have the meaning set forth in Section 9.5(g) hereof.

"**Affiliate**" shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

"**Affiliated Loans**" shall mean a loan made by Lender to a parent, subsidiary or such other entity affiliated with Borrower or Borrower Principal.

"**Affiliated Manager**" shall have the meaning set forth in Section 7.1 hereof.

"**AFRT**" shall mean American Financial Realty Trust, a Maryland real estate investment trust.

"**Agreed Terrorism Premium**" shall mean the market-based cost per annum of stand-alone coverage for casualty events resulting from Acts of Terror that is agreed upon between Borrower and Lender as of the Closing Date to be $76,204, as increased over time by five percent (5%) per annum.

"**ALTA**" shall mean American Land Title Association, or any successor thereto.

"**Alteration Threshold**" means $250,000.00.

"**Annual Budget**" shall mean the operating budget, including all planned capital expenditures, for the Property approved by Lender in accordance with Section 5.11(a)(iv) hereof for the applicable calendar year or other period.

"**Anticipated Prepayment Date**" means October 1, 2015.

"**Assignment of Agreements**" shall mean that certain Assignment of Agreements, Permits and Contracts, dated the date hereof, executed by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Assignment of Management Agreement**" shall mean any Assignment and Subordination of Management Agreement in the form attached hereto as Exhibit C among Lender, Borrower and the relevant Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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

"**Borrower Principal**" shall mean First States Group, L.P., a Delaware limited partnership.

"**Borrower Principal Obligations**" shall have the meaning set forth in Section 18.10(c) hereof.

"**Business Day**" shall mean a day on which Lender is open for the conduct of substantially all of its banking business at its office in the city in which the Note is payable (excluding Saturdays and Sundays).

"**Business Interruption Proceeds**" shall mean any and all proceeds of the insurance coverage required under Section 8.1(a)(iii) hereof.

"**Cash Management Account**" shall have the meaning set forth in Section 10.1(a) hereof.

"**Casualty**" shall have the meaning set forth in Section 8.2.

"**Certified Coverage**" shall mean the scope of coverage afforded by and described in TRIA.

"**Closing Date**" shall mean the date of the funding of the Loan.

"**Control**" shall have the meaning set forth in Section 7.1 hereof.

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

"**Condemnation Proceeds**" shall have the meaning set forth in Section 8.4(b)

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

"**Debt**" shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Note together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, this Agreement, the Mortgage or any other Loan Document.

"**Debt Service**" shall mean, with respect to any particular period of time, scheduled principal and/or interest payments under the Note.

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

"**Default Rate**" shall mean, with respect to the Loan, a rate per annum equal to the lesser of (a) the maximum rate permitted by applicable law, or (b) five percent (5%) above the Note Rate.

"**Defeasance Collateral**" shall have the meaning set forth in Section 2.4(b)(i)(D)(2) hereof.

"**Defeasance Security Agreement**" shall have the meaning set forth in Section 2.4(b)(i)(D)(2) hereof.

"**Disclosure Document**" shall have the meaning set forth in Section 13.5 hereof.

"**Eligible Account**" shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with the corporate trust department of a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a federally chartered depository institution or trust company acting in its fiduciary capacity is subject to the regulations regarding adversary funds on deposit therein under 12 CFR §9.10(b), and in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital surplus of at least $50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

"**Eligible Institution**" shall mean a depository institution or trust company insured by the Federal Deposit Insurance Corporation, the short term unsecured debt obligations or commercial paper of which are rated at least "A-1" by S&P, "P-1" by Moody's and "F-1" by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "AA-" by Fitch and S&P (or "A-" by S&P, if such depository's short term unsecured debt rating is at least "A-1" by S&P) and "Aa2" by Moody's). Notwithstanding the foregoing, prior to a Securitization, Bank of America, N.A. shall be an Eligible Institution.

"**Embargoed Person**" shall mean any person identified by OFAC or any other Person with whom a Person resident in the United States of America may not conduct business or transactions by prohibition of federal law or Executive Order of the President of the United States of America.

"**Environmental Indemnity**" shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Borrower Principal in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Environmental Law**" shall have the meaning set forth in Section 12.5 hereof.

"**Environmental Liens**" shall have the meaning set forth in Section 12.5 hereof.

"**Environmental Report**" shall have the meaning set forth in Section 12.5 hereof.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor statutes thereto and applicable regulations issued pursuant thereto in temporary or final form.

"**Event of Default**" shall have the meaning set forth in Section 11.1 hereof.

"**Excess Cash**" shall have the meaning set forth in Section 10.2(c)(ix) hereof.

"**Exchange Act**" shall mean the Securities and Exchange Act of 1934, as amended.

"**Exchange Act Filing**" shall have the meaning set forth in Section 5.11(c) hereof.

"**Extraordinary Expense**" shall mean an operating expense or capital expenditure with respect to the Property that (i) is not set forth on the Annual Budget and (ii) is not subject to payment by withdrawals from the Replacement Reserve Account. Borrower shall deliver promptly to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for the approval of Lender.

"**FFIC**" means Fireman's Fund Insurance Company.

"**FFIC Lease**" means collectively, (i) the Amended and Restated Lease Agreement for San Marin I by and between 777 San Marin Associates, L.P. and FFIC, dated November 4, 1992, (ii) the Lease Agreement for San Marin II and III by and between 775/779 San Marin Associates, L.P. and FFIC, dated November 4, 1992, (iii) the First Amendment of Lease (San Marin I) between Borrower and FFIC, dated August 5, 2005, and (iv) the First Amendment of Lease (San Marin II and III) between Borrower and FFIC, dated August 5, 2005.

"**Fitch**" shall mean Fitch, Inc.

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

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

"**Hazardous Materials**" shall have the meaning set forth in Section 12.5 hereof.

"**Improvements**" shall have the meaning set forth in the granting clause of the Mortgage.

"**Indemnified Parties**" shall mean (a) Lender, (b) any prior owner or holder of the Loan or Participations in the Loan, (c) any servicer or prior servicer of the Loan, (d) any Investor or any prior Investor in any Securities, (e) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of any Investor or other third party, (f) any receiver or other fiduciary appointed in a foreclosure or other Creditors Rights Laws proceeding, (g) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing, and (h) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties' assets and business), in all cases whether during the term of the Loan or as part of or following a foreclosure of the Mortgage.

"**Independent Director**" shall have the meaning set forth in Section 6.4(a).

"**Initial Note Rate**" shall have the meaning set forth in the definition of "Note Rate" hereunder.

"**Insurance Premiums**" shall have the meaning set forth in Section 8.1 hereof.

"**Insurance Proceeds**" shall have the meaning set forth in Section 8.4(b) hereof.

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

"**Investor**" shall have the meaning set forth in Section 13.3 hereof.

"**Issuer Group**" shall have the meaning set forth in Section 13.5(b) hereof.

"**Issuer Person**" shall have the meaning set forth in Section 13.5(b) hereof.

"**Lease**" shall have the meaning set forth in the Mortgage.

"**Leasing Reserve Account**" shall have the meaning set forth in Section 9.3 hereof.

"**Leasing Reserve Fund**" shall have the meaning set forth in Section 9.3 hereof.

"**Leasing Reserve Monthly Deposit**" shall have the meaning set forth in Section 9.3 hereof.

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

Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

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

"**LLC Agreement**" shall have the meaning set forth in Section 6.1(c).

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

"**Loan Documents**" shall mean, collectively, this Agreement, the Note, the Mortgage, the Environmental Indemnity, any Assignment of Management Agreement, Assignment of Agreements, the Lockbox Agreement, and any and all other documents, agreements and certificates executed and/or delivered in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Lockbox**" shall mean the post office address maintained by Lockbox Bank on behalf of Borrower and Lender pursuant to the terms of the Lockbox Agreement and to which Borrower shall direct all Rents and other income from the Property be sent pursuant to the Tenant Direction Letters.

"**Lockbox Account**" shall have the meaning set forth in Section 10.1(a) hereof.

"**Lockbox Agreement**" shall mean that certain agreement, if any, by and among Borrower, Lender and Lockbox Bank, in form and substance satisfactory to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to the operation and maintenance of, and application of funds in, the Lockbox Account to the extent a Lockbox Account is established pursuant to Section 10.1(a) hereof.

"**Lockbox Bank**" shall mean Wachovia Bank, National Association or any successor Eligible Institution approved or appointed by Lender acting as Lockbox Bank under the Lockbox Agreement.

"**Lockout Period**" shall mean the period commencing on the date hereof and ending on the Anticipated Prepayment Date.

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

"**Major Lease**" shall mean as to the Property (i) any Lease which, individually or when aggregated with all other leases at the Property with the same Tenant or

its Affiliate, either (A) accounts for ten percent (10%) or more of the Property's aggregate Net Operating Income, or (B) demises 25,000 square feet or more of the Property's gross leasable area, (ii) any Lease which contains any option, offer, right of first refusal or other similar entitlement to acquire all or any portion of the Property, or (iii) any instrument guaranteeing or providing credit support for any Lease meeting the requirements of (i) or (ii) above.

"**Management Agreement**" shall mean any management agreement entered into by and between Borrower and Manager and acceptable to Lender, pursuant to which Manager is to provide management and other services with respect to the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified in accordance with the terms of this Agreement.

"**Manager**" shall mean First States Management Corp., L.P., a Delaware limited partnership, or such other entity selected as the manager of the Property in accordance with the terms of this Agreement.

"**Maturity Date**" shall mean the Anticipated Prepayment Date; provided, however, that in the event that the Debt is not paid in full on the Anticipated Prepayment Date, the Maturity Date shall automatically be extended, as of the Anticipated Prepayment Date, to October 15, 2018.

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

"**Member**" shall have the meaning set forth in Section 6.1(c).

"**Mold**" shall have the meaning set forth in Section 12.5 hereof.

"**Monthly Payment Amount**" shall mean the monthly payment of interest and principal due on each Scheduled Payment Date as set forth in Section 2.2(b) hereof.

"**Moody's**" shall mean Moody's Investor Services, Inc.

"**Mortgage**" shall mean that certain first priority Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated the date hereof, executed and delivered by Borrower as security for the Loan and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Net Operating Income**" shall mean, with respect to any period of time, the amount obtained by subtracting Operating Expenses from Operating Income, as such amount may be adjusted by Lender in its good faith discretion based on Lender's underwriting standards, including without limitation, adjustments for vacancy allowance.

"**Net Proceeds**" shall have the meaning set forth in Section 8.4(b) hereof.

"**Net Proceeds Deficiency**" shall have the meaning set forth in Section 8.4(b)(vi) hereof.

"**Non-Certified Coverage**" shall mean Terrorism Coverage, which such coverage (i) is not limited by TRIA or such other applicable laws, rules, or regulations, and (ii) shall cover both foreign or domestic Acts of Terror.

"**Note**" shall mean that certain promissory note of even date herewith in the principal amount of $190,687,500.00, made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Note Rate**" shall mean (a) from the date hereof through but not including the Anticipated Prepayment Date, an interest rate equal to five and five hundred forty-seven thousand eight hundred fifty-one millionths percent (5.547851 %) per annum (the "**Initial Note Rate**"), and (b) from the Anticipated Prepayment Date through and including the date the Debt is paid in full, an interest rate per annum equal to the sum of (i) the Initial Note Rate plus (ii) five percent (5%) (the "**Revised Note Rate**").

"**OFAC**" shall have the meaning set forth in Section 4.38 hereof.

"**Offering Document Date**" shall have the meaning set forth in Section 5.11(c)(i)(D) hereof.

"**Operating Expenses**" shall mean, with respect to any period of time, the total of all expenses actually paid or payable, computed in accordance with GAAP, of whatever kind relating to the operation, maintenance and management of the Property, including, without limitation, utilities, ordinary repairs and maintenance, Insurance Premiums, license fees, Taxes and Other Charges, advertising expenses, payroll and related taxes, computer processing charges, management fees equal to the greater of 4% of the Operating Income and the management fees actually payable under the Management Agreement for such period of time, operational equipment or other lease payments as approved by Lender, normalized capital expenditures equal to $213,099 per annum, normalized tenant improvement costs equal to $455,499 per annum and normalized leasing commissions equal to $482,647 per annum, but specifically excluding depreciation and amortization, income taxes, Debt Service, any incentive fees due under the Management Agreement, any item of expense that in accordance with GAAP should be capitalized, any item of expense that would otherwise be covered by the provisions hereof but which is paid by any Tenant under such Tenant's Lease or other agreement, and deposits into the Reserve Accounts.

"**Operating Income**" shall mean, with respect to any period of time, all income, computed in accordance with GAAP, derived from the ownership and operation of the Property from whatever source, including, without limitation, Rents, utility charges, escalations, forfeited security deposits, interest on credit accounts, service fees or charges, license fees, parking fees, rent concessions or credits, and other required pass-throughs but specifically excluding sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority, refunds and uncollectible accounts, sales of furniture, fixtures and equipment, interest income from any source other than the escrow accounts, Reserve Accounts or other accounts required pursuant to the Loan Documents, Insurance Proceeds (other than business interruption or other loss of income insurance), Awards, percentage rents, unforfeited security deposits, utility and other similar deposits, income from tenants not paying rent, income from tenants in bankruptcy, non-recurring or extraordinary income, including, without limitation lease termination payments, and any disbursements to Borrower from the Reserve Funds.

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

"**Participations**" shall have the meaning set forth in Section 13.1 hereof.

"**Patriot Act**" shall have the meaning set forth in Section 4.38 hereof.

"**Permitted Encumbrances**" shall mean collectively, (a) the Lien and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender's sole discretion.

"**Permitted Investments**" shall mean to the extent available from Lender or Lender's servicer for deposits in the Reserve Accounts and the Lockbox Account, any one or more of the following obligations or securities acquired at a purchase price of not greater than par, including those issued by a servicer of the Loan, the trustee under any securitization or any of their respective Affiliates, payable on demand or having a maturity date not later than the Business Day immediately prior to the date on which the funds used to acquire such investment are required to be used under this Agreement and meeting one of the appropriate standards set forth below:

(a) obligations of, or obligations fully guaranteed as to payment of principal and interest by, the United States or any agency or instrumentality thereof provided such obligations are backed by the full faith and credit of the United States of America including, without limitation, obligations of: the U.S. Treasury (all direct or fully guaranteed obligations), the Farmers Home Administration (certificates of beneficial ownership), the General Services Administration (participation certificates), the U.S. Maritime Administration (guaranteed Title XI financing), the Small Business Administration (guaranteed participation certificates and guaranteed pool certificates), the U.S. Department of Housing and Urban Development (local authority bonds) and the Washington Metropolitan Area Transit Authority (guaranteed transit bonds); provided, however, that the investments described in this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) be rated "AAA" or the equivalent by each of the Rating Agencies, (iii) if rated by S&P, must not have an "r" highlighter affixed to their rating, (iv) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (v) such investments must not be subject to liquidation prior to their maturity;

(b) Federal Housing Administration debentures;

(c) obligations of the following United States government sponsored agencies: Federal Home Loan Mortgage Corp. (debt obligations), the Farm Credit System (consolidated systemwide bonds and notes), the Federal Home Loan Banks (consolidated debt obligations), the Federal National Mortgage Association (debt obligations), the Financing Corp. (debt obligations), and the Resolution Funding Corp. (debt obligations); provided, however, that the investments described in this

clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) if rated by S&P, must not have an "r" highlighter affixed to their rating, (iii) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (iv) such investments must not be subject to liquidation prior to their maturity;

(d) federal funds, unsecured certificates of deposit, time deposits, bankers' acceptances and repurchase agreements with maturities of not more than 365 days of any bank, the short term obligations of which at all times are rated in the highest short term rating category by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency in the highest short term rating category and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities); provided, however, that the investments described in this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) if rated by S&P, must not have an "r" highlighter affixed to their rating, (iii) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (iv) such investments must not be subject to liquidation prior to their maturity;

(e) fully Federal Deposit Insurance Corporation-insured demand and time deposits in, or certificates of deposit of, or bankers' acceptances with maturities of not more than 365 days and issued by, any bank or trust company, savings and loan association or savings bank, the short term obligations of which at all times are rated in the highest short term rating category by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency in the highest short term rating category and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities); provided, however, that the investments described in this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) if rated by S&P, must not have an "r" highlighter affixed to their rating, (iii) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (iv) such investments must not be subject to liquidation prior to their maturity;

(f) debt obligations with maturities of not more than 365 days and at all times rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities) in its highest long-term unsecured rating category; provided, however, that the investments described in this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) if rated by S&P, must not have an "r" highlighter affixed to their rating, (iii) if such investments have a variable rate of interest, such interest rate must be tied to a single

interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (iv) such investments must not be subject to liquidation prior to their maturity;

(g) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) with maturities of not more than 365 days and that at all times is rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities) in its highest short-term unsecured debt rating; provided, however, that the investments described in this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) if rated by S&P, must not have an "r" highlighter affixed to their rating, (iii) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (iv) such investments must not be subject to liquidation prior to their maturity;

(h) units of taxable money market funds, with maturities of not more than 365 days and which funds are regulated investment companies, seek to maintain a constant net asset value per share and invest solely in obligations backed by the full faith and credit of the United States, which funds have the highest rating available from each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities) for money market funds; and

(i) any other security, obligation or investment which has been approved as a Permitted Investment in writing by (i) Lender and (ii) each Rating Agency, as evidenced by a written confirmation that the designation of such security, obligation or investment as a Permitted Investment will not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities by such Rating Agency;

provided, however, that no obligation or security shall be a Permitted Investment if (A) such obligation or security evidences a right to receive only interest payments, (B) the right to receive principal and interest payments on such obligation or security are derived from an underlying investment that provides a yield to maturity in excess of one hundred twenty percent (120%) of the yield to maturity at par of such underlying investment or (C) such obligation or security has a remaining term to maturity in excess of one (1) year.

"**Permitted Transferee**" shall mean any of the following entities:

(i) a pension fund, pension trust or pension account that immediately prior to such transfer has total real estate assets with a market value of at least $600,000,000;

(ii) a pension fund advisor who (a) immediately prior to such transfer controls, directly and/or indirectly, at least $600,000,000 of real estate assets (exclusive of the Property), and (b) is acting on behalf of one or more pension funds that, in the aggregate, satisfy the requirements of clause (i) of this definition;

(iii) an insurance company which is subject to supervision by the insurance commissioner, or a similar official or agency, of a state or territory of the United States (including the District of Columbia) (i) with a net worth, determined as of a date no more than six (6) months prior to the date of the transfer, of at least $600,000,000, and (ii) who, immediately prior to such transfer, controls, directly and/or indirectly, real estate assets of at least $600,000,000 (exclusive of the Property);

(iv) an association organized under the banking laws of the United States or any state or territory of the United States (including the District of Columbia) (i) with a combined capital and surplus of at least $600,000,000, and (ii) who, immediately prior to such transfer, controls, directly or indirectly, real estate assets of at least $600,000,000 (exclusive of the Property); or

(v) any entity (a) (x) with an "investment grade rating" from each of the Rating Agencies or (y) who owns and operates at least 10 first-class office buildings totaling at least five million square feet in major metropolitan markets (exclusive of the Property), (b) who has a net worth, determined as of a date no more than six (6) months prior to the date of such transfer, of at least $600,000,000 (exclusive of the Property) and (c) who, immediately prior to such transfer, controls, directly and/or indirectly, real estate assets with a total market value of at least $600,000,000 (exclusive of the Property).

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

"**Personal Property**" shall have the meaning set forth in the granting clause of the Mortgage.

"**Policies**" shall have the meaning set forth in Section 8.1 hereof.

"**Prohibited Transfer**" shall have the meaning set forth in Section 7.2 hereof.

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

"**Property Condition Report**" shall mean a report prepared by a company satisfactory to Lender regarding the physical condition of the Property, satisfactory in form and substance to Lender in its sole discretion.

"**Provided Information**" shall have the meaning set forth in Section 13.4(a) hereof.

"**Qualified Manager**" shall mean Manager or a reputable and experienced professional management organization, in each case, (a) which manages, together with its affiliates, at least ten (10) first class office buildings totaling at least 3,500,000 square feet of gross leasable area, exclusive of the Property and (b) approved by Lender, which approval shall not have been unreasonably withheld and for which Lender shall have received (i) written confirmation from the Rating Agencies that the employment of such manager will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization, and (ii) with respect to any Affiliated Manager, a revised substantive non- consolidation opinion if one was delivered in connection with the closing of the Loan.

"**Rating Agencies**" shall mean each of S&P, Moody's and Fitch, or any other nationally-recognized statistical rating agency which has been approved by Lender.

"**REA**" shall mean any construction, operation and reciprocal easement agreement or similar agreement (including any separate agreement or other agreement between Borrower and one or more other parties to an REA with respect to such REA) affecting the Property or portion thereof.

"**Release**" shall have the meaning set forth in Section 12.5 hereof.

"**REMIC** Prohibition Period" shall have the meaning set forth in Section 2.4(b)(iv) hereof.

"**REMIC Trust**" shall mean a "real estate mortgage investment conduit" (within the meaning of Section 860D, or applicable successor provisions, of the Code) that holds the Note.

"**Rent Roll**" shall have the meaning set forth in Section 4.25 hereof.

"**Rents**" shall have the meaning set forth in the Mortgage.

"**Replacement Reserve Account**" shall have the meaning set forth in Section 9.2(b) hereof.

"**Replacement Reserve Funds**" shall have the meaning set forth in Section 9.2(b) hereof.

"**Replacement Reserve Monthly Deposit**" shall have the meaning set forth in Section 9.2(b) hereof.

"**Replacements**" shall have the meaning set forth in Section 9.2(a) hereof.

"**Required Work**" shall have the meaning set forth in Section 9.4 hereof.

"**Reserve Accounts**" shall mean the Tax and Insurance Reserve Account, the Replacement Reserve Account, Leasing Reserve Account, or any other escrow account established by the Loan Documents.

"**Reserve Funds**" shall mean the Tax and Insurance Reserve Funds, the Replacement Reserve Funds, Leasing Reserve Funds, or any other escrow funds established by the Loan Documents.

"**Restoration**" shall mean, following the occurrence of a Casualty or a Condemnation which is of a type necessitating the repair of the Property, the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

"**Restoration Consultant**" shall have the meaning set forth in Section 8.4(b)(iii) hereof.

"**Restoration Retainage**" shall have the meaning set forth in Section 8.4(b)(iv) hereof.

"**Restricted Party**" shall have the meaning set forth in Section 7.1 hereof.

"**Revised Note Rate**" shall have the meaning set forth in the definition of "Note Rate" hereunder.

"**Sale or Pledge**" shall have the meaning set forth in Section 7.1 hereof.

"**Scheduled Payment Date**" shall have the meaning set forth in Section 2.2(b) hereof.

"**Securities**" shall have the meaning set forth in Section 13.1 hereof.

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

"**Securities Liabilities**" shall have the meaning set forth in Section 13.5 hereof.

"**Securitization**" shall have the meaning set forth in Section 13.1 hereof.

"**Special Member**" shall have the meaning set forth in Section 6.1(c).

"**Standard Statements**" shall have the meaning set forth in Section 5.11(c)(i)(A) hereof.

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

"**State**" shall mean the state in which the Property or any part thereof is located.

"**Substitute Lease**" shall mean a triple net lease for the entire Property entered into by Borrower, with the prior written consent of Lender, with a Substitute Tenant.

"**Substitute Tenant**" shall mean a tenant of similar creditworthiness to FFIC and otherwise acceptable to Lender.

"**Successor Borrower**" shall have the meaning set forth in Section 2.4(b)(iii) hereof.

"**Tax and Insurance Reserve Funds**" shall have the meaning set forth in Section 9.6 hereof.

"**Tax and Insurance Reserve Account**" shall have the meaning set forth in Section 9.6 hereof.

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

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

"**Tenant Direction Letter**" shall have the meaning set forth in Section 10.2(a)(i) hereof.

"**Termination Fee Deposit**" shall have the meaning set forth in Section 9.3(b).

"**Title Insurance Policy**" shall mean that certain ALTA mortgagee title insurance policy issued with respect to the Property and insuring the lien of the Mortgage.

"**Transferee**" shall have the meaning set forth in Section 7.5 hereof.

"**TRIA**" shall mean the Terrorism Risk Insurance Act of 2002, as the same may be extended from time to time.

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

"**Underwriter Group**" shall have the meaning set forth in Section 13.5(b) hereof.

Section 1.2. Principles of Construction.

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

ARTICLE 2
GENERAL TERMS

Section 2.1. Loan Commitment; Disbursement to Borrower.

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

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

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

(d) Borrower shall use the proceeds of the Loan to (i) pay certain costs in connection with the financing of the Property, (ii) make deposits into the Reserve Funds on the Closing Date in the amounts provided herein, if any, (iii) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, (iv) fund any working capital requirements of the Property, and (v) distribute the balance, if any, to its members.

Section 2.2. Loan Payments.

(a) The Loan shall bear interest at a fixed rate per annum equal to the Note Rate. Interest shall be computed based on the daily rate produced assuming a three hundred sixty (360) day year, multiplied by the actual number of days elapsed. Except as otherwise set forth in this Agreement, interest shall be paid in arrears.

(b) Borrower hereby agrees to pay sums due under the Note as follows: An initial payment of $793,429.29 is due on the Closing Date for interest from the Closing Date through and including the last day of the month in which the Closing Date occurs. Thereafter, except as may be adjusted in accordance with the last sentence of Section 2.2(c), consecutive monthly installments of principal and interest in an amount equal $1,111,000.97 shall be payable pursuant to the terms of Section 2.2(d) (the "**Monthly Payment Amount**") on the first (1st) day of each month beginning on October 1, 2005 (each a "**Scheduled Payment Date**") until the entire indebtedness evidenced hereby is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on the Maturity Date.

(c) The Monthly Payment Amount shall mean the amount of interest and principal which would be due in order to fully amortize the principal amount of the Loan, over an amortization term of 28.5 years assuming an annual interest rate equal to the Note Rate, computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) months of thirty (30) days each. Borrower expressly understands and agrees that such computation of interest based on a three hundred sixty (360) day year consisting of twelve (12) months of thirty (30) days each is solely for the purpose of determining the Monthly Payment Amount, and, notwithstanding such computation, interest shall accrue on the outstanding principal amount of the Loan as provided in Section 2.2(a) above. Borrower understands and acknowledges that such interest accrual requirement results in more interest accruing on the Loan than if either a thirty (30) day month and a three hundred sixty (360) day year or the actual number of days and a three hundred sixty-five (365) day year were used to compute the accrual of interest on the Loan. Borrower recognizes that such interest accrual requirement will not fully amortize the Loan within the amortization period set forth

above. Following any partial prepayment occurring solely as a result of the application of Insurance Proceeds or Awards pursuant to the terms of this Agreement, Lender may, in its sole and absolute discretion, adjust the Monthly Payment Amount to give effect to any such partial prepayment, provided, however, that in no event will any such adjustment result in any such installment becoming due and payable on any date after the Maturity Date.

(d) Each payment by Borrower hereunder or under the Note shall be payable at P.O. Box 65585, Charlotte, North Carolina 28265-0585, or by wire transfer to Bank of America, N.A., ABA #111000025, Account #4782779943 for credit to CMSG, Loan #59227, or at such other place as the Lender may designate from time to time in writing, on the date such payment is due, to Lender by deposit to such account as Lender may designate by written notice to Borrower. Whenever any payment hereunder or under the Note shall be stated to be due on a day which is not a Business Day, such payment shall be made on the first Business Day preceding such scheduled due date.

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

(f) All payments made by Borrower hereunder or under the Note or the other Loan Documents shall be made irrespective of, and without any deduction for, any setoff, defense or counterclaims.

(g) From and after the Anticipated Prepayment Date, interest in excess of the Initial Note Rate shall accrue and be added to the Debt and shall earn interest at the Revised Note Rate to the extent permitted by applicable law ("**Accrued Interest**"). All of the unpaid principal balance of the Note, including, without limitation, any Accrued Interest, shall be due and payable on the Maturity Date.

(h) Provided no Event of Default has occurred, from and after the Anticipated Prepayment Date (i) each Monthly Payment Amount made as scheduled herein shall be applied first to the payment of interest computed at the Initial Note Rate, and the balance toward the reduction of the principal amount of the Note, and (ii) each payment of Excess Cash made as required herein shall be applied first to the reduction of the principal amount of the Note until paid in full, and the balance to Accrued Interest until paid in full.

(i) Nothing in this Article 2 shall limit, reduce or otherwise affect Borrower's obligations to make payments of the Monthly Payment Amount, payments to the Reserve Accounts and payments of other amounts due hereunder and under the other Loan Documents, whether or not Rents are available to make such payments.

Section 2.3. Late Payment Charge.

If any principal or interest payment is not paid by Borrower on or before the date after the same is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of four percent (4%) of such unpaid sum or the maximum amount permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by applicable law.

Section 2.4. Prepayment; Defeasance.

Except as otherwise expressly permitted by this Section 2.4 no voluntary prepayments, whether in whole or in part, of the Loan or any other amount at any time due and owing under the Note can be made by Borrower or any other Person without the express written consent of Lender.

(a) Lockout Period. Borrower has no right to make, and Lender shall have no obligation to accept, any voluntary prepayment, whether in whole or in part, of the Loan during the Lockout Period. Notwithstanding the foregoing, if either (i) Lender, in its sole and absolute discretion, accepts a full or partial voluntary prepayment during the Lockout Period or (ii) there is an involuntary prepayment during the Lockout Period, then, in either case, Borrower shall, in addition to any portion of the Loan prepaid (together with all interest accrued and unpaid thereon), pay to Lender a prepayment premium in an amount calculated in accordance with Section 2.4(c) hereof.

(b) Defeasance.

(i) Notwithstanding any provisions of this Section 2.4 to the contrary, including, without limitation, subsection (a) of this Section 2.4, at any time prior to the Anticipated Prepayment Date, other than during a REMIC Prohibition Period, Borrower may cause the release of the Property from the lien of the Mortgage and the other Loan Documents upon the satisfaction of the following conditions:

(A) no default shall exist under any of the Loan Documents;

(B) not less than sixty (60) (but not more than ninety (90)) days prior written notice shall be given to Lender specifying a date on which the Defeasance Collateral (as hereinafter defined) is to be delivered (the "Release Date"), such date being on a Scheduled Payment Date; provided, however, that Borrower shall have the right (i) to cancel such notice by providing Lender with notice of cancellation ten (10) days prior to the scheduled Release Date, or (ii) to extend the scheduled Release Date until the next Scheduled Payment Date; provided that in each case, Borrower shall pay all of Lender's costs and expenses incurred as a result of such cancellation or extension;

(C) all accrued and unpaid interest and all other sums due under the Note, this Agreement and under the other Loan Documents up to the Release Date, including, without limitation, all fees, costs and expenses incurred by Lender and its agents in connection with such release (including, without limitation, legal fees and expenses for the review and preparation of the

Defeasance Security Agreement (as hereinafter defined) and of the other materials described in Section 2.4(b)(i)(D) below and any related documentation, and any servicing fees, Rating Agency fees or other costs related to such release), shall be paid in full on or prior to the Release Date;

(D) Borrower shall deliver to Lender on or prior to the Release Date:

(1) a pledge and security agreement, in form and substance satisfactory to a prudent lender, creating a first priority security interest in favor of Lender in the Defeasance Collateral, as defined herein (the "Defeasance Security Agreement"), which shall provide, among other things, that any excess amounts received by Lender from the Defeasance Collateral over the amounts payable by Borrower on a given Scheduled Payment Date, which excess amounts are not required to cover all or any portion of amounts payable on a future Scheduled Payment Date, shall be refunded to Borrower promptly after each such Scheduled Payment Date;

(2) direct non-callable obligations of the United States of America or other obligations which are "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, to the extent the applicable Rating Agencies rating the Securities have confirmed in writing will not cause a downgrade, withdrawal or qualification of the initial, or, if higher, then applicable ratings of the Securities, that provide for payments prior and as close as possible to (but in no event later than) all successive Scheduled Payment Dates occurring after the Release Date, with each such payment being equal to or greater than the amount of the corresponding Monthly Payment Amount required to be paid under this Agreement and the Note (including all amounts due on the Maturity Date) for the balance of the term hereof (the "Defeasance Collateral"), each of which shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance wholly satisfactory to Lender in its sole discretion (including, without limitation, such certificates, documents and instruments as may be required by the depository institution holding such securities or the issuer thereof, as the case may be, to effectuate book- entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the Defeasance Security Agreement the first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing granting of such security interests;

(3) a certificate of Borrower certifying that all of the requirements set forth in this Section 2.4(b)(i) have been satisfied;

(4) one or more opinions of counsel for Borrower in form and substance and delivered by counsel which would be satisfactory to a prudent lender stating, among other things, that (i) Lender has a perfected first priority security interest in the Defeasance Collateral

and that the Defeasance Security Agreement is enforceable against Borrower in accordance with its terms, (ii) in the event of a bankruptcy proceeding or similar occurrence with respect to Borrower, none of the Defeasance Collateral nor any proceeds thereof will be property of Borrower's estate under Section 541 of the U.S. Bankruptcy Code or any similar statute and the grant of security interest therein to Lender shall not constitute an avoidable preference under Section 547 of the U.S. Bankruptcy Code or applicable state law, (iii) the release of the lien of the Mortgage and the pledge of Defeasance Collateral will not directly or indirectly result in or cause any REMIC Trust that then holds the Note to fail to maintain its status as a REMIC Trust and (iv) the defeasance will not cause any REMIC Trust to be an "investment company" under the Investment Company Act of 1940;

(5) a certificate in form and scope reasonably acceptable to Lender from an Acceptable Accountant certifying that the Defeasance Collateral will generate amounts sufficient to make all payments of principal and interest due under the Note (including the scheduled outstanding principal balance of the Loan due on the Maturity Date); and

(6) such other certificates, documents and instruments as Lender may in its sole discretion require; and

(E) in the event the Loan is held by a REMIC Trust, Lender has received written confirmation from any Rating Agency rating any Securities that substitution of the Defeasance Collateral will not result in a downgrade, withdrawal, or qualification of the ratings then assigned to any of the Securities.

(ii) Upon compliance with the requirements of Section 2.4(b)(i), the Property shall be released from the lien of the Mortgage and the other Loan Documents, and the Defeasance Collateral shall constitute collateral which shall secure the Note and all other obligations under the Loan Documents. Lender will, at Borrower's expense, execute and deliver any agreements reasonably requested by Borrower to release the lien of the Mortgage and the other Loan Documents from the Property.

(iii) Upon the release of the Property in accordance with this Section 2.4(b), Borrower shall (at Lender's sole and absolute discretion) assign all its obligations and rights under the Note, together with the pledged Defeasance Collateral, to a successor entity designated by Borrower and approved by Lender in its reasonable discretion ("Successor Borrower"). Successor Borrower shall execute an assignment and assumption agreement in form and substance satisfactory to Lender in its sole and absolute discretion pursuant to which it shall assume Borrower's obligations under the Note and the Defeasance Security Agreement. As conditions to such assignment and assumption, Borrower shall (A) deliver to Lender one or more opinions of counsel in form and substance and delivered by counsel which would be satisfactory to a prudent Lender stating, among other things, that such assignment and assumption agreement is enforceable against Borrower and the Successor Borrower in accordance with its terms and that the Note, the Defeasance Security Agreement and

the other Loan Documents, as so assigned and assumed, are enforceable against the Successor Borrower in accordance with their respective terms, and opining to such other matters relating to Successor Borrower and its organizational structure as Lender may reasonably require, and (B) pay all fees, costs and expenses incurred by Lender or its agents in connection with such assignment and assumption (including, without limitation, legal fees and expenses and for the review of the proposed transferee and the preparation of the assignment and assumption agreement and related certificates, documents and instruments and any fees payable to any Rating Agencies and their counsel in connection with the issuance of the confirmation referred to in subsection (b)(i)(E) above). Upon such assignment and assumption, Borrower shall be relieved of its obligations hereunder, under the Note, under the other Loan Documents and under the Defeasance Security Agreement, except as expressly set forth in the assignment and assumption agreement.

(iv) For purposes of this Section 2.4, "REMIC Prohibition Period" means the earlier to occur of (A) two-year period commencing with the "startup day" within the meaning of Section 860G(a)(9) of the Code of any REMIC Trust that holds the Note and (B) the period commencing on the date hereof and ending on the date which is three (3) years after the first Scheduled Payment Date following the date hereof. In no event shall Lender have any obligation to notify Borrower that a REMIC Prohibition Period is in effect with respect to the Loan, except that Lender shall notify Borrower if any REMIC Prohibition Period is in effect with respect to the Loan after receiving any notice described in Section 2.4(b)(i)(B); provided, however, that the failure of Lender to so notify Borrower shall not impose any liability on Lender or grant Borrower any right to defease the Loan during any such REMIC Prohibition Period.

(c) Involuntary Prepayment During the Lockout Period. During the Lockout Period, in the event of any involuntary prepayment of the Loan or any other amount under the Note, whether in whole or in part, in connection with or following Lender's acceleration of the Note or otherwise, and whether the Mortgage is satisfied or released by foreclosure (whether by power of sale or judicial proceeding), deed in lieu of foreclosure or by any other means, including, without limitation, repayment of the Loan by Borrower or any other Person pursuant to any statutory or common law right of redemption, Borrower shall, in addition to any portion of the principal balance of the Loan prepaid (together with all interest accrued and unpaid thereon and in the event the prepayment is made on a date other than a Scheduled Payment Date, a sum equal to the amount of interest which would have accrued under the Note on the amount of such prepayment if such prepayment had occurred on the next Scheduled Payment Date), pay to Lender a prepayment premium in an amount calculated in accordance with this Section 2.4(c). Such prepayment premium shall be in an amount equal to the greater of:

(i) 1% of the portion of the Loan being prepaid; or

(ii) the product obtained by multiplying:

(A) the portion of the Loan being prepaid, times;

(B) the difference obtained by subtracting (I) the Yield Rate from (II) the Note Rate, times;

(C) the present value factor calculated using the following formula:

$$\frac{1-(1+r)^{-n}}{r}$$

r = Yield Rate
n = the number of years and any fraction thereof, remaining between the date the prepayment is made and the Maturity Date of the Note.

As used herein, "Yield Rate" means the yield rate for the 4.125% U.S. Treasury Security due May 15, 2015, as reported in The Wall Street Journal on the fifth Business Day preceding the Prepayment Calculation Date. If the Yield Rate is not published for the such U.S. Treasury Security, then the "Yield Rate" shall mean the yield rate for the nearest equivalent U.S. Treasury Security (as selected at Lender's sole and absolute discretion) as reported in The Wall Street Journal on the fifth Business Day preceding the Prepayment Calculation Date. If the publication of such Yield Rate in The Wall Street Journal is discontinued, Lender shall determine such Yield Rate from another source selected by Lender in Lender's sole and absolute discretion. The "Prepayment Calculation Date" shall mean, as applicable, the date on which (i) Lender applies any partial prepayment to the reduction of the outstanding principal amount the Note, in the case of a voluntary partial prepayment which is accepted by Lender, (ii) Lender accelerates the Loan, in the case of a prepayment resulting from acceleration, or (iii) Lender applies funds held under any Reserve Account, in the case of a prepayment resulting from such an application (other than in connection with acceleration of the Loan).

(d) Insurance and Condemnation Proceeds; Excess Interest. Notwithstanding any other provision herein to the contrary, and provided no Event of Default exists, Borrower shall not be required to pay any prepayment premium in connection with any prepayment occurring solely as a result of (i) the application of Insurance Proceeds or Condemnation Proceeds pursuant to the terms of the Loan Documents, or (ii) the application of any interest in excess of the maximum rate permitted by applicable law to the reduction of the Loan.

(e) After the Anticipated Prepayment Date, (x) prepayment of the Debt shall be permitted in whole or in part at any time without payment of any penalty or premium; provided that any prepayment that occurs on a date that is not a Scheduled Payment Date shall also include interest due through the end of the related monthly interest period on the portion prepaid and (y) all excess amounts remaining on deposit in the Cash Management Account after the payment of items (i) through and including (viii) of Section 10.2 hereof shall be applied to prepay the outstanding Debt without payment of any penalty or premium.

Section 2.5. Payments after Default.

Upon the occurrence and during the continuance of an Event of Default, interest on the outstanding principal balance of the Loan and, to the extent permitted by law, overdue interest and other amounts due in respect of the Loan, (a) shall accrue at the Default Rate, and (b) Lender shall be entitled to receive and Borrower shall pay to Lender all cash flow from the Property in accordance with the terms of the Cash Management Agreement,

such amount to be applied by Lender to the payment of the Debt in such order as Lender shall determine in its sole discretion, including, without limitation, alternating applications thereof between interest and principal. Interest at the Default Rate shall be computed from the occurrence of the Event of Default until the earlier of (i) the actual receipt and collection of the Debt (or that portion thereof that is then due) and (ii) the cure of such Event of Default. To the extent permitted by applicable law, interest at the Default Rate shall be added to the Debt, shall itself accrue interest at the same rate as the Loan and shall be secured by the Mortgage. This paragraph shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default; the acceptance of any payment from Borrower shall not be deemed to cure or constitute a waiver of any Event of Default; and Lender retains its rights under this Agreement to accelerate and to continue to demand payment of the Debt upon the happening of and during the continuance any Event of Default, despite any payment by Borrower to Lender.

Section 2.6. Usury Savings.

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

ARTICLE 3
CONDITIONS PRECEDENT

The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date.

Section 3.1. Representations and Warranties; Compliance with Conditions.

The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and Lender shall have determined that no Default or an Event of Default shall have occurred and be continuing nor will any Default or Event of Default occur immediately following the Closing Date; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

Section 3.2. Delivery of Loan Documents; Title Insurance; Reports; Leases.

(a) Mortgage, Loan Agreement and Note. Lender shall have received from Borrower a fully executed and acknowledged counterpart of the Mortgage and evidence that counterparts of the Mortgage and Uniform Commercial Code financing statements have been delivered to the title company for recording, in the reasonable judgment of Lender, so as to effectively create upon such recording valid and enforceable Liens upon the Property, of the requisite priority, in favor of Lender (or such other trustee as may be required or desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the Environmental Indemnity, this Agreement, the Note and Assignment of Management Agreement, if applicable, and all other Loan Documents.

(b) Title Insurance. Lender shall have received a Title Insurance Policy issued by a title company acceptable to Lender and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such Title Insurance Policy shall (i) provide coverage in the amount of the Loan, (ii) insure Lender that the Mortgage creates a valid lien on the Property of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, to the extent available in the State, and (iv) name Lender as the insured. The Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such Title Insurance Policy have been paid.

(c) Survey. Lender shall have received a current title survey for the Property, certified to the title company and Lender and their successors and assigns, in form and content reasonably satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender and licensed to practice surveying in the State and prepared in accordance with the 1999 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys. The survey shall meet the classification of an “Urban Survey” and the following additional items from the list of “Optional Survey Responsibilities and Specifications” (Table A) should be added to each survey: 2, 3, 4, 6, 7(a), 7(b)(i), 8, 9, 10, 11(a) (as to utilities and surface matters only) and 13 (and other Table A items as Lender may reasonably require). Such survey shall reflect the same legal description contained in the Title Insurance Policy referred to in subsection (b) above and shall include, among other things, a metes and bounds description of the real property comprising part of the Property reasonably satisfactory to Lender. The surveyor’s seal shall be affixed to the survey and the surveyor shall provide a certification for each survey in form and substance acceptable to Lender.

(d) Insurance. To the extent that FFIC is not self- insuring pursuant to the terms of the FFIC Lease, Lender shall have received copies of the Policies required hereunder, reasonably satisfactory to Lender, and evidence of the payment of all Insurance Premiums payable for the existing policy period.

(e) Environmental Reports. Lender shall have received an Environmental Report in respect of the Property satisfactory to Lender.

(f) Zoning/Building Code. Lender shall have received evidence of compliance with zoning and building ordinances and codes, including, without limitation, required certificates of occupancy, reasonably acceptable to Lender.

(g) Encumbrances. Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first Lien as of the Closing Date on the Property, subject only to applicable Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

(h) Lien Searches. Borrower shall have delivered to Lender certified search results pertaining to the Borrower, Borrower Principal and such other Persons or the sole member of Borrower as reasonably required by Lender for state and federal tax liens, bankruptcy, judgment, litigation and state and local UCC filings

Section 3.3. Related Documents.

Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall have been duly authorized, executed and delivered by all parties thereto and, at Lender's written request, Lender shall have received and approved certified copies thereof.

Section 3.4. Organizational Documents.

On or before the Closing Date, Borrower shall deliver or cause to be delivered to Lender (a) copies certified by Borrower of all organizational documentation related to Borrower, the sole member of Borrower and Borrower Principal which must be reasonably acceptable to Lender and (b) such other evidence of the formation, structure, existence, good standing and/or qualification to do business of the Borrower, the sole member of Borrower and Borrower Principal, as Lender may reasonably request, including, without limitation, good standing or existence certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

Section 3.5. Opinions of Borrower's Counsel.

Lender shall have received opinions of Borrower's counsel (a) with respect to non-consolidation issues, (b) with respect to Delaware single member limited liability companies, and (c) with respect to due execution, authority, enforceability of the Loan Documents and such other matters as Lender may require, all such opinions in form, scope and substance reasonably satisfactory to Lender and Lender's counsel.

Section 3.6. Annual Budget.

Borrower shall have delivered, and Lender shall have approved, the Annual Budget for the current fiscal year, a copy of which is attached as Exhibit A hereto.

Section 3.7. Taxes and Other Charges.

Borrower shall have paid all Taxes and Other Charges (including any in arrears) (except such as are being contested in good faith and pursuant to the terms and provisions hereof) relating to the Property, which amounts may be funded with proceeds of the Loan.

Section 3.8. Completion of Proceedings.

All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be reasonably satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

Section 3.9. Payments.

All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

Section 3.10. Transaction Costs.

Except as otherwise expressly provided herein, Borrower shall have paid or reimbursed Lender for all out of pocket expenses in connection with the underwriting, negotiation, Securitization (subject to the limitation in Section 13.4 hereof) and closing of the Loan, including title insurance premiums and other title company charges; recording, registration, filing and similar fees, taxes and charges; transfer, mortgage, deed, stamp or documentary taxes or similar fees or charges; costs of third-party reports, including without limitation, environmental studies, credit reports, seismic reports, engineer's reports, appraisals and surveys; underwriting and origination expenses; Securitization expenses (subject to the limitation in Section 13.4 hereof); and all actual, reasonable legal fees and expenses charged by counsel to Lender.

Section 3.11. No Material Adverse Change.

There shall have been no material adverse change in the financial condition or business condition of the Property, Borrower, Borrower Principal, the sole member of Borrower, Manager or any other person or party contributing to the operating income and operations of the Property since the date of the most recent financial statements and/or other information delivered to Lender. The income and expenses of the Property, the occupancy and leases thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. Neither Borrower nor Borrower Principal, the sole member of Borrower or Affiliated Manager shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

Section 3.12. Leases and Rent Roll.

Lender shall have received copies of all Leases affecting the Property, including, without limitation, the FFIC Lease, which shall be reasonably satisfactory in form and substance to Lender. Lender shall have received a current certified rent roll of the Property, reasonably satisfactory in form and substance to Lender.

Section 3.13. Tenant Estoppels.

Borrower shall have delivered to Lender an executed tenant estoppel letter, which shall be in form and substance previously submitted to and approved by Lender, from FFIC for the FFIC Lease which reflects that the annual base rent shall be $18,816,633.00 as set forth in the FFIC Lease.

Section 3.14. REA Estoppels.

If there are any material REAs affecting the Property, Borrower shall have delivered to Lender an executed REA estoppel letter, which shall be in form and substance satisfactory to Lender, from each party to any REA for the Property. With respect to any non-material REAs, Borrower shall use commercially reasonable efforts to deliver to Lender REA estoppel letters as soon as practical.

Section 3.15. Subordination and Attornment.

Borrower shall have delivered to Lender an executed subordination, non- disturbance and attornment agreement from FFIC in the form required under the FFIC Lease.

Section 3.16. Tax Lot.

Lender shall have received evidence that the Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

Section 3.17. Property Condition and Seismic Reports.

Lender shall have received a Property Condition Report and a seismic report, if applicable, with respect to the Property, both of which reports shall be reasonably satisfactory in form and substance to Lender.

Section 3.18. Management Agreement.

Lender shall have received a certified copy of the Management Agreement with respect to the Property which shall be satisfactory in form and substance to Lender.

Section 3.19. Appraisal.

Lender shall have received an appraisal (FIRREA and USPAP) of the Property, which shall be satisfactory in form and substance to Lender.

Section 3.20. Financial Statements.

Lender shall have received financial statements and related information in form and substance satisfactory to Lender.

Section 3.21. Intentionally Omitted.

Section 3.22. Further Documents.

Lender or its counsel shall have received such other and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested including the Loan Documents in form and substance reasonably satisfactory to Lender and its counsel.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

Borrower and, where specifically indicated, Borrower Principal represents and warrants to Lender as of the Closing Date that:

Section 4.1. Organization.

Borrower and Borrower Principal (when not an individual) (a) has been duly formed and is validly existing and in good standing with requisite power and authority to own its properties and to transact the businesses in which it is now engaged, (b) is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, (c) possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged, and the sole business of Borrower is the ownership, management and operation of the Property, and (d) in the case of Borrower, has full power, authority and legal right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms of the Loan Documents, and in the case of Borrower and Borrower Principal, has full power, authority and legal right to keep and observe all of the terms of the Loan Documents to which it is a party. Borrower and Borrower Principal represent and warrant that the chart attached hereto as Exhibit B sets forth an accurate listing of the direct and indirect owners of the equity interests in Borrower, the sole member of Borrower and Borrower Principal (when not an individual).

Section 4.2. Status of Borrower.

Borrower's exact legal name is correctly set forth on the first page of this Agreement, on the Mortgage and on any UCC-1 Financing Statements filed in connection with the Loan. Borrower is an organization of the type specified on the first page of this Agreement. Borrower is incorporated in or organized under the laws of the state of Delaware. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Borrower) the address of Borrower set forth on the first page of this Agreement. Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is 3991779.

Section 4.3. Validity of Documents.

Borrower and Borrower Principal have taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents to which they are parties. This Agreement and such other Loan Documents have been duly

executed and delivered by or on behalf of Borrower and Borrower Principal and constitute the legal, valid and binding obligations of Borrower and Borrower Principal enforceable against Borrower and Borrower Principal in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

Section 4.4. No Conflicts.

The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and Borrower Principal will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower or Borrower Principal pursuant to the terms of any agreement or instrument to which Borrower or Borrower Principal is a party or by which any of Borrower's or Borrower Principal's property or assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or Borrower Principal or any of Borrower's or Borrower Principal's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Borrower or Borrower Principal of this Agreement or any of the other Loan Documents has been obtained and is in full force and effect.

Section 4.5. Litigation.

There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or, to Borrower's or Borrower Principal's knowledge, threatened against or affecting Borrower, Borrower Principal, Manager or the Property, which actions, suits or proceedings, if determined against Borrower, Borrower Principal, Manager or the Property, would materially adversely affect the condition (financial or otherwise) or business of Borrower or Borrower Principal or the condition or ownership of the Property.

Section 4.6. Agreements.

Borrower is not a party to any agreement or instrument or subject to any restriction which would materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property is bound. Borrower has no material financial obligation under any agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property and (b) obligations under the Loan Documents.

Section 4.7. Solvency.

Borrower and Borrower Principal have (a) not entered into the transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to

hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for their obligations under such Loan Documents. Giving effect to the Loan, the fair saleable value of the assets of Borrower and Borrower Principal exceeds and will, immediately following the making of the Loan, exceed the total liabilities of Borrower and Borrower Principal, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. No petition in bankruptcy has been filed against Borrower, Borrower Principal, the sole member of Borrower or Affiliated Manager in the last ten (10) years, and neither Borrower nor Borrower Principal, the sole member of Borrower or Affiliated Manager in the last ten (10) years has made an assignment for the benefit of creditors or taken advantage of any Creditors Rights Laws. Neither Borrower nor Borrower Principal, the sole member of Borrower or Affiliated Manager is contemplating either the filing of a petition by it under any Creditors Rights Laws or the liquidation of all or a major portion of Borrower's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against Borrower or Borrower Principal, the sole member of Borrower or Affiliated Manager.

Section 4.8. Full and Accurate Disclosure.

No statement of fact made by or on behalf of Borrower or Borrower Principal in this Agreement or in any of the other Loan Documents or in any other document or certificate delivered by or on behalf of Borrower or Borrower Principal contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower or Borrower Principal which has not been disclosed to Lender which adversely affects, nor as far as Borrower or Borrower Principal can reasonably foresee, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower or Borrower Principal.

Section 4.9. No Plan Assets.

Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Internal Revenue Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement.

Section 4.10. Not a Foreign Person.

Neither Borrower nor Borrower Principal is a foreign corporation, foreign partnership, foreign trust, foreign estate or nonresident alien or a disregarded entity owned by any of them (as those terms are defined in the Internal Revenue Code of 1986), and if requested by Lender, Borrower or Borrower Principal will so certify (or in the case of a disregarded entity, its owner will certify) to Lender or a person designated by Lender under penalties of perjury to the accuracy of this representation, and will provide in such certification such additional information as Lender may reasonably request.

Section 4.11. Enforceability.

The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable, subject to the qualifications set forth in Section 4.3 hereof, and neither Borrower nor Borrower Principal has asserted any right of rescission, set-off, counterclaim or defense with respect thereto. No Default or Event of Default exists under or with respect to any Loan Document.

Section 4.12. Business Purposes.

The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 4.13. Compliance.

Except as expressly disclosed by Borrower to Lender in writing in connection with the closing of the Loan, Borrower and the Property, and the use and operation thereof, comply in all material respects with all Legal Requirements, including, without limitation, building and zoning ordinances and codes and the Americans with Disabilities Act. To Borrower's knowledge, Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority and Borrower has received no written notice of any such default or violation. There has not been committed by Borrower or, to Borrower's knowledge, any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

Section 4.14. Financial Information.

All financial data, including, without limitation, the balance sheets, statements of cash flow, statements of income and operating expense and rent rolls, that have been delivered to Lender in respect of Borrower, Borrower Principal and/or the Property (a) are true, complete and correct in all material respects, (b) accurately represent in all material respects the financial condition of Borrower, Borrower Principal or the Property, as applicable, as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a material adverse effect on the Property or the current and/or intended operation thereof, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower or Borrower Principal from that set forth in said financial statements.

Section 4.15. Condemnation.

No Condemnation or other proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

Section 4.16. Utilities and Public Access; Parking.

The Property has adequate rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for full utilization of the Property for its intended uses. All public utilities necessary to the full use and enjoyment of the Property as currently used and enjoyed are located either in the public right-of- way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purposes have been completed and dedicated to public use and accepted by all Governmental Authorities. The Property has, or is served by, parking to the extent required to comply with all Legal Requirements.

Section 4.17. Separate Lots.

The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 4.18. Assessments.

To Borrower's knowledge, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

Section 4.19. Insurance.

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

Section 4.20. Use of Property.

The Property is used exclusively for commercial office purposes and other appurtenant and related uses.

Section 4.21. Certificate of Occupancy; Licenses.

All certifications, permits, licenses and approvals, including, without limitation, certificates of completion or occupancy and any applicable liquor license required for the legal use, occupancy and operation of the Property for the purpose intended herein,

have been obtained and are valid and in full force and effect. Borrower shall keep and maintain (or cause to be kept and maintained) all licenses necessary for the operation of the Property for the purpose intended herein. The use being made of the Property is in conformity with the final certificate of occupancy (or compliance, if applicable) and any other permits or licenses issued for the Property.

Section 4.22. Flood Zone.

None of the Improvements on the Property are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards, or, if any portion of the Improvements is located within such area, Borrower has obtained the insurance prescribed in Section 8.1(a)(i).

Section 4.23. Physical Condition.

Except as set forth in the Property Condition Report, to Borrower's knowledge, the Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects. Except as set forth in the Property Condition Report, to Borrower's knowledge, there exists no structural or other material defects or damages in the Property, as a result of a Casualty or otherwise, and whether latent or otherwise. Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which, to Borrower's knowledge, would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or the termination or threatened termination of any policy of insurance or bond.

Section 4.24. Boundaries; Survey.

To Borrower's knowledge, (a) none of the Improvements which were included in determining the appraised value of the Property lie outside the boundaries and building restriction lines of the Property to any material extent, and (b) no improvements on adjoining properties encroach upon the Property and no easements or other encumbrances upon the Property encroach upon any of the Improvements so as to materially affect the value or marketability of the Property. To Borrower's knowledge, the Survey for the Property delivered to Lender in connection with this Agreement has been prepared in accordance with the provisions of Section 3.2(c) hereof, and to the knowledge of Borrower does not fail to reflect any material matter affecting the Property or the title thereto.

Section 4.25. Leases and Rent Roll.

Borrower has delivered to Lender a true, correct and complete rent roll for the Property (a "Rent Roll") which includes all Leases affecting the Property (including schedules for all executed Leases for Tenants not yet in occupancy or under which the rent commencement date has not occurred). Except as set forth in the Rent Roll (as same has been updated by written notice thereof to Lender) and estoppel certificates delivered to Lender on or prior to the Closing Date: (a) each Lease is in full force and effect; (b) the premises demised under the Leases have been completed and the Tenants under the Leases have accepted possession of and are in occupancy of all of their respective demised premises;

(c) the Tenants under the Leases have commenced the payment of rent under the Leases, there are no offsets, claims or defenses to the enforcement thereof, and Borrower has no monetary obligations to any Tenant under any Lease; (d) all Rents due and payable under the Leases have been paid and no portion thereof has been paid for any period more than thirty (30) days in advance; (e) the rent payable under each Lease is the amount of fixed rent set forth in the Rent Roll, and there is no claim or basis for a claim by the Tenant thereunder for an offset or adjustment to the rent; (f) no Tenant has made any written claim of a material default against the landlord under any Lease which remains outstanding nor has Borrower or Manager received, by telephonic, in-person, e-mail or other communication, any notice of a material default under any Lease; (g) to Borrower's knowledge there is no present material default by the Tenant under any Lease; (h) all security deposits under the Leases have been collected by Borrower; (i) Borrower is the sole owner of the entire landlord's interest in each Lease; (j) each Lease is the valid, binding and enforceable obligation of Borrower and the applicable Tenant thereunder and there are no agreements with the Tenants under the Leases other than as expressly set forth in the Leases; (k) no Person has any possessory interest in, or right to occupy, the Property or any portion thereof except under the terms of a Lease; (l) none of the Leases contains any option or offer to purchase or right of first refusal to purchase the Property or any part thereof; (m) neither the Leases nor the Rents have been assigned, pledged or hypothecated except to Lender, and no other Person has any interest therein except the Tenants thereunder; and (n) no conditions exist which now give any Tenant or party the right to "go dark" pursuant to the provision of its Lease and/or the REA.

Section 4.26. Filing and Recording Taxes.

All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgage, have been paid or will be paid, and, under current Legal Requirements, the Mortgage is enforceable in accordance with its terms by Lender (or any subsequent holder thereof).

Section 4.27. Management Agreement.

The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and, to Borrower's knowledge, no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. No management fees under the Management Agreement are accrued and unpaid.

Section 4.28. Illegal Activity.

No portion of the Property has been or will be purchased with proceeds of any illegal activity, and no part of the proceeds of the Loan will be used in connection with any illegal activity.

Section 4.29. Construction Expenses.

All costs and expenses of any and all labor, materials, supplies and equipment used in the construction maintenance or repair of the Improvements have been paid in full. To Borrower's knowledge, there are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents.

Section 4.30. Personal Property.

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

Section 4.31. Taxes.

Borrower and Borrower Principal have filed all federal, state, county, municipal, and city income, personal property and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Borrower nor Borrower Principal knows of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 4.32. Permitted Encumbrances.

None of the Permitted Encumbrances, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by the Loan Documents, materially and adversely affects the value of the Property, impairs the use or the operation of the Property or impairs Borrower's ability to pay its obligations in a timely manner.

Section 4.33. Federal Reserve Regulations.

Borrower will use the proceeds of the Loan for the purposes set forth in Section 2.1(d) hereof and not for any illegal activity. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or prohibited by the terms and conditions of this Agreement or the other Loan Documents.

Section 4.34. Investment Company Act.

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

Section 4.35. Reciprocal Easement Agreements.

(a) Neither Borrower, nor, to Borrower's knowledge, any other party to the REA is currently in default (nor has any notice been given or received with respect to an alleged or current default) under any of the terms and conditions of the REA, and the REA remains unmodified and in full force and effect;

(b) All easements granted pursuant to the REA which were to have survived the site preparation and completion of construction (to the extent that the same has been completed), remain in full force and effect and have not been released, terminated, extinguished or discharged by agreement or otherwise;

(c) All sums due and owing by Borrower to the other parties to the REA (or by the other parties to the REA to the Borrower) pursuant to the terms of the REA, including without limitation, all sums, charges, fees, assessments, costs, and expenses in connection with any taxes, site preparation and construction, non-shareholder contributions, and common area and other property management activities have been paid, are current, and no lien has attached on the Property (or threat thereof been made) for failure to pay any of the foregoing;

(d) The terms, conditions, covenants, uses and restrictions contained in the REA do not conflict in any manner with any terms, conditions, covenants, uses and restrictions contained in any Lease or in any agreement between Borrower and occupant of any peripheral parcel, including without limitation, conditions and restrictions with respect to kiosk placement, tenant restrictions (type, location or exclusivity), sale of certain goods or services, and/or other use restrictions; and

(e) The terms, conditions, covenants, uses and restrictions contained in each Lease do not conflict in any manner with any terms, conditions, covenants, uses and restrictions contained in the REA, any other Lease or in any agreement between Borrower and occupant of any peripheral parcel, including without limitation, conditions and restrictions with respect to kiosk placement, tenant restrictions (type, location or exclusivity), sale of certain goods or services, and/or other use restrictions.

Section 4.36. No Change in Facts or Circumstances; Disclosure.

All information submitted by Borrower or its agents to Lender and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the Property or the business operations or the financial condition of Borrower. Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 4.37. Intellectual Property.

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

Section 4.38. Compliance with Anti-Terrorism Laws.

None of Borrower, Borrower Principal or any Person who Controls Borrower or Borrower Principal currently is identified by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") or otherwise qualifies as a Embargoed Person, and Borrower has implemented procedures to ensure that no Person who now or hereafter owns a direct or indirect equity interest in Borrower is an Embargoed Person or is Controlled by an Embargoed Person. None of Borrower or Borrower Principal is in violation of any applicable law relating to anti money laundering or antiterrorism, including, without limitation, those related to transacting business with Embargoed Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations (collectively, as the same may be amended from time to time, the "**Patriot Act**"). To the best of Borrower's knowledge, no tenant at the Property is currently identified by OFAC or otherwise qualifies as an Embargoed Person, or is owned or Controlled by an Embargoed Person. Borrower has determined that Manager has implemented procedures approved by Borrower to ensure that no tenant at the Property is currently identified by OFAC or otherwise qualifies as an Embargoed Person, or is owned or Controlled by an Embargoed Person.

Section 4.39. Patriot Act.

Neither Borrower nor Borrower Principal shall (a) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the list maintained by OFAC and accessible through the OFAC website) that prohibits or limits any lender from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower and Borrower Principal, or (b) fail to provide documentary and other evidence of Borrower's identity as may be requested by any lender at any time to enable any lender to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, the Patriot Act. In addition, Borrower hereby agrees to provide to Lender any additional information that Lender deems necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities.

Section 4.40. Survival.

Borrower agrees that, unless expressly provided otherwise, all of the representations and warranties of Borrower set forth in this Article 4 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any portion of the Debt remains owing to Lender. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE 5
BORROWER COVENANTS

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

Section 5.1. Existence; Compliance with Legal Requirements.

(a) Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Property. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower shall at all times maintain, preserve and protect all franchises and trade names used in connection with the operation of the Property.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the Legal Requirements affecting the Property, provided that (i) no Default or Event of Default has occurred and is continuing; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and shall not constitute a default thereunder; (iii) neither the Property, any part thereof or interest therein, any of the tenants or occupants thereof, nor Borrower shall be affected in any material adverse way as a result of such proceeding; (iv) non-compliance with the Legal Requirements shall not impose civil or criminal liability on Borrower or Lender; (v) Borrower shall have furnished the security as may be required in the proceeding or by Lender to ensure compliance by Borrower with the Legal Requirements; and (vi) Borrower shall have furnished to Lender all other items reasonably requested by Lender.

Section 5.2. Maintenance and Use of Property.

Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or other than in accordance with the provisions of Section 5.21, materially altered (except for tenant improvements required under a Lease and normal replacement of the Personal Property) without the prior written consent of Lender. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender.

Section 5.3. Waste.

Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security for the Loan. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Property, regardless of the depth thereof or the method of mining or extraction thereof.

Section 5.4. Taxes and Other Charges.

(a) Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 9.6 hereof. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, that Borrower is not required to furnish such receipts for payment of Taxes as long as Borrower complies with the terms and conditions set forth in Section 9.6 hereof). Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay for all utility services provided to the Property.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable Legal Requirements; (iii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (iv) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (v) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or deliver to Lender such reserve deposits as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon (unless Borrower has paid all of the Taxes or Other Charges under protest). Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, canceled or lost or there shall be any danger of the Lien of the Mortgage being primed by any related Lien.

Section 5.5. Litigation.

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

Section 5.6. Access to Property.

Subject to the rights of Tenants under Leases, Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

Section 5.7. Notice of Default.

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

Section 5.8. Cooperate in Legal Proceedings.

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

Section 5.9. Performance by Borrower.

Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision to be observed and performed by Borrower under this Agreement and the other Loan Documents and any other agreement or instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 5.10. Awards; Insurance Proceeds.

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

Section 5.11. Financial Reporting.

(a) Borrower and Borrower Principal shall keep adequate books and records of account in accordance with GAAP, or in accordance with other methods acceptable to Lender in its sole discretion, consistently applied and shall furnish to Lender in a form reasonably satisfactory to Lender:

(i) to the extent that the FFIC Lease is no longer in full force and effect, monthly certified rent rolls signed and dated by Borrower, detailing the names of all Tenants of the Improvements, the portion of Improvements (in terms of square footage) occupied by each Tenant, the base rent, additional rent and any other charges payable under each Lease (including annual store sales required to be reported by Tenant under any Lease), and the term of each Lease, including the commencement and expiration dates and any tenant extension, expansion or renewal options, the extent to which any Tenant is in default under any Lease, and any other information as is reasonably required by Lender, within forty-five (45) days after the end of each calendar month, forty-five (45) days after the end of each fiscal quarter or one hundred twenty (120) days after the close of each fiscal year of Borrower, as applicable;

(ii) quarterly and annual (and prior to a Securitization, at the request of Lender, monthly), operating statements of the Property, prepared and certified by Borrower in the form required by Lender (with the annual operating statement prepared and audited by an Acceptable Accountant), detailing the revenues received, the expenses incurred and the net operating income before and after debt service (principal and interest) and major capital improvements for the period of calculation and containing appropriate year-to-date information, within forty-five (45) days after the end of each calendar month, forty-five (45) days after the end of each fiscal quarter or one hundred twenty (120) days after the close of each fiscal year of Borrower, as applicable;

(iii) quarterly and annual balance sheets and profit and loss statements and annual statements of cash flows of Borrower and Borrower Principal in the form required by Lender (and in accordance with any SEC requirements, Section S-X of the Securities Act of 1933, as amended, if applicable) (with the annual financial statements prepared and audited by an Acceptable Accountant), within forty-five (45) days after the end of each fiscal quarter or one hundred twenty (120) days after the close of each fiscal year of Borrower and Borrower Principal, as applicable, as the case may be;

(iv) the annual 10-K financial statements of Borrower Principal; and

(v) an Annual Budget not later than thirty (30) days prior to the commencement of each fiscal year of Borrower in form reasonably satisfactory to Lender. In the event that Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, which approval shall not be unreasonably withheld, conditioned or delayed, the most recent Annual Budget shall apply; provided that, such approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums, utilities expenses and expenses under the Management Agreement.

(b) Upon request from Lender, Borrower shall promptly furnish to Lender:

(i) a property management report for the Property, showing the number of inquiries made and/or rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender, in reasonable detail and certified by Borrower under penalty of perjury to be true and complete, but no more frequently than quarterly;

(ii) an accounting of all security deposits held in connection with any Lease of any part of the Property, including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institutions in which such security deposits are held and the name of the

Person to contact at such financial institution, along with any authority or release necessary for Lender to obtain information regarding such accounts directly from such financial institutions; and

(iii) a report of all letters of credit provided by any Tenant in connection with any Lease of any part of the Property, including the account numbers of such letters of credit, the names and addresses of the financial institutions that issued such letters of credit and the names of the Persons to contact at such financial institutions, along with any authority or release necessary for Lender to obtain information regarding such letters of credit directly from such financial institutions.

(c) Borrower shall comply with the following:

(i) If requested by Lender, Borrower shall provide Lender, promptly upon request, with the following financial statements if, at the time a Disclosure Document is being prepared for a Securitization, it is expected that the principal amount of the Loan when combined with the principal amount of any Affiliated Loans at the time of Securitization may, or if the principal amount of the Loan when combined with the principal amount of any Affiliated Loans at any time during which the Loan and any Affiliated Loans are included in a Securitization does, equal or exceed 20% of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the Securitization:

(A) A balance sheet with respect to the Property for the two most recent fiscal years, meeting the requirements of Section 210.3-01 of Regulation S-X of the Securities Act and statements of income and statements of cash flows with respect to the Property for the three most recent fiscal years, meeting the requirements of Section 210.3-02 of Regulation S-X, and, to the extent that such balance sheet is more than 135 days old as of the date of the document in which such financial statements are included, interim financial statements of the Property meeting the requirements of Section 210.3-01 and 210.3-02 of Regulation S-X (all of such financial statements, collectively, the “Standard Statements”); provided, however, that with respect to a Property (other than properties that are hotels, nursing homes, or other properties that would be deemed to constitute a business and not real estate under Regulation S-X or other legal requirements) that has been acquired by Borrower from an unaffiliated third party (such Property, “Acquired Property”), as to which the other conditions set forth in Section 210.3-14 of Regulation S-X for provision of financial statements in accordance with such Section have been met, in lieu of the Standard Statements otherwise required by this section, Borrower shall instead provide the financial statements required by such Section 210.3-14 of Regulation S-X (“Acquired Property Statements”).

(B) Not later than forty-five (45) days after the end of each fiscal quarter following the date hereof, a balance sheet of the Property as of the end of such fiscal quarter, meeting the requirements of Section 210.3-01 of Regulation S-X, and statements of income and statements of cash flows of the Property for the period commencing following the last day of the most recent fiscal year and ending on the date of such balance sheet and for the corresponding period of the most recent fiscal year, meeting the requirements

of Section 210.3-02 of Regulation S-X (provided, that if for such corresponding period of the most recent fiscal year Acquired Property Statements were permitted to be provided hereunder pursuant to subsection (i) above, Borrower shall instead provide Acquired Property Statements for such corresponding period).

(C) Not later than 120 days after the end of each fiscal year following the date hereof, a balance sheet of the Property as of the end of such fiscal year, meeting the requirements of Section 210.3-01 of Regulation S-X, and statements of income and statements of cash flows of the Property for such fiscal year, meeting the requirements of Section 210.3-02 of Regulation S-X.

(D) Within ten Business Days after notice from Lender in connection with the Securitization of this Loan, such additional financial statements, such that, as of the date (each an "Offering Document Date") of each Disclosure Document, Borrower shall have provided Lender with all financial statements as described in subsection (f)(i) above; provided that the fiscal year and interim periods for which such financial statements shall be provided shall be determined as of such Offering Document Date.

(ii) If requested by Lender, Borrower shall provide Lender, promptly upon request, with summaries of the financial statements referred to in Section 5.11(c) hereof if, at the time a Disclosure Document is being prepared for a Securitization, it is expected that the principal amount of the Loan and any Affiliated Loans at the time of Securitization may, or if the principal amount of the Loan and any Affiliated Loans at any time during which the Loan and any Affiliated Loans are included in a Securitization does, equal or exceed 10% (but is less than 20%) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in a Securitization. Such summaries shall meet the requirements for "summarized financial information," as defined in Section 210.1-02(bb) of Regulation S-X, or such other requirements as may be determined to be necessary or appropriate by Lender.

(iii) All financial statements provided by Borrower hereunder pursuant to Section 5.11(c)(i) and (ii) hereof shall be prepared in accordance with GAAP, and shall meet the requirements of Regulation S-X and other applicable legal requirements. All financial statements referred to in Section 5.11(c)(i)(A) and (C) above shall be audited by Acceptable Accountants in accordance with Regulation S-X and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation S-X and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the Acceptable Accountants, in form and substance acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such Acceptable Accountants and the reference to such Acceptable Accountants as "experts" in any Disclosure Document and Exchange Act Filing (as defined below), all of which shall be provided at the same time as the related financial statements are required to be provided. All financial statements (audited or unaudited) provided by Borrower under this Section 5.11 shall be certified by the chief financial officer or administrative member of Borrower, which certification shall state that such financial statements meet the requirements set forth in the first sentence of this Section 5.11 (c)(iii).

(iv) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall determine to be required pursuant to Regulation S- X or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any filing under or pursuant to the Exchange Act in connection with or relating to a Securitization (hereinafter an "Exchange Act Filing") or as shall otherwise be reasonably requested by Lender.

(v) In the event Lender determines, in connection with a Securitization, that the financial statements required in order to comply with Regulation S-X or other legal requirements are other than as provided herein, then notwithstanding the provisions of Section 5.11(c) hereof, Lender may request, and Borrower shall promptly provide, such combination of Acquired Property Statement and/or Standard Statements or such other financial statements as Lender determines to be necessary or appropriate for such compliance.

(vi) Any reports, statements or other information required to be delivered under this Agreement shall be delivered in paper form and in the event that Lender requires financial statements in connection with subsection (c) above because the Loan when combined with the principal amount of any Affiliated Loans equal or exceed 20% of the aggregate principal amount of all mortgage loans included in a Securitization (defined below), Borrower shall deliver such reports, statements and other information (A) on a diskette, and (B) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form and prepared using Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files).

(d) Borrower and Borrower Principal shall furnish Lender with such other additional financial or management information (including state and federal tax returns) as may, from time to time, be reasonably required by Lender in form and substance satisfactory to Lender (including, without limitation, any financial reports required to be delivered by any Tenant or any guarantor of any Lease pursuant to the terms of such Lease), and shall furnish to Lender and its agents convenient facilities for the examination and audit of any such books and records.

(e) Without limiting any other rights available to Lender under this Loan Agreement or any of the other Loan Documents, in the event Borrower shall fail to timely furnish Lender any financial document or statement in accordance with this Section 5.11, Borrower shall promptly pay to Lender a non-refundable charge in the amount of $250.00 for each such failure. The payment of such amount shall not be construed to relieve Borrower of any Event of Default hereunder arising from such failure.

(f) All items requiring the certification of Borrower shall, except where Borrower is an individual, require a certificate executed by the general partner, managing member or chief executive officer of Borrower, as applicable (and the same rules shall apply to any sole shareholder, general partner or managing member which is not an individual).

Section 5.12. Estoppel Statement.

(a) After request by Lender, Borrower shall within ten (10) Business Days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the rate of interest on the Note, (iii) the unpaid principal amount of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Agreement, the Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender, promptly upon request, duly executed estoppel certificates from any one or more Tenants as required by Lender attesting to such facts regarding the related Lease as Lender may require, including, but not limited to attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, except as security, and that the Tenant claims no defense or offset against the full and timely performance of its obligations under the Lease.

Section 5.13. Leasing Matters.

(a) Borrower may enter into a proposed Lease (including the renewal or extension of an existing Lease (a "**Renewal Lease**")) without the prior written consent of Lender, provided such proposed Lease or Renewal Lease (i) provides for rental rates and terms comparable to existing local market rates and terms (taking into account the type and quality of the tenant) as of the date such Lease is executed by Borrower (unless, in the case of a Renewal Lease, the rent payable during such renewal, or a formula or other method to compute such rent, is provided for in the original Lease), (ii) is an arm's- length transaction with a bona fide, independent third party tenant, (iii) does not have a materially adverse effect on the value of the Property taken as a whole, (iv) is subject and subordinate to the Mortgage and the Tenant thereunder agrees to attorn to Lender and Lender agrees not to disturb such Tenant as long as such Tenant is not in default under its Lease, (v) does not contain any option, offer, right of first refusal, or other similar right to acquire all or any portion of the Property; provided, however, that to the extent that Borrower enters into a Renewal Lease with FFIC, such Renewal Lease may contain the same right of first refusal appearing in the FFIC Lease, (vi) has a base term of less than fifteen (15) years including options to renew, (vii) has no rent credits, free rents or concessions granted thereunder not consistent with local market rates and terms, and (viii) is written on the standard form of lease approved by Lender, which approval shall not be unreasonably withheld, conditioned or delayed. All proposed Leases which do not satisfy the requirements set forth in this subsection shall be subject to the prior approval of Lender and its counsel, at Borrower's expense. Borrower shall promptly deliver to Lender copies of all Leases which are entered into pursuant to this subsection together with Borrower's certification that it has satisfied all of the conditions of this Section.

(b) Borrower (i) shall observe and perform all the obligations imposed upon the landlord under the Leases and shall not do or permit to be done anything to impair the value of any of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall send or receive thereunder; (iii) shall enforce all of the material terms, covenants and conditions contained in the Leases upon the

part of the tenant thereunder to be observed or performed; (iv) shall not collect any of the Rents more than one (1) month in advance (except security deposits shall not be deemed Rents collected in advance); (v) shall not execute any other assignment of the landlord's interest in any of the Leases or the Rents; and (vi) shall not consent to any assignment of or subletting under any Leases not in accordance with their terms, without the prior written consent of Lender.

(c) Borrower may, without the prior written consent of Lender, amend, modify or waive the provisions of any Lease or terminate, reduce Rents under, accept a surrender of space under, or shorten the term of, any Lease (including any guaranty, letter of credit or other credit support with respect thereto) provided that such action (taking into account, in the case of a termination, reduction in rent, surrender of space or shortening of term, the planned alternative use of the affected space) does not have a materially adverse effect on the value of the Property taken as a whole, and provided that such Lease, as amended, modified or waived, is otherwise in compliance with the requirements of this Agreement and any subordination agreement binding upon Lender with respect to such Lease. A termination of a Lease with a tenant who is in default beyond applicable notice and grace periods shall not be considered an action which has a materially adverse effect on the value of the Property taken as a whole. Any amendment, modification, waiver, termination, rent reduction, space surrender or term shortening which does not satisfy the requirements set forth in this subsection shall be subject to the prior approval of Lender (not to be unreasonably withheld or delayed) and its counsel, at Borrower's expense. Borrower shall promptly deliver to Lender copies of amendments, modifications and waivers which are entered into pursuant to this subsection together with Borrower's certification that it has satisfied all of the conditions of this subsection.

(d) Notwithstanding anything contained herein to the contrary, Borrower shall not, without the prior written consent of Lender, enter into, renew, extend, amend, modify, waive any material provisions of, terminate, reduce Rents under, accept a surrender of space under, or shorten the term of any Major Lease (other than extensions and renewals pursuant to options set forth in such Major Lease).

Section 5.14. Property Management.

(a) In the event that the FFIC Lease is no longer in full force and effect, the Property shall be managed by a Qualified Manager pursuant to a Management Agreement.

(b) Borrower shall (i) promptly perform and observe all of the covenants required to be performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of any notice of default or other material notice received by Borrower under the Management Agreement; (iv) promptly give notice to Lender of any notice or information that Borrower receives which indicates that the Manager is terminating the Management Agreement or that the Manager is otherwise discontinuing its management of the Property; and (v) promptly enforce the performance and observance of all of the covenants required to be performed and observed by Manager under the Management Agreement. Notwithstanding the foregoing, Borrower shall not be permitted to pay the Manager a management fee in excess of five percent (5%) of the gross revenues of the Property under the Management Agreement for the Property, unless and until Borrower has

paid to Lender all amounts then due and owing by Borrower under the Loan Documents. Borrower shall execute and deliver to Lender an Assignment of Management Agreement simultaneously with the execution of any Management Agreement, and to the extent that any Manager under any Management Agreement is an Affiliated Manager, Borrower shall deliver to Lender a revised substantive non-consolidation opinion with respect to such Affiliated Manager.

(c) If at any time, (i) Manager shall become insolvent or a debtor in a bankruptcy proceeding; (ii) an Event of Default has occurred and is continuing and Lender has accelerated the Debt; or (iii) a default by Manager has occurred and is continuing under the Management Agreement beyond any notice and cure period provided in the Management Agreement, Borrower shall, at the request of Lender, terminate the Management Agreement upon thirty (30) days prior notice to Manager and replace Manager with a Qualified Manager approved by Lender on terms and conditions satisfactory to Lender, it being understood and agreed that the management fee for such replacement manager shall not exceed then prevailing market rates.

(d) (intentionally deleted).

(e) Borrower shall not, without the prior written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed): (i) surrender, terminate or cancel the Management Agreement or otherwise replace Manager or enter into any other management agreement with respect to the Property; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. In the event that Borrower engages or replaces Manager at any time during the term of Loan pursuant to this subsection, such Manager shall be a Qualified Manager.

Section 5.15. Liens.

Subject to Borrower's right to contest same pursuant to the terms of the Mortgage, Borrower shall not, without the prior written consent of Lender, create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except Permitted Encumbrances.

Section 5.16. Debt Cancellation.

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

Section 5.17. Zoning.

Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non- conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior written consent of Lender.

Section 5.18. ERISA.

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

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

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

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2); or

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

Section 5.19. No Joint Assessment.

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

Section 5.20. Reciprocal Easement Agreements.

Borrower shall not enter into, terminate or modify any REA without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Borrower shall enforce, comply with, and cause each of the parties to the REA to comply with all of the material economic terms and conditions contained in the REA.

Section 5.21. Alterations.

Lender's prior approval shall be required in connection with any alterations to any Improvements, exclusive of alterations to tenant spaces required under any Lease, (a) that may have a material adverse effect on the Property, (b) that are structural in nature or (c) that, together with any other alterations undertaken at the same time (including any related alterations, improvements or replacements), are reasonably anticipated to have a cost in excess of the Alteration Threshold. If the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements shall at any time exceed the Alteration Threshold, Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (i) cash, (ii) direct non-callable obligations of the United States of America

or other obligations which are "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, to the extent acceptable to the applicable Rating Agencies, (iii) other securities acceptable to Lender and the Rating Agencies, or (iv) a completion bond, provided that such completion bond is acceptable to the Lender and the Rating Agencies. Such security shall be in an amount equal to the excess of the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements over the Alteration Threshold.

ARTICLE 6
ENTITY COVENANTS

Section 6.1. Single Purpose Entity/Separateness.

Until the Debt has been paid in full, Borrower represents, warrants and covenants as follows:

(a) Borrower has not and will not:

(i) engage in any business or activity other than the ownership, operation and maintenance of the Property, and activities incidental thereto;

(ii) acquire or own any assets other than (A) the Property, and (B) such incidental Personal Property as may be necessary for the operation of the Property;

(iii) to the fullest extent permitted by law, merge into or consolidate with any Person, or dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(iv) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents;

(v) own any subsidiary, or make any investment in, any Person;

(vi) commingle its assets with the assets of any other Person, or permit any Affiliate or constituent party independent access to its bank accounts;

(vii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Debt, (B) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than sixty (60) days past the date incurred and paid on or prior to such date, and/or (C) financing leases and purchase money indebtedness incurred in the ordinary course of business relating to Personal Property on commercially reasonable terms and conditions; provided however, the aggregate amount of the indebtedness described in (B) and (C) shall not exceed at any time three percent (3%) of the outstanding principal amount of the Note;

(viii) fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person; except that Borrower's financial position, assets, liabilities, net worth and operating results may be included in the consolidated financial statements of an Affiliate;

(ix) enter into any contract or agreement with any general partner, member, shareholder, principal, guarantor of the obligations of Borrower, or any Affiliate of the foregoing, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;

(x) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xi) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(xii) make any loans or advances to any Person;

(xiii) fail to file its own tax returns or files a consolidated federal income tax return with any Person (unless prohibited or required, as the case may be, by applicable Legal Requirements), except to the extent the Borrower is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law;

(xiv) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;

(xv) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations, provided that there are sufficient funds from the operation of the Property to do so;

(xvi) if it is a partnership or limited liability company, without the unanimous written consent of all of its partners or members, as applicable, and the written consent of 100% of the directors of Borrower, including, without limitation, each Independent Director, (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any Creditors Rights Laws, (b) seek or consent to the appointment of a receiver, liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, or (d) make an assignment for the benefit of creditors;

(xvii) fail to allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an Affiliate) among the Persons sharing such expenses and to use separate stationery, invoices and checks;

(xviii) fail to remain solvent or pay its own liabilities (including, without limitation, salaries of its own employees) only from its own funds, provided that there are sufficient funds from the operation of the Property to do so;

(xix) acquire obligations or securities of its partners, members, shareholders or other affiliates, as applicable;

(xx) violate or cause to be violated the assumptions made with respect to Borrower, Manager (if applicable) and their respective direct and/or indirect owners in any opinion letter pertaining to substantive consolidation delivered to Lender in connection with the Loan; or

(xxi) fail to maintain a sufficient number of employees in light of its contemplated business operations.

(b) Prior to the withdrawal or the disassociation of the sole member of Borrower from Borrower, Borrower shall immediately appoint a new sole member and, if an opinion letter pertaining to substantive consolidation was required at closing, deliver a new opinion letter acceptable to Lender and the Rating Agencies with respect to the new sole member and its equity owners.

(c) In the event Borrower is a single member Delaware limited liability company, the limited liability company agreement of Borrower (the "**LLC Agreement**") shall provide that (i) upon the occurrence of any event that causes the sole member of Borrower ("**Member**") to cease to be the member of Borrower (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower in accordance with the terms of the Loan Documents and the LLC Agreement), any person acting as Independent Director of Borrower shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower, automatically be admitted to Borrower ("**Special Member**") and shall continue Borrower without dissolution and (ii) Special Member may not resign from Borrower or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower as Special Member in accordance with requirements of Delaware law and (B) such successor Special Member has also accepted its appointment as an Independent Director. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower upon the admission to Borrower of a substitute Member, (ii) Special Member shall be a member of Borrower that has no interest in the profits, losses and capital of Borrower and has no right to receive any distributions of Borrower assets, (iii) pursuant to Section 18-301 of the Delaware Limited Liability Company Act (the "**Act**"), Special Member shall not be required to make any capital contributions to Borrower and shall not receive a limited liability company interest in Borrower, (iv) Special Member, in its capacity as Special Member, may not bind Borrower and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower, including, without limitation, the merger, consolidation or conversion of Borrower; provided, however, such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Director, to vote on such matters required by the Loan Documents or the LLC Agreement. In order to implement the admission to Borrower of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower as Special Member, Special Member shall not be a member of Borrower.

Upon the occurrence of any event that causes the Member to cease to be a member of Borrower, to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower, agree in writing (i) to continue Borrower and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower, effective as of the occurrence of the event that terminated the continued membership of Member of Borrower in Borrower. Any action initiated by or brought against Member or Special Member under any Creditors Rights Laws shall not cause Member or Special Member to cease to be a member of Borrower and upon the occurrence of such an event, the business of Borrower shall continue without dissolution. The LLC Agreement shall provide that each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower upon the occurrence of any action initiated by or brought against Member or Special Member under any Creditors Rights Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower.

Section 6.2. Change of Name, Identity or Structure.

Borrower shall not change or permit to be changed (a) Borrower's name, (b) Borrower's identity (including its trade name or names), (c) Borrower's principal place of business set forth on the first page of this Agreement, (d) the corporate, partnership or other organizational structure of Borrower, the sole member of Borrower, or Borrower Principal, (e) Borrower's state of organization, or (f) Borrower's organizational identification number, without in each case notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender. In addition, Borrower shall not change or permit to be changed any organizational documents of Borrower or the sole member of Borrower if such change would adversely impact the covenants set forth in Section 6.1 and Section 6.4 hereof. Borrower authorizes Lender to file any financing statement or financing statement amendment required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property. If Borrower does not now have an organizational identification number and later obtains one, or if the organizational identification number assigned to Borrower subsequently changes, Borrower shall promptly notify Lender of such organizational identification number or change.

Section 6.3. Business and Operations.

Borrower will qualify to do business and will remain in good standing under the laws of the State as and to the extent the same are required for the ownership, maintenance, management and operation of the Property.

Section 6.4. Independent Director.

(a) The organizational documents of Borrower shall provide that at all times there shall be, and Borrower shall cause there to be, at least two duly appointed members of the board of directors (each an "**Independent Director**") of Borrower reasonably satisfactory to Lender each of whom are not at the time of such individual's initial appointment, and shall not have been at any time during the preceding five (5) years, and shall not be at any time while serving as a manager of Borrower, either (i) a shareholder (or other equity owner) of, or an officer, director, partner, manager, member (other than as a Special Member in the case of single member Delaware limited liability companies), employee, attorney or counsel of, Borrower, the sole member of Borrower or any of their respective shareholders, partners, members, subsidiaries or affiliates; (ii) a customer or creditor of, or supplier to, Borrower or any of its respective shareholders, partners, members, subsidiaries or affiliates who derives any of its purchases or revenue from its activities with Borrower or the sole member of Borrower or any Affiliate of any of them; (iii) a Person who Controls or is under common Control with any such shareholder, officer, director, partner, manager, member, employee, supplier, creditor or customer; or (iv) a member of the immediate family of any such shareholder, officer, director, partner, manager, member, employee, supplier, creditor or customer.

(b) The organizational documents of Borrower shall provide that the board of directors of Borrower shall not take any action which, under the terms of any certificate of incorporation, by-laws or equivalent organizational documents, as applicable, or any voting trust agreement with respect to any common stock, requires an unanimous vote of the board of directors of Borrower unless at the time of such action there shall be at least two members of the board of directors who are Independent Directors. Borrower will not, without the unanimous written consent of its board of managers including each Independent Director, (i) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable Creditors Rights Laws; (ii) seek or consent to the appointment of a receiver, liquidator or any similar official; (iii) take any action that might cause such entity to become insolvent; or (iv) make an assignment for the benefit of creditors.

ARTICLE 7
NO SALE OR ENCUMBRANCE

Section 7.1. Transfer Definitions.

For purposes of this Article 7 an "**Affiliated Manager**" shall mean any managing agent with respect to the Property in which Borrower, Borrower Principal, the sole member of Borrower or any affiliate of such entities has, directly or indirectly, any legal, beneficial or economic interest; "**Control**" shall mean the power to direct the management and policies of a Restricted Party, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise; "**Restricted Party**" shall mean Borrower, Borrower Principal, the sole member of Borrower, any Affiliated Manager, or any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower, Borrower Principal, the sole member of Borrower, any Affiliated Manager or any non-member manager; and a "**Sale or Pledge**" shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

Section 7.2. No Sale/Encumbrance.

(a) Borrower shall not cause or permit a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein nor permit a Sale or Pledge of an interest in any Restricted Party (in each case, a "**Prohibited Transfer**"), other than pursuant to Leases of space in the Improvements to Tenants in accordance with the provisions of Section 5.13, without the prior written consent of Lender.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of any member or any profits or proceeds relating to such membership interest; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (vii) the removal or the resignation of Manager (including, without limitation, an Affiliated Manager) other than in accordance with Section 5.14.

Section 7.3. Permitted Transfers.

(a) Notwithstanding the provisions of Section 7.2 hereof, Lender's prior written consent shall not be required (nor shall an processing fee or assumption fee be payable) with respect to (i) transfers of direct or indirect ownership interests in Borrower, provided that (A) no default under the Loan Documents shall exist, (B) Lender shall have received thirty (30) days prior written notice of such transfer (unless such transfer results from devise, descent or operation of law upon the death or demise of a direct or indirect holder of ownership interests in Borrower), (C) after taking into account all prior transfers that occur hereunder, no such transfer shall pertain to more than 49% of the direct and/or indirect ownership interests in Borrower or result in the proposed transferee owning, directly and/or indirectly, more than 49% of the ownership interests in Borrower (except with respect to transfers to an Affiliate which was included in the substantive non-consolidation opinion delivered to Lender at closing or for which a new acceptable substantive non-consolidation opinion has been delivered to Lender), (D) Lender shall have received evidence that the single-purpose, bankruptcy remote nature of Borrower shall remain in accordance with rating agency standards, (E) Borrower Principal shall, directly and/or indirectly, own at least a 5 1 % interest in Borrower and Control Borrower and (F) the Property shall continue to be managed by a Qualified Manager and (ii) the (A) transfer by any shareholder of its shares in AFRT or the causing or permitting of its interest in AFRT to be redeemed or (B) transfer by any limited partner of Borrower Principal of its limited partnership interest in Borrower Principal or causing or permitting of its limited partnership interest in Borrower Principal to

be redeemed, in each case provided that the common shares of AFRT remain traded on the New York Stock Exchange and that any such transfer or redemption in connection with a merger, consolidation or reorganization of AFRT or Borrower Principal where AFRT or Borrower Principal will not be the surviving entity shall be subject to Section 7.3(b) hereof.

(b) Any transfer of the direct and/or indirect interests in Borrower, Borrower Principal or AFRT other than as permitted above shall require the consent of Lender, which may be granted in its sole and absolute discretion; provided, that in the event that all or any portion of the Debt is subject to a Securitization, Lender's consent shall not be required in connection with a merger, consolidation or reorganization of AFRT or Borrower Principal where AFRT or Borrower Principal shall not be the surviving entity, if (i) Borrower shall have delivered to Lender an additional substantive, non-consolidation opinion in form and substance satisfactory to Lender and (ii) either (A) Lender shall have received written confirmation from each of the Rating Agencies that the transfer shall not result in any adverse ratings affect upon any certificates issued or to be issued in connection with a Securitization or (B) the surviving party following such merger, consolidation or reorganization (1) has a net worth of $500,000,000 or more (exclusive of the Property), (2) has total assets of $1,500,000,000 or more (exclusive of the Property) and (3) has a substantial portion of its business involving the ownership and operation of institutional office and related properties, as reasonably determined by Lender and the Rating Agencies.

Section 7.4. Lender's Rights.

Lender reserves the right to condition the consent to a Prohibited Transfer requested hereunder upon (a) a modification of the terms hereof and an assumption of the Note and the other Loan Documents as so modified by the proposed Prohibited Transfer, (b) receipt of payment of a transfer fee equal to one half percent (0.5%) of the outstanding principal balance of the Loan and all of Lender's expenses incurred in connection with such Prohibited Transfer, (c) receipt of written confirmation from the Rating Agencies that the Prohibited Transfer will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization, (d) the proposed transferee's continued compliance with the covenants set forth in this Agreement (including, without limitation, the covenants in Article 6) and the other Loan Documents, (e) if following such Prohibited Transfer the property manager that is managing the Property prior to such Prohibited Transfer will not continue to be the property manager of the Property, a new manager for the Property and a new management agreement satisfactory to Lender, and (f) the satisfaction of such other conditions and/or legal opinions as Lender shall determine in its sole discretion to be in the interest of Lender. All expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Prohibited Transfer made without Lender's consent. This provision shall apply to each and every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer. In the event an opinion letter pertaining to substantive consolidation was delivered to Lender and the Rating Agencies in connection with the closing of the Loan, and if any Sale or Pledge permitted under this Article 7 results in any Person and its Affiliates owning in excess of forty-nine percent (49%) of the ownership interests in a Restricted Party, Borrower shall, prior to such transfer, and in addition to any other requirement for Lender consent contained herein, deliver a revised opinion letter

pertaining to substantive consolidation to Lender reflecting such Prohibited Transfer, which opinion shall be in form, scope and substance acceptable in all respects to Lender and the Rating Agencies.

Section 7.5. Assumption.

(a) Notwithstanding the foregoing provisions of this Article 7, following the date which is six (6) months from the Closing Date, Lender shall not unreasonably withhold consent to a transfer of the Property in its entirety to, and the related assumption of the Loan by, any Person (a "**Transferee**") provided that each of the following terms and conditions are satisfied:

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

(ii) Borrower shall have (A) delivered written notice to Lender of the terms of such prospective transfer not less than forty- five (45) days before the date on which such transfer is scheduled to close and, concurrently therewith, at Borrower's expense, all such information concerning the proposed Transferee as Lender shall reasonably require, including, without limitation, (1) acceptable credit and financial information about the proposed Transferee and the ownership of such Transferee and (2) evidence that the Property shall continue to be managed by a Qualified Manager and (B) concurrently with the delivery of such notice, paid to Lender a non-refundable processing fee in the amount of $15,000.00. Lender shall have the right to approve or disapprove the proposed transfer based on its then current underwriting and credit requirements for similar loans secured by similar properties which loans are sold in the secondary market, such approval not to be unreasonably withheld, conditioned or delayed. In determining whether to give or withhold its approval of the proposed transfer, Lender shall consider the experience and track record of Transferee and its principals in owning and operating facilities similar to the Property, the financial strength of Transferee and its principals, the general business standing of Transferee and its principals and Transferee's and its principals' relationships and experience with contractors, vendors, tenants, lenders and other business entities; provided, however, that, notwithstanding Lender's agreement to consider the foregoing factors in determining whether to give or withhold such approval, such approval shall be given or withheld based on what Lender determines to be commercially reasonable and, if given, may be given subject to such conditions as Lender may deem reasonably appropriate;

(iii) Borrower shall have paid to Lender, (A) upon assumption approval, a non refundable assumption fee in an amount equal to one half percent (0.5 %) of the then outstanding principal balance of the Note, and (B) concurrently with the closing of such transfer, all reasonable out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred by Lender in connection with the transfer;

(iv) (A) Transferee shall have assumed and agreed to pay the Debt as and when due subject to the provisions of Article 15 hereof and, prior to or concurrently with the closing of such transfer, Transferee and its constituent partners, members or shareholders as Lender may require, shall have executed, without any cost or expense to Lender, such documents, certificates and agreements as Lender shall reasonably require to evidence and effectuate said assumption and (B) if required by Lender, a Person affiliated with Transferee and acceptable to Lender shall have assumed the

obligations of Borrower Principal under the Loan Documents with respect to all acts and events occurring or arising after the transfer of the Property pursuant to this Section 7.5;

(v) Borrower and Transferee, without any cost to Lender, shall furnish any information requested by Lender for the preparation of, and shall authorize Lender to file, new financing statements and financing statement amendments and other documents to the fullest extent permitted by applicable law, and shall execute any additional documents reasonably requested by Lender;

(vi) Borrower shall have delivered to Lender, without any cost or expense to Lender, such endorsements to Lender's Title Insurance Policy insuring that fee simple or leasehold title to the Property, as applicable, is vested in Transferee (subject to Permitted Encumbrances), hazard insurance endorsements or certificates and other similar materials as Lender may deem necessary at the time of the transfer, all in form and substance satisfactory to Lender;

(vii) Transferee shall have furnished to Lender, if Transferee is a corporation, partnership, limited liability company or other entity, all appropriate papers evidencing Transferee's organization and good standing, and the qualification of the signers to execute the assumption of the Debt, which papers shall include certified copies of all documents relating to the organization and formation of Transferee and of the entities, if any, which are partners or members of Transferee. Transferee and such constituent partners, members or shareholders of Transferee (as the case may be), as Lender shall require, shall comply with the covenants set forth in Article 6 hereof;

(viii) Transferee shall assume the obligations of Borrower under any Management Agreement or provide a new management agreement with a new manager which meets with the requirements of Section 5.14 hereof and shall assign to Lender as additional security such new management agreement;

(ix) Transferee shall furnish an opinion of counsel satisfactory to Lender and its counsel (A) that Transferee's formation documents provide for the matters described in subparagraph (vii) above, (B) that the assumption of the Debt has been duly authorized, executed and delivered, and that the Note, the Mortgage, this Agreement, the assumption agreement and the other Loan Documents are valid, binding and enforceable against Transferee in accordance with their terms, (C) that Transferee and any entity which is a controlling stockholder, member or general partner of Transferee, have been duly organized, and are in existence and good standing, and (D) with respect to such other matters as Lender may reasonably request;

(x) Lender shall have received confirmation in writing from each of the Rating Agencies that rate the Securities to the effect that the transfer will not result in a qualification, downgrade or withdrawal of any rating initially assigned or to be assigned to the Securities;

(xi) Borrower's obligations under the contract of sale pursuant to which the transfer is proposed to occur shall expressly be subject to the satisfaction of the terms and conditions of this Section 7.5; and

(xii) Transferee shall, prior to such transfer, deliver a substantive non-consolidation opinion to Lender, which opinion shall be in form, scope and substance acceptable in all respects to Lender and the Rating Agencies;

Notwithstanding the foregoing provisions of this Section 7.5(a), in no event shall Lender consent to any transfer or assumption occurring prior to the end of the twelfth (12th) full calendar month following the Closing Date, if the consideration to be paid to Borrower by the proposed Transferee, as determined by Lender, is less than the appraised value of the Property, as determined in connection with Lender's underwriting of the Loan.

(b) Notwithstanding the foregoing provisions of this Article 7, including subsection (a) above, in connection with a one-time transfer of the Property to, and the simultaneous assumption of the Debt by, an entity meeting the requirements of Article 6 hereof and wholly owned and controlled by a Permitted Transferee, Lender's consent shall not be required in connection therewith; provided, however, that (i) no default under the Loan Documents shall have occurred and be continuing, (ii) Borrower shall have paid all reasonable out-of-pocket costs and expenses incurred by Lender in connection with the transfer and assumption (such amounts shall not include the assumption fee under Section 7.5(a)(iii) hereof), (iii) Lender shall have received such documents, certificates and legal opinions as it may reasonably request, including, without limitation, an acceptable substantive non-consolidation opinion, and (iv) the Property shall continue to be managed by a Qualified Manager reasonably acceptable to Lender and acceptable to the Rating Agencies.

(c) A consent by Lender with respect to a transfer of the Property in its entirety to, and the related assumption of the Loan by, a Transferee pursuant to this Section 7.5 shall not be construed to be a waiver of the right of Lender to consent to any subsequent Sale or Pledge of the Property. Upon the transfer of the Property pursuant to this Section 7.5, Borrower and Borrower Principal shall be relieved of all liability under the Loan Documents for acts, events, conditions, or circumstances occurring or arising after the date of such transfer, except to the extent that such acts, events, conditions, or circumstances are the proximate result of acts, events, conditions, or circumstances that existed prior to the date of such transfer, whether or not discovered prior or subsequent to the date of such transfer.

ARTICLE 8
INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

Section 8.1. Insurance.

(a) Borrower shall obtain and maintain, or cause to be maintained, at all times insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive "special causes of loss" form of insurance (or its equivalent) on the Improvements and the Personal Property (A) in an amount equal to not less than one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings); (B) written on a replacement cost basis and containing either an agreed amount endorsement with respect to the Improvements and Personal Property or a waiver of all co- insurance provisions; (C) providing for no deductible in excess of $10,000 for all such insurance coverage, except that the deductible for flood insurance may not exceed $50,000 and the deductible for earthquake insurance may not exceed $25,000; (D) at all times

insuring against at least those hazards that are commonly insured against under a "special causes of loss" form of policy, as the same shall exist on the date hereof, and together with any increase in the scope of coverage provided under such form after the date hereof; and (E) if any of the Improvements or the use of the Property shall at any time constitute legal non- conforming structures or uses, providing coverage for contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements and containing an "Ordinance or Law Coverage" or "Enforcement" endorsement. In addition, Borrower shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in a "special flood hazard area" designated by the Federal Emergency Management Agency, flood hazard insurance in an amount equal to the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended; and (z) earthquake insurance in amounts and in form and substance reasonably satisfactory to Lender, provided that the insurance pursuant to clauses (y) and (z) hereof shall be on terms consistent with the special causes of loss form required under this subsection (i);

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, with such insurance (A) to be on the so-called "occurrence" form with a general aggregate limit of not less than $2,000,000 and a per occurrence limit of not less than $1,000,000; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations; (3) independent contractors; (4) blanket contractual liability; and (5) contractual liability covering the indemnities contained in Article 12 and Article 14 hereof to the extent the same is available;

(iii) loss of rents insurance or business income insurance, as applicable, (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; and (C) which provides that after the physical loss to the Improvements and Personal Property occurs, the loss of rents or income, as applicable, will be insured until completion of Restoration or the expiration of twenty-four (24) months, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) which contains an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such loss of rents or business income insurance, as applicable, shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Property for the succeeding period of coverage required above. All proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall

be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in the Note, this Agreement and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such loss of rents or business income insurance, as applicable;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called Builder's Risk Completed Value form (1) on a non-reporting basis, (2) against "special causes of loss" insured against pursuant to subsection (i) above, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co- insurance provisions;

(v) workers' compensation, subject to the statutory limits of the State, and employer's liability insurance in respect of any work or operations on or about the Property, or in connection with the Property or its operation (if applicable);

(vi) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(vii) excess liability insurance in an amount not less than $50,000,000 per occurrence on terms consistent with the commercial general liability insurance required under subsection (ii) above; and

(viii) upon sixty (60) days' written notice, such other reasonable insurance and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located, provided, however, such other insurance shall be limited to the maximum amount of coverage that Borrower can obtain by paying an annual premium that is twenty percent (20%) of the Borrower's premium for the insurance maintained pursuant to clauses (i) through (vii) above.

The Policies required to be maintained pursuant to clauses (i) through (viii) above shall not contain exclusions for acts of terrorism or similar acts of sabotage (with respect to either Certified Coverage or Non-Certified Coverage), but may exclude acts of war and nuclear, chemical and biological acts ("**Acts of Terror**"), or alternatively, Borrower shall have obtained and shall maintain throughout the term of Loan affirmative coverage thereunder insuring against Acts of Terror satisfactory to Lender in all respects and in the amounts and subject to the deductibles described in Sections 8.1(a)(i) and 8.1(a)(iii) above (the "**Terrorism Coverage**"). Notwithstanding anything to the contrary contained herein, (i) if, after the Closing Date and at the expiration of any applicable Policy, it is no longer customary for Qualified Insurers insuring properties similar to the Property to (1) exclude acts of war and/or nuclear, chemical and/or biological acts, the Borrower shall obtain and maintain Terrorism Coverage without each of such referenced exclusions which are no longer customarily excluded by such Qualified Insurers and (2) exclude Acts of Terror from such

Policies, then Borrower shall obtain and maintain said Policies without said exclusion and (ii) in the event that TRIA is no longer in effect, the Terrorism Coverage for acts similar to acts included within the Certified Coverage under TRIA shall be maintained in the amount of full replacement cost and business income as provided in this Section 8.1. Notwithstanding the requirement in this Section 8.1(a) for coverage against Acts of Terror for the full replacement cost and required business interruption amount, Borrower shall not be required to spend per annum more than 250% of the Agreed Terrorism Premium for such coverage.

(b) All insurance provided for in Section 8.1(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and meeting the following syndicate carrier ratings requirements: (i) if 5 or more members, (A) at least 60% of coverage (and 100% of first layer) shall be provided by carriers having a claims paying ability rating of "A" or better by two Rating Agencies (including S&P) and (B) of the remaining 40% of coverage, (1) 30% shall be provided by carriers having a claims paying ability rating of "BBB" or better by 2 Rating Agencies (including S&P) and (2) the bottom 10% shall be provided by carriers having a general policy rating of "A" or better and a financial class of "XII" or better by A.M. Best, or (ii) if 4 or fewer members, (A) at least 75% of coverage (and 100% of first layer) shall be provided by carriers having a claims paying ability rating of "A" or better by 2 Rating Agencies (including S&P) and (B) of the remaining 25% of coverage, (1) 15% shall be provided by carriers having a claims paying ability rating of "BBB" or better by 2 Rating Agencies (including S&P) and (2) the bottom 10% shall be provided by carriers having a general policy rating of "A" or better and a financial class of "XII" or better by A.M. Best. The Policies described in Section 8.1(a) and all insurance policies maintained by FFIC pursuant to the FFIC Lease shall designate Lender and its successors and assigns as additional insureds, mortgagees and/or loss payee as deemed appropriate by Lender. To the extent such Policies are not available as of the Closing Date, Borrower shall deliver to Lender prior to the Closing Date an Acord 28 or similar certificate of insurance evidencing the coverages and amounts required hereunder and, upon request of Lender as soon as available after the Closing Date, certified copies of all Policies. Not less than five (5) days prior to the expiration dates of any insurance coverage in place with respect to the Property, Borrower shall deliver to Lender an Acord 28 or similar certificate, accompanied by evidence satisfactory to Lender of payment of the premiums due in connection therewith (the "**Insurance Premiums**"), and, as soon as available thereafter, certified copies of all renewal Policies.

(c) Any blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 8.1(a).

(d) All Policies provided for or contemplated by Section 8.1(a), except for the Policy referenced in Section 8.1(a)(v), shall name Borrower as the insured and Lender as the additional insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called New York standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies provided for in Section 8.1(a) shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Borrower, or anyone acting for Borrower, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

(ii) the Policies shall not be materially changed (other than to increase the coverage provided thereby) or canceled by the insurer without at least thirty (30) days' (ten (10) days' in the case of non-payment of premium) prior written notice to Lender and any other party named therein as an additional insured;

(iii) the issuers thereof shall give written notice to Lender if the Policies have not been renewed thirty (30) days prior to its expiration; and

(iv) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(f) If at any time Lender is in receipt of written evidence that all insurance required hereunder is not in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, obtaining such insurance coverage as Lender in its sole discretion deems appropriate. All premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and, until paid, shall be secured by the Mortgage and shall bear interest at the Default Rate.

(g) Notwithstanding the foregoing provisions of this Section 8.1, so long as (i) the FFIC Lease is in full force and effect with no material defaults existing thereunder and (ii) FFIC has elected to self- insure pursuant to the terms and provisions of the FFIC Lease and is in compliance therewith, Borrower shall not be required to procure and maintain the insurance coverage otherwise required pursuant to this Section 8.1.

Section 8.2. Casualty.

If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the Restoration of the Property in accordance with Section 8.4, provided that Lender makes any Net Proceeds available pursuant to Section 8.4. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. Borrower shall adjust all claims for Insurance Proceeds in consultation with, and approval of, Lender; provided, however, if an Event of Default has occurred and is continuing, Lender shall have the exclusive right to participate in the adjustment of all claims for Insurance Proceeds.

Section 8.3. Condemnation.

Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of the Property of which Borrower has knowledge and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If the Property or any portion thereof is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property and otherwise comply with the provisions of Section 8.4, provided that Lender makes any Net Proceeds available pursuant to Section 8.4. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 8.4. Restoration.

The following provisions shall apply in connection with the Restoration of the Property:

(a) If the Net Proceeds shall be less than $300,000 and the costs of completing the Restoration shall be less than $300,000, the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 8.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than $300,000 or the costs of completing the Restoration are equal to or greater than $300,000, Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Section 8.4. The term "**Net Proceeds**" for purposes of this Section 8.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 8.1(a)(i), (iv), (vi) and (viii) as a result of a Casualty, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same ("**Insurance Proceeds**"), or (ii) the net amount of the Award as a result of a Condemnation, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same ("**Condemnation Proceeds**"), whichever the case may be.

(i) Unless the terms of the FFIC Lease require that the Net Proceeds be used for the Restoration of the Property, the Net Proceeds shall be made available to Borrower for Restoration provided that each of the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) (1) in the event the Net Proceeds are Insurance Proceeds, less than thirty percent (30%) of the total floor area of the Improvements on the Property has been damaged, destroyed or rendered unusable as a result of a Casualty and the amount of damage does not exceed thirty percent (30%) of the Property's fair market value immediately prior to the occurrence of such Casualty, or (2) in the event the Net Proceeds are Condemnation Proceeds, less than ten percent (10%) of the land constituting the Property is taken, such land is located along the perimeter or periphery of the Property, and less than fifteen percent (15%) of the aggregate floor area of the Improvements is taken and the taking does not exceed fifteen percent (15%) of the Property's fair market value immediately prior to the occurrence of such taking;

(C) Leases covering in the aggregate at least seventy-five percent (75%) of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, and each Major Lease in effect as of such date shall remain in full force and effect during and after the completion of the Restoration without abatement of rent beyond the time required for Restoration;

(D) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than ninety (90) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

(E) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be covered out of the insurance coverage referred to in Section 8.1(a)(iii) above;

(F) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases or material agreements affecting the Property, (3) such time as may be required under applicable zoning law, ordinance, rule or regulation, or (4) the expiration of the insurance coverage referred to in Section 8.1(a)(iii);

(G) the Property and the use thereof after the Restoration will be in compliance with and permitted under all Legal Requirements;

(H) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

(I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the Property or the Improvements;

(J) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be acceptable to Lender; and

(K) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's reasonable judgment to cover the cost of the Restoration.

(ii) The Net Proceeds shall be held by Lender until disbursements commence, and, until disbursed in accordance with the provisions of this Section 8.4, shall constitute additional security for the Debt and other obligations under the Loan Documents. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all the conditions precedent to such advance, including those set forth in Section 8.4(b)(i), have been satisfied, (B) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the related Restoration item have been paid for in full, and (C) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company issuing the Title Insurance Policy. Notwithstanding the foregoing, Business Interruption Proceeds shall be controlled by Lender at all times, shall not be subject to the provisions of this Section 8.4 and shall be used solely for the payment of the obligations under the Loan Documents, including the payment of Actual Operating Expenses

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "Restoration Consultant"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts in excess of $300,000 under which they have been engaged, shall be subject to prior review and acceptance by Lender and the Restoration Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration, including, without limitation, reasonable counsel fees and disbursements and the Restoration Consultant's fees, shall be paid by Borrower.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Restoration Consultant, minus the Restoration Retainage. The term "Restoration Retainage" shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Restoration Consultant, until the

Restoration has been completed. The Restoration Retainage shall be reduced to five percent (5%) of the costs incurred upon receipt by Lender of satisfactory evidence that fifty percent (50%) of the Restoration has been completed. The Restoration Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 8.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Restoration Retainage shall not be released until the Restoration Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 8.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Restoration Retainage; provided, however, that Lender will release the portion of the Restoration Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Restoration Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company issuing the Title Insurance Policy, and Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the lien of the Mortgage and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Restoration Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender in consultation with the Restoration Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Restoration Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "Net Proceeds Deficiency") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 8.4(b) shall constitute additional security for the Debt and other obligations under the Loan Documents.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Restoration Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 8.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Agreement or any of the other Loan Documents.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 8.4(b)(vii) may (x) be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, (y) at the sole discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes and upon such conditions as Lender shall designate. If, pursuant to this Section 8.4, Lender shall receive and retain Net Proceeds, (i) the lien of the Mortgage shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt; and (ii) notwithstanding any other provisions hereof, Borrower shall not be required to repair or restore the portion of the Property affected by such Casualty or Condemnation to the condition or character the Property was in immediately prior to such Casualty or Condemnation so long as no Event of Default exists, but Borrower shall be required to remove all debris with respect to the portion of the Property not required to be restored in a manner that is safe and is not dangerous to health or other property and is in compliance with all applicable laws.

(d) In the event of foreclosure of the Mortgage, or other transfer of title to the Property in extinguishment in whole or in part of the Debt, all right, title and interest of Borrower in and to the Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure, Lender or other transferee in the event of such other transfer of title.

ARTICLE 9
RESERVE FUNDS

Section 9.1. Required Repairs.

Borrower shall use its best efforts to cause FFIC to complete the repairs and improvements to the Property set forth on Schedule I and as more particularly described in the Property Condition Report prepared in connection with the closing of the Loan in a good and workmanlike manner on or before the date that is twelve (12) months from the date hereof.

Section 9.2. Replacements.

(a) On an ongoing basis throughout the term of the Loan, Borrower shall make, or shall cause FFIC to make, to the extent FFIC is required to do so under the FFIC Lease, capital repairs, replacements and improvements necessary to keep the Property in good order and repair and in a good marketable condition or prevent deterioration of the Property, including, but not limited to, those repairs, replacements and improvements more particularly described in (i) the Property Condition Report prepared in connection with the closing of the Loan and (ii) Schedule II attached hereto (collectively, the "**Replacements**"). Borrower shall complete, or shall cause FFIC to complete, to the extent FFIC is required to maintain the physical condition of the Property under the FFIC Lease, all Replacements in a good and workmanlike manner as soon as commercially reasonable after commencing to make each such Replacement.

(b) Borrower shall establish on the date hereof an Eligible Account with Lender or Lender's agent to fund the Replacements (the "**Replacement Reserve Account**") into which Borrower shall deposit $1,657.44 (the "**Replacement Reserve Monthly Deposit**") into the Replacement Reserve Account on each Scheduled Payment Date. Amounts so deposited shall hereinafter be referred to as "**Replacement Reserve Funds**." Lender may, in its reasonable discretion, adjust the Replacement Reserve Monthly Deposit from time to time to an amount sufficient to maintain the proper maintenance and operation of the Property. In the event Lender shall at any time increase the Replacement Reserve Monthly Deposit, Borrower may, at its election, request that Lender obtain, at the sole cost and expense of Borrower, a Property Condition Report prepared by an engineer selected by Lender in its reasonable discretion, in which case the Replacement Reserve Monthly Deposit shall be adjusted by Lender based on the results of such report, provided that in no event shall such amounts be reduced below the initial amount of the Replacement Reserve Monthly Deposit set forth in herein. Notwithstanding the foregoing, provided that (x) the FFIC Lease or Substitute Lease obligates FFIC or Substitute Tenant to maintain the physical condition of the Property in good and marketable condition and (y) the FFIC Lease or Substitute Lease remains in full force and effect with no material defaults thereunder, then Borrower shall not be required to make Replacement Reserve Monthly Deposits other than for those items that are not the responsibility of FFIC or Substitute Tenant under the FFIC Lease or the Substitute Lease, as applicable.

Section 9.3. Termination Fee Deposits.

Borrower shall deposit with Lender into an Eligible Account established with Lender or Lender's agent to fund Tenant Improvements and Leasing Commissions (the "**Leasing Reserve Account**") any sum or termination fee payable to Borrower in connection with any early termination option contained in its respective lease of space at the Property (the "**Termination Fee Deposit**") on the date of Borrower's receipt thereof. Amounts so deposited shall hereinafter be referred to as the "**Leasing Reserve Funds**."

Section 9.4. Required Work.

Borrower shall diligently pursue all Replacements (the "**Required Work**") to completion in accordance with the following requirements:

(a) Lender reserves the right, at its option, to approve all contracts or work orders with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Required Work to the extent such contracts or work orders exceed $50,000. Upon Lender's request, Borrower shall assign any contract or subcontract to Lender.

(b) In the event Lender determines in its reasonable discretion that any Required Work is not being or has not been performed in a workmanlike or timely manner, and such failure continues for thirty (30) days after Borrower receives written notice from Lender, Lender shall have the option to withhold disbursement for such unsatisfactory Required Work and to proceed under existing contracts or to contract with third parties to complete such Required Work and to apply the Replacement Reserve Funds, as applicable, toward the labor and materials necessary to complete such Required Work, without providing any prior notice to Borrower and to exercise any and all other remedies available to Lender upon the occurrence and during the continuance of an Event of Default hereunder.

(c) In order to facilitate Lender's completion of the Required Work, Borrower grants Lender the right to enter onto the Property and perform any and all work and labor necessary to complete the Required Work and/or employ watchmen to protect the Property from damage. All sums so expended by Lender, to the extent not from the Reserve Funds, shall be deemed to have been advanced under the Loan to Borrower and secured by the Mortgage. For this purpose Borrower constitutes and appoints Lender its true and lawful attorney- in- fact with full power of substitution to complete or undertake the Required Work in the name of Borrower to the extent permitted pursuant to Section 9.4(b). Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney- in- fact as follows: (i) to use any of the Reserve Funds for the purpose of making or completing the Required Work; (ii) to make such additions, changes and corrections to the Required Work as shall be necessary or desirable to complete the Required Work; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iv) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of the Required Work, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the rehabilitation and repair of the Property; and (vii) to do any and every act which Borrower might do on its own behalf to fulfill the terms of this Agreement.

(d) Nothing in this Section 9.4 shall: (i) make Lender responsible for making or completing the Required Work; (ii) require Lender to expend funds in addition to the Reserve Funds to make or complete any Required Work; (iii) obligate Lender to proceed with the Required Work; or (iv) obligate Lender to demand from Borrower additional sums to make or complete any Required Work.

(e) Borrower shall permit Lender and Lender's agents and representatives (including, without limitation, Lender's engineer, architect, or inspector) or third parties performing Required Work pursuant to this Section 9.4 to enter onto the Property during normal business hours (subject to the rights of tenants under their Leases) to inspect the progress of any Required Work and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Required Work which are or may be kept at the Property, and to complete any Required Work made pursuant to this Section 9.4. Borrower shall cause all contractors and subcontractors to cooperate with Lender and Lender's representatives or such other persons described above in connection with inspections described in this Section 9.4 or the completion of Required Work pursuant to this Section 9.4.

(f) Lender may, to the extent any Required Work would reasonably require an inspection of the Property, inspect the Property at Borrower's expense prior to making a disbursement of the Reserve Funds in order to verify completion of the Required Work for which reimbursement is sought. Borrower shall pay Lender a reasonable inspection fee not exceeding $250.00 for each such inspection. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender and/or may require a copy of a certificate of completion by an independent qualified professional acceptable to Lender prior to the disbursement of the Reserve Funds. Borrower shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional.

(g) The Required Work and all materials, equipment, fixtures, or any other item comprising a part of any Required Work shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialman's or other Liens (except for Permitted Encumbrances).

(h) Before each disbursement of the Reserve Funds, Lender may require Borrower to provide Lender with a search of title to the Property effective to the date of the disbursement, which search shows that no mechanic's or materialmen's or other Liens of any nature have been placed against the Property since the date of recordation of the Mortgage and that title to the Property is free and clear of all Liens (except for Permitted Encumbrances).

(i) All Required Work shall comply with all Legal Requirements and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

(j) Borrower hereby collaterally assigns to Lender all rights and claims Borrower may have against all Persons supplying labor or materials in connection with the Required Work; provided, however, that Lender may not pursue any such rights or claims unless an Event of Default has occurred and remains uncured.

Section 9.5. Release of Reserve Funds.

(a) Upon written request from Borrower and satisfaction of the requirements set forth in this Section 9.5, Lender shall disburse to Borrower amounts from (i) the Replacement Reserve Account to the extent necessary to reimburse Borrower for the actual costs of any approved Replacements, or (ii) the Leasing Reserve Account to the extent necessary to reimburse Borrower for the actual costs of Tenant Improvements and/or Leasing Commissions incurred in connection with Leases entered into in accordance with the Loan Documents or those Leases entered into with FFIC, provided that (A) such Leasing Commissions are reasonable and customary for properties similar to the Property and the portion of the Property leased for which such Leasing Commissions are due, and (B) the amount of such Leasing Commissions are determined pursuant to arm's- length transactions between Borrower and any leasing agent to which a Leasing Commission is due, and excluding any Leasing Commissions which shall be due any member, general partner or shareholder of Borrower or any affiliate of Borrower. Notwithstanding the preceding sentence, in no event shall Lender be required to (x) disburse funds from any of the Reserve Accounts if an Event of Default exists, or (y) disburse funds from the Replacement Reserve Account to reimburse Borrower for the costs of routine repairs or maintenance to the Property or for costs which are to be reimbursed from funds held for Tenant Improvements and Leasing Commissions.

(b) With each request for disbursement, Borrower shall certify in writing to Lender that all Required Work has been performed in accordance with all Legal Requirements and that all such Required Work has been completed lien free and paid for in full or will be paid for in full upon disbursement of the requested funds. In addition, each request for disbursement in excess of $50,000 shall be on a form provided or approved by Lender and shall (i) include copies of invoices for all items or materials purchased and all labor or services provided, (ii) specify (A) the Required Work for which the disbursement is requested, (B) the quantity and price of each item purchased, if the Required Work includes the purchase or replacement of specific items, (C) the price of all materials (grouped by type

or category) used in any Required Work other than the purchase or replacement of specific items, and (D) the cost of all contracted labor or other services applicable to each Required Work for which such request for disbursement is made, (iii) if requested by Lender, conditional lien waivers from each contractor, supplier, materialman, mechanic or subcontractor with respect to the completion of its work or delivery of its materials, and (iv) include, if such request for disbursement is in connection with Tenant Improvements, a certificate from the Tenant(s) for which the Tenant Improvements have been performed stating that such Tenant Improvements have been completed in a manner satisfactory and acceptable to such Tenant(s) and (unless disbursement is requested pursuant to Section 9.5(d)), such Tenant(s) has accepted the premises demised under the applicable Lease(s), and containing such other information as Lender may require, in form and substance reasonably satisfactory to Lender, and/or if such request for disbursement is in connection with Leasing Commissions, a certificate from the leasing agent that no further sums are due to it in connection with the applicable Lease]. Except as provided in Section 9.5(d), each request for disbursement shall be made only after completion of the Replacement or Tenant Improvement (or the portion thereof completed in accordance with Section 9.5(d)), or the full performance by the leasing agent of its obligations (in the case of Leasing Commissions), as applicable, for which disbursement is requested. Borrower shall provide Lender evidence satisfactory to Lender in its reasonable judgment of such completion or performance.

(c) Any lien waiver delivered hereunder shall conform to all Legal Requirements and shall cover all work performed and materials supplied (including equipment and fixtures) for the Property by that contractor, supplier, subcontractor, mechanic or materialman through the date covered by the current disbursement request. In the case of Leasing Commissions, payment shall be made to any leasing agent to which a Leasing Commission is due in the amount of invoices submitted by such leasing agent, provided all of the other conditions for disbursements for such Leasing Commissions are satisfied in the judgment of Lender.

(d) If (i) the cost of any item of Required Work exceeds $50,000, (ii) the contractor performing such Required Work requires periodic payments pursuant to terms of a written contract, and (iii) Lender has approved in writing in advance such periodic payments, a request for disbursement from the Reserve Accounts may be made after completion of a portion of the work under such contract, provided (A) such contract requires payment upon completion of such portion of work, (B) the materials for which the request is made are on site at the Property and are properly secured or have been installed in the Property, (C) all other conditions in this Agreement for disbursement have been satisfied, and (D) in the case of a Replacement, funds remaining in the Replacement Reserve Account are, in Lender’s judgment, sufficient to complete such Replacement and other Replacements when required.

(e) Borrower shall not make a request for, nor shall Lender have any obligation to make, any disbursement from any Reserve Account more frequently than once in any calendar month and (except in connection with the final disbursement) in any amount less than the lesser of (i) $10,000 or (ii) the total cost of the Required Work or Leasing Commission for which the disbursement is requested.

(f) Intentionally Omitted.

(g) In the event any Borrower requests a disbursement from the Replacement Reserve Account to pay for or to reimburse Borrower for the actual cost of labor or materials used in connection with repairs or improvements other than the

Replacements specified in the Property Condition Report prepared in connection with the closing of the Loan (an "Additional Replacement"), Borrower shall disclose in writing to Lender the reason why funds in the Replacement Reserve Account should be used to pay for such Additional Replacement. If Lender determines, in the exercise of Lender's reasonable judgment, that (i) such Additional Replacement is of the type intended to be covered by the Replacement Reserve Account, (ii) costs for such Additional Replacement are reasonable, (iii) the funds in the Replacement Reserve Account are sufficient to pay for such Additional Replacement and all other Replacements for the Property specified in the Property Condition Report, and (iv) all other conditions for disbursement under this Agreement have been met, Lender may disburse funds from the Replacement Reserve Account.

(h) Lender's disbursement of any Reserve Funds or other acknowledgment of completion of any Required Work in a manner satisfactory to Lender shall not be deemed a certification or warranty by Lender to any Person that the Required Work has been completed in accordance with Legal Requirements.

(i) If the funds in any Reserve Account should exceed the amount of payments actually applied by Lender for the purposes of the account, Lender in its sole discretion shall either return any excess to Borrower or credit such excess against future payments to be made to that Reserve Account. If at any time Lender reasonably determines that the Reserve Funds are not or will not be sufficient to make the required payments, Lender shall notify Borrower of such determination and Borrower shall pay to Lender any amount necessary to make up the deficiency within ten (10) Business Days after notice from Lender to Borrower requesting payment thereof.

(j) The insufficiency of any balance in any of the Reserve Accounts shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

(k) Intentionally Omitted.

(l) Upon payment in full of the Debt, Lender shall return all amounts remaining on deposit, if any, in the Replacement Reserve Account, if any, to Borrower or the Person shown on Lender's records as being the owner of the Property and no other party shall have any right or claim thereto.

(m) Upon the earlier to occur of (i) the completion of all Tenant Improvements and the full performance by the leasing agent of its obligations with respect to any Leasing Commissions, as verified by Lender in its reasonable discretion, or (ii) the payment in full of the Debt, all amounts remaining on deposit, if any, in the Leasing Reserve Account shall be returned to Borrower or the Person shown on Lender's records as being the owner of the Property and no other party shall have any right or claim thereto.

Section 9.6. Tax and Insurance Reserve Funds.

(a) Borrower shall establish on the date hereof an Eligible Account with Lender or Lender's agent sufficient to discharge Borrower's obligations for the payment of Taxes and Insurance Premiums pursuant to Section 5.4 and Section 8.1 hereof (the "**Tax and Insurance Reserve Account**") into which Borrower shall deposit on each Scheduled Payment Date (a) one-twelfth of the Taxes that Lender estimates will be payable during the next ensuing twelve (12) months or such higher amount necessary to accumulate with Lender

sufficient funds to pay all such Taxes at least thirty (30) days prior to the earlier of (i) the date that the same will become delinquent and (ii) the date that additional charges or interest will accrue due to the non-payment thereof, and (b) except to the extent Lender has waived the insurance escrow because the insurance required hereunder is maintained under a blanket insurance Policy acceptable to Lender in accordance with Section 8.1(c), one-twelfth of the Insurance Premiums that Lender estimates will be payable during the next ensuing twelve (12) months for the renewal of the coverage afforded by the Policies upon the expiration thereof or such higher amount necessary to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (a) and (b) above hereinafter called the "**Tax and Insurance Reserve Funds**"). Lender will apply the Tax and Insurance Reserve Funds to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.4 and Section 8.1 hereof. In making any disbursement from the Tax and Insurance Reserve Account, Lender may do so according to any bill, statement or estimate procured from the appropriate public office or tax lien service (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Reserve Funds shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.4 and Section 8.1 hereof, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Reserve Account. In allocating any such excess, Lender may deal with the person shown on Lender's records as being the owner of the Property. Upon payment in full of the Debt, lender shall return any amount remaining in the Tax and Insurance Reserve Account to Borrower or the person shown on Lender's records as being the owner of the Property and no other party shall have any right or claim thereto. If at any time Lender reasonably determines that the Tax and Insurance Reserve Funds are not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (a) and (b) above, Lender shall notify Borrower of such determination and Borrower shall pay to Lender any amount necessary to make up the deficiency within ten (10) Business Days after notice from Lender to Borrower requesting payment thereof.

(b) Notwithstanding the foregoing, (i) for so long as (A) the FFIC Lease obligates FFIC to pay the real estate taxes directly to the governmental authority and (B) the FFIC Lease remains in full force and effect with no material defaults thereunder, then Borrower shall not be required to make reserve deposits for real estate taxes and (ii) for so long as (A) the FFIC Lease obligates FFIC to maintain and pay for acceptable insurance coverage directly to the applicable insurer (or FFIC is self-insuring pursuant to the FFIC Lease)) and (B) the FFIC Lease remains in full force and effect with no material defaults thereunder, then Borrower shall not be required to make reserve deposits for insurance premiums.

Section 9.7. Intentionally Omitted.

Section 9.8. Intentionally Omitted.

Section 9.9. Reserve Funds Generally.

(a) (i) Except for the Replacement Reserve Account, no earnings or interest on the Reserve Accounts shall be payable to Borrower. Neither Lender nor any loan servicer that at any time holds or maintains such non-interest-bearing Reserve Accounts shall have any obligation to keep or maintain such Reserve Accounts or any funds deposited

therein in interest-bearing accounts. If Lender or any such loan servicer elects in its sole and absolute discretion to keep or maintain any non-interest-bearing Reserve Account or any funds deposited therein in an interest-bearing account, the account shall be an Eligible Account and (A) such funds shall not be invested except in Permitted Investments, and (B) all interest earned or accrued thereon shall be for the account of and be retained by Lender or such loan servicer.

(ii) Funds deposited in the Replacement Reserve Account shall be held in an interest-bearing business savings account and interest shall be credited to Borrower. In no event shall Lender or any loan servicer that at any time holds or maintains the Replacement Reserve Account be required to select any particular interest-bearing account or the account that yields the highest rate of interest, provided that selection of the account shall be consistent with the general standards at the time being utilized by Lender or the loan servicer, as applicable, in establishing similar accounts for loans of comparable type. All such interest shall be and become part of the Replacement Reserve Account and shall be disbursed in accordance with Section 9.5 above; provided, however, that Lender may, at its election, retain any such interest for its own account during the occurrence and continuance of an Event of Default. Borrower agrees that it shall include all interest on Replacement Reserve Funds as the income of Borrower (and, if Borrower is a partnership or other pass-through entity, the partners, members or beneficiaries of Borrower, as the case may be), and shall be the owner of the Replacement Reserve Funds for federal and applicable state and local tax purposes, except to the extent that Lender retains any interest for its own account during the occurrence and continuance of an Event of Default as provided herein.

(b) Borrower grants to Lender a first-priority perfected security interest in, and assigns and pledges to Lender, each of the Reserve Accounts and any and all Reserve Funds now or hereafter deposited in the Reserve Accounts as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Accounts and the Reserve Funds shall constitute additional security for the Debt. The provisions of this Section 9.9 are intended to give Lender or any subsequent holder of the Loan “control” of the Reserve Accounts within the meaning of the UCC.

(c) The Reserve Accounts and any and all Reserve Funds now or hereafter deposited in the Reserve Accounts shall be subject to the exclusive dominion and control of Lender, which shall hold the Reserve Accounts and any or all Reserve Funds now or hereafter deposited in the Reserve Accounts subject to the terms and conditions of this Agreement. Borrower shall have no right of withdrawal from the Reserve Accounts or any other right or power with respect to the Reserve Accounts or any or all of the Reserve Funds now or hereafter deposited in the Reserve Accounts, except as expressly provided in this Agreement.

(d) Lender shall furnish or cause to be furnished to Borrower, without charge, an annual accounting of each Reserve Account in the normal format of Lender or its loan servicer, showing credits and debits to such Reserve Account and the purpose for which each debit to each Reserve Account was made.

(e) As long as no Event of Default has occurred and is continuing, Lender shall make disbursements from the Reserve Accounts in accordance with this Agreement. All such disbursements shall be deemed to have been expressly pre-authorized by Borrower,

and shall not be deemed to constitute the exercise by Lender of any remedies against Borrower unless an Event of Default has occurred and is continuing and Lender has expressly stated in writing its intent to proceed to exercise its remedies as a secured party, pledgee or lienholder with respect to the Reserve Accounts.

(f) If any Event of Default occurs, Borrower shall immediately lose all of its rights to receive disbursements from the Reserve Accounts until the earlier to occur of (i) the date on which such Event of Default is cured to Lender's satisfaction, or (ii) the payment in full of the Debt. In addition, at Lender's election, Borrower shall lose all of its rights to receive interest on the Replacement Reserve Account during the occurrence and continuance of an Event of Default. Upon the occurrence and during the continuance of any Event of Default, Lender may exercise any or all of its rights and remedies as a secured party, pledgee and lienholder with respect to the Reserve Accounts. Without limitation of the foregoing, upon the occurrence and during the continuance of any Event of Default, Lender may use and disburse the Reserve Funds (or any portion thereof) for any of the following purposes: (A) repayment of the Debt, including, but not limited to, principal prepayments and the prepayment premium applicable to such full or partial prepayment (as applicable); (B) reimbursement of Lender for all losses, fees, costs and expenses (including, without limitation, reasonable legal fees) suffered or incurred by Lender as a result of such Event of Default; (C) payment of any amount expended in exercising any or all rights and remedies available to Lender at law or in equity or under this Agreement or under any of the other Loan Documents; (D) payment of any item from any of the Reserve Accounts as required or permitted under this Agreement; or (E) any other purpose permitted by applicable law; provided, however, that any such application of funds shall not cure or be deemed to cure any Event of Default. Without limiting any other provisions hereof, each of the remedial actions described in the immediately preceding sentence shall be deemed to be a commercially reasonable exercise of Lender's rights and remedies as a secured party with respect to the Reserve Funds and shall not in any event be deemed to constitute a setoff or a foreclosure of a statutory banker's lien. Nothing in this Agreement shall obligate Lender to apply all or any portion of the Reserve Funds to effect a cure of any Event of Default, or to pay the Debt, or in any specific order of priority. The exercise of any or all of Lender's rights and remedies under this Agreement or under any of the other Loan Documents shall not in any way prejudice or affect Lender's right to initiate and complete a foreclosure under the Mortgage.

(g) The Reserve Funds shall not constitute escrow or trust funds and may be commingled with other monies held by Lender. Notwithstanding anything else herein to the contrary, Lender may commingle in one or more Eligible Accounts any and all funds controlled by Lender, including, without limitation, funds pledged in favor of Lender by other borrowers, whether for the same purposes as the Reserve Accounts or otherwise. Without limiting any other provisions of this Agreement or any other Loan Document, the Reserve Accounts may be established and held in such name or names as Lender or its loan servicer, as agent for Lender, shall deem appropriate, including, without limitation, in the name of Lender or such loan servicer as agent for Lender. In the case of any Reserve Account which is held in a commingled account, Lender or its loan servicer, as applicable, shall maintain records sufficient to enable it to determine at all times which portion of such account is related to the Loan. The Reserve Accounts are solely for the protection of Lender. With respect to the Reserve Accounts, Lender shall have no responsibility beyond the allowance of due credit for the sums actually received by Lender or beyond the reimbursement or payment of the costs and expenses for which such accounts were established in accordance with their terms. Upon assignment of the Loan by Lender, any Reserve Funds shall be turned over to

the assignee and any responsibility of Lender as assignor shall terminate. The requirements of this Agreement concerning Reserve Accounts in no way supersede, limit or waive any other rights or obligations of the parties under any of the Loan Documents or under applicable law.

(h) Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in the Reserve Accounts or the Reserve Funds deposited therein or permit any Lien to attach thereto, except for the security interest granted in this Section 9.9, or any levy to be made thereon, or any UCC Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(i) Borrower will maintain the security interest created by this Section 9.9 as a first priority perfected security interest and will defend the right, title and interest of Lender in and to the Reserve Accounts and the Reserve Funds against the claims and demands of all Persons whomsoever. At any time and from time to time, upon the written request of Lender, and at the sole expense of Borrower, Borrower will promptly and duly execute and deliver such further instruments and documents and will take such further actions as Lender reasonably may request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted.

ARTICLE 10
CASH MANAGEMENT

Section 10.1. Lockbox Account and Cash Management Account.

(a) Borrower acknowledges and confirms that Borrower has established, and Borrower covenants that it shall maintain, (i) pursuant to the Lockbox Agreement, an Eligible Account into which Borrower shall, and shall cause Manager to, deposit or cause to be deposited, all Rents and other revenue from the Property (such account, all funds at any time on deposit therein and any proceeds, replacements or substitutions of such account or funds therein, are referred to herein as the "**Lockbox Account**"), and (ii) an Eligible Account into which funds in the Lockbox Account shall be transferred pursuant to the terms of Section 10.2(b) hereof, named "First States Investors 239, LLC for the benefit of Bank of America N.A.", with account number 12354-65879 (such account, the sub-accounts thereof, all funds at any time on deposit therein and any proceeds, replacements or substitutions of such account or funds therein, are referred to herein as the "**Cash Management Account**"); provided, however, that so long as the FFIC Lease remains in full force and effect with no material defaults thereunder, then (x) Borrower need not establish or maintain the Lockbox Account and (y) the deposits required pursuant to subsection (i) of this Section 10.1(a) shall be made directly to the Cash Management Account. In the event that the FFIC Lease is terminated or a material default thereunder has occurred and is continuing beyond any grace period set forth in the FFIC Lease, upon request by Lender, Borrower shall establish and maintain the Lockbox Account as provided herein within thirty (30) calendar days of Lender's request.

(b) The Lockbox Account and Cash Management Account shall each be in the name of Borrower for the benefit of Lender, provided that Borrower shall be the owner of all funds on deposit in such accounts for federal and applicable state and local tax purposes (except to the extent Lender retains any interest earned on the Cash Management Account for its own account following the occurrence and during the continuance of an Event of Default). Sums on deposit in the Cash Management Account shall not be invested except in such

Permitted Investments as determined and directed by Lender and all income earned thereon shall be the income of Borrower and be applied to and become part of the Cash Management Account, to be disbursed in accordance with this Article 10. Neither Lockbox Bank nor Lender shall have any liability for any loss resulting from the investment of funds in Permitted Investments in accordance with the terms and conditions of this Agreement.

(c) The Lockbox Account and Cash Management Account shall be subject to the exclusive dominion and control of Lender and, except as otherwise expressly provided herein, and as long as the Loan (or any portion thereof) is outstanding, neither Borrower, Manager nor any other party claiming on behalf of, or through, Borrower or Manager, shall have any right of withdrawal therefrom or any other right or power with respect thereto.

(d) Borrower agrees to pay the customary fees and expenses of Lockbox Bank (incurred in connection with maintaining the Lockbox Account) and Lender (incurred in connection with maintaining the Lockbox Account) and any successors thereto in connection with the maintenance of the Lockbox Account, as separately agreed by them from time to time.

(e) Lender shall be responsible for the performance only of such duties with respect to the Cash Management Account as are specifically set forth herein, and no duty shall be implied from any provision hereof. Lender shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Borrower shall indemnify and hold Lender and its directors, employees, officers and agents harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by such parties in connection with the Cash Management Account other than such as result from the gross negligence or willful misconduct of Lender or intentional nonperformance by Lender of its obligations under this Agreement.

Section 10.2. Deposits and Withdrawals.

(a) Borrower represents, warrants and covenants that:

(i) Concurrently with the execution of this Agreement with respect to all Leases existing on the date hereof, and concurrently with the execution of any new Lease with respect to any new Lease, Borrower shall notify and advise each Tenant under each Lease (whether such Lease is presently effective or executed after the date hereof) to send directly to the Cash Management Account (or if the Lockbox Account has been established pursuant to Section 10.1(a) hereof, to the Lockbox Account) all payments of Rents or any other item payable under such Leases pursuant to an instruction letter, including the wiring instructions for the Cash Management Account (or the Lockbox Account, as applicable) appearing in such letter, in the form of Exhibit E attached hereto (a "**Tenant Direction Letter**"). If Borrower fails to provide any such notice (and without prejudice to Lender's rights with respect to such default), Lender shall have the right, and Borrower hereby grants to Lender a power of attorney (which power of attorney shall be coupled with an interest and irrevocable so long as any portion of the Debt remains outstanding), to sign and deliver a Tenant Direction Letter;

(ii) Borrower shall, and shall cause Manager to, instruct all Persons that maintain open accounts with Borrower or Manager with respect to the Property or

with whom Borrower or Manager does business on an "accounts receivable" basis with respect to the Property to deliver all payments due under such accounts to the Lockbox. Neither Borrower nor Manager shall direct any such Person to make payments due under such accounts in any other manner;

(iii) All Rents or other income from the Property shall (A) be deemed additional security for payment of the Debt and shall be held in trust for the benefit, and as the property, of Lender, (B) not be commingled with any other funds or property of Borrower or Manager, and (C) if received by Borrower or Manager notwithstanding the delivery of a Tenant Direction Letter, be deposited in the Lockbox Account within one (1) Business Day of receipt;

(iv) Without the prior written consent of Lender, so long as any portion of the Debt remains outstanding, neither Borrower nor Manager shall terminate, amend, revoke or modify any Tenant Direction Letter in any manner whatsoever or direct or cause any Tenant to pay any amount in any manner other than as provided in the related Tenant Direction Letter; and

(v) So long as any portion of the Debt remains outstanding, neither Borrower, Manager nor any other Person shall open or maintain any accounts other than the Lockbox Account into which revenues from the ownership and operation of the Property are deposited. The foregoing shall not prohibit Borrower from utilizing one or more separate accounts for the disbursement or retention of funds that have been transferred to Borrower pursuant to the express terms of this Agreement.

(b) Borrower hereby irrevocably authorizes Lender to transfer, or cause to be transferred, and Lender shall transfer, on each Business Day by wire transfer or other method of transfer mutually agreeable to Lockbox Bank and Lender of immediately available funds, all collected and available balances in the Lockbox Account to the Cash Management Account to be held until disbursed by Lender pursuant to Section 10.2(c).

(c) on each Scheduled Payment Date (and if such day is not a Business Day, then the immediately preceding day which is a Business Day) commencing the month during which the first Scheduled Payment Date occurs, Borrower hereby irrevocably authorizes Lender to withdraw or allocate to the sub-accounts of the Cash Management Account, as the case may be, amounts received in the Cash Management Account, in each case to the extent that sufficient funds remain therefor:

(i) *first*, funds sufficient to pay the monthly deposits to the Tax and Insurance Reserve Account, if applicable, shall be allocated to the Tax and Insurance Reserve Account to be held and disbursed in accordance with Section 9.6;

(ii) *second*, funds sufficient to pay the Monthly Payment Amount shall be withdrawn and paid to Lender;

(iii) *third*, funds sufficient to pay the Actual Operating Expenses of the Property pursuant to the Annual Budget, to the extent not paid by FFIC pursuant to the FFIC Lease;

(iv) *fourth*, funds sufficient to pay the Replacement Reserve Monthly Deposit, if applicable, shall be allocated to the Replacement Reserve Account to be held and disbursed in accordance with Section 9.5;

(v) *fifth*, funds sufficient to pay any interest accruing at the Default Rate, late payment charges, if any, and any other sums due and payable to Lender under any of the Loan Documents, shall be withdrawn and paid to Lender and applied against such items;

(vi) *sixth*, funds sufficient to pay Lockbox Bank for all costs and expenses incurred by Lockbox Bank in connection with the maintenance and administration of the Lockbox Account;

(vii) *seventh*, funds sufficient to pay capital expenses of the Property pursuant to the Annual Budget, to the extent not paid by FFIC pursuant to the FFIC Lease;

(viii) *eighth*, funds sufficient to pay Extraordinary Expenses approved by Lender;

(ix) *ninth*, (A) prior to the Anticipated Prepayment Date, funds in an amount equal to the balance (if any) remaining on deposit in the Cash Management Account after the foregoing withdrawals and allocations shall be transferred to Borrower's Account or (B) on or subsequent to the Anticipated Prepayment Date, such balance of funds ("**Excess Cash**") shall be applied by Lender to prepay the Debt in accordance with Section 2.2(h) hereof. Such prepayments pursuant to this Section 10.2(c)(ix)(B) shall be made without payment of any premium or penalty.

(d) Notwithstanding anything to the contrary herein, Borrower acknowledges that Borrower is responsible for monitoring the sufficiency of funds deposited in the Cash Management Account and that Borrower is liable for any deficiency in available funds, irrespective of whether Borrower has received any account statement, notice or demand from Lender or Lender's servicer. If the amount on deposit in the Cash Management Account is insufficient to make all of the withdrawals and allocations described in Section 10.2(c)(i) through (viii) above, Borrower shall deposit such deficiency into the Cash Management Account within five (5) days (provided that such five day period shall not constitute a grace period for any default or Event of Default under this Agreement or any other Loan Document based on a failure to satisfy any monetary obligation provided in any Loan Document).

(e) If an Event of Default shall have occurred and be continuing, Borrower hereby irrevocably authorizes Lender to make any and all withdrawals from the Lockbox Account and Cash Management Account and transfers between any of the Reserve Accounts as Lender shall determine in Lender's sole and absolute discretion and Lender may use all funds contained in any such accounts for any purpose, including but not limited to repayment of the Debt in such order, proportion and priority as Lender may determine in its sole and absolute discretion. Lender's right to withdraw and apply funds as stated herein shall be in addition to all other rights and remedies provided to Lender under this Agreement, the Note, the Mortgage and the other Loan Documents.

Section 10.3. Security Interest.

(a) To secure the full and punctual payment of the Debt and performance of all obligations of Borrower now or hereafter existing under this Agreement and the other Loan Documents, Borrower hereby grants to Lender a first-priority perfected security interest in each of the Accounts and the Account Collateral. Furthermore, Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any of the foregoing or permit any Lien to attach thereto or any levy to be made thereon or any UCC Financing Statements to be filed with respect thereto. Borrower will maintain the security interest created by this Section 10.3(a) as a first priority perfected security interest and will defend the right, title and interest of Lender in and to each of the Accounts and the Account Collateral against the claims and demands of all Persons whomsoever.

(b) Borrower authorizes Lender to file any financing statement or statements required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein in connection with the Lockbox Account and Cash Management Account. Borrower agrees that at any time and from time to time, at the expense of Borrower, Borrower will promptly and duly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby (including, without limitation, any security interest in and to any Permitted Investments) or to enable Lender to exercise and enforce its rights and remedies hereunder.

(c) Upon the occurrence of an Event of Default, Lender may exercise any or all of its rights and remedies as a secured party, pledgee and lienholder with respect to the Accounts and the Account Collateral. Without limitation of the foregoing, upon any Event of Default, Lender may use the Accounts and the Account Collateral for any of the following purposes: (A) repayment of the Debt, including, but not limited to, principal prepayments and the prepayment premium applicable to such full or partial prepayment (as applicable); (B) reimbursement of Lender for all losses, fees, costs and expenses (including, without limitation, reasonable legal fees) suffered or incurred by Lender as a result of such Event of Default; (C) payment of any amount expended in exercising any or all rights and remedies available to Lender at law or in equity or under this Agreement or under any of the other Loan Documents; (D) payment of any item as required or permitted under this Agreement; or (E) any other purpose permitted by applicable law; provided, however, that any such application of funds shall not cure or be deemed to cure any Event of Default. Without limiting any other provisions hereof, each of the remedial actions described in the immediately preceding sentence shall be deemed to be a commercially reasonable exercise of Lender's rights and remedies as a secured party with respect to the Accounts and the Account Collateral and shall not in any event be deemed to constitute a setoff or a foreclosure of a statutory banker's lien. Nothing in this Agreement shall obligate Lender to apply all or any portion of the Accounts and the Account Collateral to effect a cure of any Event of Default, or to pay the Debt, or in any specific order of priority. The exercise of any or all of Lender's rights and remedies under this Agreement or under any of the other Loan Documents shall not in any way prejudice or affect Lender's right to initiate and complete a foreclosure under the Mortgage.

(d) Definitions. Notwithstanding anything to the contrary contained herein, For purposes of this Article 10 only, Business Day shall mean a day on which Lender

and Lockbox Bank are both open for the conduct of substantially all of their respective banking business at the office in the city in which the Note is payable, with respect to Lender and at the office in the city where the Lockbox Account is maintained, with respect to Lockbox Bank (in both instances, excluding Saturdays and Sundays).

ARTICLE 11
EVENTS OF DEFAULT; REMEDIES

Section 11.1. Event of Default.

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

(a) if any portion of the Debt is not paid on or prior to the date the same is due or if the entire Debt is not paid on or before the Maturity Date; provided, however, Borrower shall not be in default so long as there is sufficient money in the Cash Management Account for payment of all amounts then due and payable (including any deposits into Reserve Accounts) and Lender's access to such money has not been constrained or constricted in any manner;

(b) except as otherwise expressly provided in the Loan Documents, if any of the Taxes or Other Charges are not paid when the same are due and payable, unless there is sufficient money in the Tax and Insurance Reserve Account for payment of amounts then due and payable and Lender's access to such money has not been constrained or restricted in any manner;

(c) if (i) the Policies are not kept in full force and effect, (ii) the Acord 28 (or similar) certificate is not delivered to Lender in accordance with Section 8.1 or (iii) certified copies of the Policies are not delivered to Lender upon request, provided such copies are available;

(d) if Borrower breaches any covenant with respect to itself contained in Article 6 or any covenant contained in Article 7 hereof;

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

(f) if (i) Borrower, or any managing member or general partner of Borrower, Borrower Principal, or the sole member of Borrower shall commence any case, proceeding or other action (A) under any Creditors Rights Laws, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower, any managing member or general partner of Borrower, Borrower Principal, or the sole member of Borrower shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower, any managing member or general partner of Borrower, Borrower Principal, or the sole member of Borrower any case, proceeding or other action of a

nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against Borrower, any managing member or general partner of Borrower, Borrower Principal, or the sole member of Borrower any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) Borrower, any managing member or general partner of Borrower, Borrower Principal, or the sole member of Borrower shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower, any managing member or general partner of Borrower, Borrower Principal, or the sole member of Borrower shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(g) if Borrower shall be in default beyond applicable notice and grace periods under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property, whether it be superior or junior in lien to the Mortgage;

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

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

(j) if a judgment is filed against the Borrower in excess of $10,000 which is not vacated or discharged within 30 days;

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

(l) if Borrower shall permit any event within its control to occur that would cause any REA to terminate without notice or action by any party thereto or would entitle any party to terminate any REA and the term thereof by giving notice to Borrower; or any REA shall be surrendered, terminated or canceled for any reason or under any circumstance whatsoever except as provided for in such REA; or any term of any REA shall be modified or supplemented without Lender's prior written consent; or Borrower shall fail, within ten (10) Business Days after written demand by Lender, to exercise its option to renew or extend the term of any REA or shall fail or neglect to pursue diligently all actions necessary to exercise such renewal rights pursuant to such REA except as provided for in such REA; or

(m) if Borrower shall continue to be in default under any other term, covenant or condition of this Agreement or any of the Loan Documents for more than ten (10) days after Borrower's receipt of written notice from Lender in the case of any default which can be cured by the payment of a sum of money or for thirty (30) days after receipt of

written notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) days.

Section 11.2. Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in Section 11.1(f) above) and at any time thereafter Lender may, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in Section 11.1(f) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

(b) Upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents.

ARTICLE 12
ENVIRONMENTAL PROVISIONS

Section 12.1. Environmental Representations and Warranties.

Borrower represents and warrants, based upon an Environmental Report of the Property and information that Borrower knows that: (a) there are no Hazardous Materials or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with Environmental Laws and with permits issued pursuant thereto (if such permits are required), if any, and (ii) either (A) in the case of Hazardous Materials, in amounts not in excess of that necessary to operate the Property for the purposes set forth herein or (B) fully disclosed to and approved by Lender in writing pursuant to an Environmental Report; (b) there are no past, present or threatened Releases of Hazardous

Materials in violation of any Environmental Law or which would require remediation by a Governmental Authority in, on, under or from the Property except as described in the Environmental Report; (c) there is no threat of any Release of Hazardous Materials migrating to the Property except as described in the Environmental Report; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Report; (e) Borrower does not know of, and has not received, any written or oral notice or other communication from any Person relating to Hazardous Materials in, on, under or from the Property; (f) the Property is free of Mold; and (g) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to environmental conditions in, on, under or from the Property known to Borrower or contained in Borrower's files and records, including but not limited to any reports relating to Hazardous Materials in, on, under or migrating to or from the Property and/or to the environmental condition of or the presence of Mold at the Property.

Section 12.2. Environmental Covenants.

Borrower covenants and agrees that so long as Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property: (a) all uses and operations on or of the Property, whether by Borrower or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Materials in, on, under or from the Property; (c) there shall be no Hazardous Materials in, on, or under the Property, except those that are both (i) in compliance with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required, and (ii) (A) in amounts not in excess of that necessary to operate the Property for the purposes set forth herein or (B) fully disclosed to and approved by Lender in writing or (C) with respect to Mold, not in a condition, location, or of a type which may pose a risk to human health or safety or the environment or which may result in damage to or would adversely affect or impair the value or marketability of the Property; (d) Borrower shall keep the Property free and clear of all Environmental Liens; (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 12.4 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Lender, upon Lender's reasonable belief that the Property is not in full compliance with all Environmental Laws, and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (g) Borrower shall keep the Property free of Mold; and (h) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate remediation of any Hazardous Materials in, on, under or from the Property; and (ii) comply with any Environmental Law; (i) Borrower shall not allow any tenant or other user of the Property to violate any Environmental Law; and (j) Borrower shall immediately notify Lender in writing after it has become aware of (A) any presence or Release or threatened Release of Hazardous Materials in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien against the Property; (D) any required or proposed remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication of which Borrower becomes aware from any source whatsoever (including but not limited to a Governmental Authority) relating in any way to Hazardous Materials. Any failure of Borrower to perform its obligations pursuant to this Section 12.2 shall constitute bad faith waste with respect to the Property.

Section 12.3. Lender's Rights.

Lender and any other Person designated by Lender, including but not limited to any representative of a Governmental Authority, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender.

Section 12.4. Operations and Maintenance Programs.

Borrower shall comply with the operations and maintenance program attached hereto as Exhibit D and, if recommended by the Environmental Report or any other environmental assessment or audit of the Property, Borrower shall establish and comply with any other operations and maintenance program with respect to the Property, in form and substance reasonably acceptable to Lender, prepared by an environmental consultant reasonably acceptable to Lender, which program shall address any asbestos-containing material or lead based paint that may now or in the future be detected at or on the Property. Without limiting the generality of the preceding sentence, Lender may require (a) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify, (b) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (c) at Borrower's sole expense, supplemental examination of the Property by consultants specified by Lender, (d) access to the Property by Lender, its agents or servicer, to review and assess the environmental condition of the Property and Borrower's compliance with any operations and maintenance program, and (e) variation of the operations and maintenance program in response to the reports provided by any such consultants.

Section 12.5. Environmental Definitions.

"**Environmental Law**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other government directives or requirements, as well as common law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, that apply to Borrower or the Property and relate to Hazardous Materials or protection of human health or the environment. "**Environmental Liens**" means all Liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person. "**Environmental Report**" means the written reports resulting from the environmental site assessments of the Property delivered to Lender in connection with the Loan. "**Hazardous Materials**" shall mean petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence

of which on the Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material", "hazardous waste", "toxic substance", "toxic pollutant", "contaminant", or "pollutant" within the meaning of any Environmental Law. "**Mold**" shall mean any mold, fungi, bacterial or microbial matter present at or in the Property, including, without limitation, building materials which is in a condition, location or a type which may pose a risk to human health or safety or the environment, may result in damage to or would adversely affect or impair the value or marketability of the Property. "**Release**" of any Hazardous Materials includes but is not limited to any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials.

ARTICLE 13
SECONDARY MARKET

Section 13.1. Transfer of Loan.

Lender may, at any time, sell, transfer or assign the Loan Documents, or grant participations therein ("**Participations**") or syndicate the Loan ("**Syndication**") or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement ("**Securities**") (a Syndication or the issuance of Participations and/or Securities, a "**Securitization**"). Lender may separate the Debt into two or more separate notes (or components) that correspond to one or more traunches of the certificates/securities created in a Securitization. Such notes (or components) may be assigned different interest rates, so long as the initial weighted average of such interest rates equals the Note Rate as of the Closing Date.

Section 13.2. Delegation of Servicing.

At the option of Lender, the Loan may be serviced by a servicer/trustee selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to such servicer/trustee pursuant to a servicing agreement between Lender and such servicer/trustee. Bank of America, N.A. acknowledges its current intention to (a) service the Loan upon closing, (b) enter into satisfactory documentation upon a Securitization involving the Loan to act as the primary servicer and (c) endeavor to remain the primary servicer throughout the term of the Loan.

Section 13.3. Dissemination of Information.

Lender may forward to each purchaser, transferee, assignee, or servicer of, and each participant, or investor in, the Loan, or any Participations and/or Securities or any of their respective successors (collectively, the "**Investor**") or any Rating Agency rating the Loan, or any Participations and/or Securities, each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower, any managing member or general partner thereof, Borrower Principal, the sole member of Borrower and the Property, including financial statements, whether furnished by Borrower or otherwise, as Lender determines necessary or desirable. Borrower irrevocably waives any and all rights it may have under applicable Legal Requirements to prohibit such disclosure, including but not limited to any right of privacy.

Section 13.4. Cooperation.

At the request of the holder of the Note and, to the extent not already required to be provided by Borrower under this Agreement, Borrower and Borrower Principal shall use reasonable efforts to provide information not in the possession of the holder of the Note in order to satisfy the market standards to which the holder of the Note customarily adheres or which may be reasonably required in the marketplace or by the Rating Agencies in connection with such sales or transfers, including, without limitation, to:

(a) promptly provide updated financial, budget and other information with respect to the Property, Borrower, Borrower Principal and Manager and provide modifications and/or updates to the appraisals, market studies, environmental reviews and reports (Phase I reports and, if appropriate, Phase II reports) and engineering reports of the Property obtained in connection with the making of the Loan (all of the foregoing being referred to as the "**Provided Information**"), together, if customary, with appropriate verification and/or consents of the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to Lender and the Rating Agencies;

(b) make changes to the organizational documents of Borrower, the sole member of Borrower and their respective principals;

(c) at Borrower's expense, cause counsel to render or update existing opinion letters as to enforceability and non-consolidation, and a 10b-5 comfort letter, which may be relied upon by the holder of the Note, the Rating Agencies and their respective counsel, which shall be dated as of the closing date of the Securitization;

(d) permit site inspections, appraisals, market studies and other due diligence investigations of the Property, as may be reasonably requested by the holder of the Note or the Rating Agencies or as may be necessary or appropriate in connection with the Securitization;

(e) make the representations and warranties with respect to the Property, Borrower, Borrower Principal and the Loan Documents as are made in the Loan Documents and such other representations and warranties as may be reasonably requested by the holder of the Note or the Rating Agencies;

(f) execute such amendments to the Loan Documents as may be reasonably requested by the holder of the Note or the Rating Agencies or otherwise to effect the Securitization including, without limitation, bifurcation of the Loan into two or more components and/or separate notes and/or creating a senior/subordinate note structure; provided, however, that Borrower shall not be required to modify or amend any Loan Document if such modification or amendment would (i) change the interest rate, the stated maturity or the amortization of principal set forth in the Note, except in connection with a bifurcation of the Loan which may result in varying fixed interest rates and amortization schedules, but which shall have the same initial weighted average coupon of the original Note, or (ii) in the reasonable judgment of Borrower, modify or amend any other material economic term of the Loan, or (iii) in the reasonable judgment of Borrower, materially increase Borrower's obligations, or materially decrease Borrower's rights, and liabilities under the Loan Documents;

(g) deliver to Lender and/or any Rating Agency, (i) one or more certificates executed by an officer of the Borrower certifying as to the accuracy, as of the closing date of the Securitization, of all representations made by Borrower in the Loan Documents as of the Closing Date in all relevant jurisdictions or, if such representations are no longer accurate, certifying as to what modifications to the representations would be required to make such representations accurate as of the closing date of the Securitization, and (ii) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower as of the date of the closing date of the Securitization;

(h) have reasonably appropriate personnel (including senior management of Borrower and/or Borrower Principal) participate in a bank meeting and/or presentation for the Rating Agencies or Investors; and

(i) cooperate with and assist Lender in obtaining ratings of the Securities from two (2) or more of the Rating Agencies.

All reasonable third party costs and expenses incurred by Borrower and Borrower Principal in connection with Borrower's and Borrower Principal's complying with requests made under this Section 13.4 shall be paid by Borrower and Borrower Principal and all third party costs and expenses incurred by Lender in connection with Borrower's and Borrower Principal's complying with requests made under this Section 13.4 (including, without limitation, the fees and expenses of the Rating Agencies) shall be paid by Lender; provided, however, that the reasonable out-of-pocket costs and expenses incurred by Borrower and Borrower's Principal to third parties under this Section 13.4 shall not exceed $25,000 in the aggregate, and all such reasonable out-of-pocket costs and expenses incurred by Borrower and Borrower's Principal to third parties under this Section 13.4 in excess of $25,000 shall be paid by Lender.

In the event that Borrower requests any consent or approval hereunder and the provisions of this Agreement or any Loan Documents require the receipt of written confirmation from each Rating Agency with respect to the rating on the Securities, or, in accordance with the terms of the transaction documents relating to a Securitization, such a rating confirmation is required in order for the consent of Lender to be given, Borrower shall pay all of the costs and expenses of Lender, Lender's servicer and each Rating Agency in connection therewith, and, if applicable, shall pay any fees imposed by any Rating Agency as a condition to the delivery of such confirmation.

Section 13.5. Securitization Indemnification.

(a) Borrower and Borrower Principal understand that certain of the Provided Information may be included in disclosure documents in connection with the Securitization, including, without limitation, a prospectus, prospectus supplement, offering memorandum or private placement memorandum (each, a "**Disclosure Document**") and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act or the Exchange Act, or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower and Borrower Principal will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects.

(b) Borrower and Borrower Principal agree to provide in connection with each of (i) a preliminary and a final offering memorandum or private placement memorandum or similar document (including any Investor or Rating Agency "term sheets" or presentations relating to the Property and/or the Loan) or (ii) a preliminary and final prospectus or prospectus supplement, as applicable, an indemnification certificate (A) certifying that Borrower and Borrower Principal have carefully examined such memorandum or prospectus or other document (including any Investor or Rating Agency "term sheets" or presentations relating to the Property and/or the Loan), as applicable, including without limitation, the sections entitled "Special Considerations," and/or "Risk Factors," and "Certain Legal Aspects of the Mortgage Loan," or similar sections, and all sections relating to Borrower, Borrower Principal, Manager, their Affiliates, the Loan, the Loan Documents and the Property, and any risks or special considerations relating thereto, and that, to the best of Borrower's knowledge, such sections (and any other sections reasonably requested) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (B) indemnifying Lender (and for purposes of this Section 13.5, Lender hereunder shall include its officers and directors) and the Affiliate of Lender that (i) has filed the registration statement, if any, relating to the Securitization and/or (ii) which is acting as issuer, depositor, sponsor and/or a similar capacity with respect to the Securitization (any Person described in (i) or (ii), an "**Issuer Person**"), and each director and officer of any Issuer Person, and each Person or entity who controls any Issuer Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "**Issuer Group**"), and each Person which is acting as an underwriter, manager, placement agent, initial purchaser or similar capacity with respect to the Securitization, each of its directors and officers and each Person who controls any such Person within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act (collectively, the "**Underwriter Group**") for any Losses to which Lender, the Issuer Group or the Underwriter Group may become subject insofar as the Losses arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in such sections (including any Investor or Rating Agency "term sheets" or presentations relating to the Property and/or the Loan) or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such sections (including any Investor or Rating Agency "term sheets" or presentations relating to the Property and/or the Loan) or necessary in order to make the statements in such sections (including any Investor or Rating Agency "term sheets" or presentations relating to the Property and/or the Loan) or in light of the circumstances under which they were made, not misleading (collectively the "**Securities Liabilities**") and (C) agreeing to reimburse Lender, the Issuer Group and the Underwriter Group for any legal or other expenses reasonably incurred by Lender and Issuer Group in connection with investigating or defending the Securities Liabilities; provided, however, that Borrower will be liable in any such case under clauses (B) or (C) above only to the extent that any such Securities Liabilities arise out of or is based upon any such untrue statement or omission made therein in reliance upon and in conformity with information furnished to Lender or any member of the Issuer Group or Underwriter Group by or on behalf of Borrower or Borrower Principal in connection with the preparation of the memorandum or prospectus or other document (including any Investor or Rating Agency "term sheets" or presentations relating to the Property and/or the Loan) or in connection with the underwriting of the Loan, including, without limitation, financial statements of Borrower or Borrower Principal, operating statements, rent rolls, environmental site assessment reports and Property condition reports with respect to the Property. This indemnity agreement will be in addition to any liability which Borrower and Borrower Principal may otherwise have. Moreover, the

indemnification provided for in Clauses (B) and (C) above shall be effective whether or not an indemnification certificate described in (A) above is provided and shall be applicable based on information previously provided by Borrower and Borrower Principal or their Affiliates if Borrower or Borrower Principal do not provide the indemnification certificate.

(c) In connection with filings under the Exchange Act or any information provided to holders of Securities on an ongoing basis, Borrower and Borrower Principal agree to indemnify (i) Lender, the Issuer Group and the Underwriter Group for Losses to which Lender, the Issuer Group or the Underwriter Group may become subject insofar as the Securities Liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in light of the circumstances under which they were made not misleading and (ii) reimburse Lender, the Issuer Group or the Underwriter Group for any legal or other expenses reasonably incurred by Lender, the Issuer Group or the Underwriter Group in connection with defending or investigating the Securities Liabilities.

(d) Promptly after receipt by an indemnified party under this Section 13.5 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 13.5, notify the indemnifying party in writing of the commencement thereof, but the omission to so notify the indemnifying party will not relieve the indemnifying party from any liability which the indemnifying party may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the indemnifying party. In the event that any action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party. After notice from the indemnifying party to such indemnified party under this Section 13.5 the indemnifying party shall be responsible for any reasonable legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there are any legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. The indemnifying party shall not be liable for the expenses of more than one such separate counsel unless an indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another indemnified party.

(e) In order to provide for just and equitable contribution in circumstances in which the indemnity agreements provided for in Section 13.5(c) or Section 13.5(d) is or are for any reason held to be unenforceable by an indemnified party in respect of any losses, claims, damages or liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 13.5(c) or Section 13.5(d), the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such

losses, claims, damages or liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11 (f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified party's, Borrower's and Borrower Principal's relative knowledge and access to information concerning the matter with respect to which claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. Lender, Borrower and Borrower Principal hereby agree that it would not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

(f) The liabilities and obligations of Borrower, Borrower Principal and Lender under this Section 13.5 shall survive the satisfaction of this Agreement and the satisfaction and discharge of the Debt.

ARTICLE 14
INDEMNIFICATIONS

Section 14.1. General Indemnification.

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

Section 14.2. Mortgage and Intangible Tax Indemnification.

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

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

Section 14.3. ERISA Indemnification.

Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Section 4.9 or Section 5.18 of this Agreement.

Section 14.4. Survival.

The obligations and liabilities of Borrower under this Article 14 shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Mortgage.

ARTICLE 15
EXCULPATION

Section 15.1. Exculpation.

(a) Except as otherwise provided herein or in the other Loan Documents, Lender shall not enforce the liability and obligation of Borrower or Borrower Principal, as applicable, to perform and observe the obligations contained herein or in the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower or Borrower Principal, except that Lender may bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable Lender to enforce and realize upon this Agreement, the Note, the Mortgage and the other Loan Documents, and the interest in the Property, the Rents and any other collateral given to Lender created by this Agreement, the Note, the Mortgage and the other Loan Documents; provided, however, that any judgment in any such action or proceeding shall be enforceable against Borrower or Borrower Principal, as applicable, only to the extent of Borrower's or Borrower Principal's interest in the Property, in the Rents and in any other collateral given to Lender. Lender, by accepting this Agreement, the Note, the Mortgage and the other Loan Documents, agrees that it shall not, except as otherwise provided in this Section 15.1, sue for, seek or demand any deficiency judgment against Borrower or Borrower Principal in any such action or proceeding, under or by reason of or under or in connection with this Agreement, the Note, the Mortgage or the other Loan Documents. The provisions of this Section 15.1 shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by this Agreement, the Note, the Mortgage or the other Loan Documents; (ii) impair the right of Lender to name Borrower or Borrower Principal as a party defendant in any action or suit for judicial foreclosure and sale under this Agreement and the Mortgage; (iii) affect the validity or enforceability of any indemnity (including, without limitation, those contained in the Environmental Indemnity and Section 13.5 and Article 14 of this Agreement), guaranty, master lease or similar instrument made in connection with this

Agreement, the Note, the Mortgage and the other Loan Documents; (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of the assignment of leases provisions contained in the Mortgage; or (vi) impair the right of Lender to obtain a deficiency judgment or other judgment on the Note against Borrower or Borrower Principal if necessary to obtain any Insurance Proceeds or Awards to which Lender would otherwise be entitled under this Agreement; provided however, Lender shall only enforce such judgment to the extent of the Insurance Proceeds and/or Awards.

(b) Notwithstanding the provisions of this Section 15.1 to the contrary, Borrower and Borrower Principal shall be personally liable to Lender on a joint and several basis for Losses to Lender due to:

(i) fraud or intentional misrepresentation by Borrower, Borrower Principal or any other Affiliate of Borrower or Borrower Principal or any agent of any of them, in connection with the execution and the delivery of this Agreement, the Note, the Mortgage, any of the other Loan Documents, or any certificate, report, financial statement or other instrument or document furnished to Lender at the time of the closing of the Loan or during the term of the Loan;

(ii) after an Event of Default, Borrower's misapplication or misappropriation of Rents received by Borrower;

(iii) Borrower's misapplication or misappropriation of tenant security deposits or Rents collected in advance;

(iv) the misapplication or the misappropriation of Insurance Proceeds or Awards;

(v) Borrower's failure to pay Taxes, Other Charges (except to the extent that sums sufficient to pay such amounts have been deposited in escrow with Lender pursuant to the terms hereof and there exists no impediment to Lender's utilization thereof), charges for labor or materials or other charges that can create liens on the Property beyond any applicable notice and cure periods specified herein;

(vi) Borrower's failure to return or to reimburse Lender for all Personal Property taken from the Property by or on behalf of Borrower and not replaced with Personal Property of the same utility and of the same or greater value;

(vii) any act of actual waste, arson, gross negligence or willful misconduct by Borrower, any principal, Affiliate, member or general partner thereof or by Borrower Principal, any principal, Affiliate, member or general partner thereof; or

(viii) Borrower's failure following the occurrence and during the continuance of any Event of Default to deliver to Lender upon demand all Rents and books and records relating to the Property.

(c) Notwithstanding the foregoing, the agreement of Lender not to pursue recourse liability as set forth in subsection (a) above SHALL BECOME NULL AND VOID and shall be of no further force and effect and the Debt shall be fully recourse to Borrower and Borrower Principal on a joint and several basis in the event (i) of a breach by Borrower, Borrower Principal of any of the covenants set forth in Article 6 hereof, to the extent that (A)

such breach is considered by a court as a factor in the court's finding for the substantive consolidation of Borrower with Borrower Principal or any other Person or (B) as a result thereof, Lender suffers any material damage, cost, liability or expense (including reasonable attorneys' fees and disbursements, whether or not litigation has commenced); provided, however, that in the absence of an actual consolidation, recourse may be had only to the extent of losses incurred for its failure to comply with such covenants, (ii) of a breach of any of the covenants set forth in Article 7 hereof, (iii) Borrower, the sole member of Borrower, Borrower Principal or any Affiliate, officer, director, or representative which controls, directly or indirectly, Borrower, the sole member of Borrower, or Borrower Principal files, or joins in the filing of, a voluntary or an involuntary petition against Borrower under any Creditors Rights Laws, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person; (iv) Borrower files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under any Creditors Rights Laws, or solicits or causes to be solicited petitioning creditors for any involuntary petition from any Person; or (v) any Affiliate, officer, director, or representative which controls Borrower consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Property.

(d) Nothing herein shall be deemed to be a waiver of any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provision of the U.S. Bankruptcy Code to file a claim for the full amount of the indebtedness secured by the Mortgage or to require that all collateral shall continue to secure all of the indebtedness owing to Lender in accordance with this Agreement, the Note, the Mortgage or the other Loan Documents.

(e) Subject to the terms of the Environmental Indemnity, upon payment in full of the Loan, Borrower Principal shall be relieved of its obligations under this Article 15.

ARTICLE 16
NOTICES

Section 16.1. Notices.

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

If to Lender: Bank of America, N.A.
Capital Markets Servicing Group
900 West Trade Street, Suite 650
Mail Code: NC1-026-06-01
Charlotte, North Carolina 28255
Attn: Servicing Manager
Telephone No: (866) 531-0957
Facsimile No.: (704) 317-4501

With a copy to:	Cadwalader, Wickersham & Taft LLP 227 West Trade Street, Suite 2400 Charlotte, North Carolina 28202 Attention: James P. Carroll, Esq. Telephone No.: (704) 348-5100 Facsimile No.: (704) 348-5200
If to Borrower:	First States Investors 239, LLC c/o American Financial Realty Trust 680 Old York Road, Suite 200 Jenkintown, Pennsylvania 19046 Attention: Operations Telephone No. (215) 887-2280 Facsimile No.: (215) 887-9856
With a copy to:	American Financial Realty Trust 680 Old York Road, Suite 200 Jenkintown, Pennsylvania 19046 Attention: General Counsel Telephone No.: (215) 887-2280 Facsimile No.: (215) 887-9856
If to Borrower Principal:	First States Group, L.P. c/o American Financial Realty Trust 680 Old York Road, Suite 200 Jenkintown, Pennsylvania 19046 Attention: Operations Telephone No.: (215) 887-2280 Facsimile No.: (215) 887-9856
With a copy to:	American Financial Realty Trust 680 Old York Road, Suite 200 Jenkintown, Pennsylvania 19046 Attention: General Counsel Telephone No.: (215) 887-2280 Facsimile No.: (215) 887-9856

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

ARTICLE 17
FURTHER ASSURANCES

Section 17.1. Replacement Documents.

Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record: (i) with respect to any Loan Document other than the Note, Borrower will issue, in lieu thereof, a replacement of such other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Loan Document in the same principal amount thereof and otherwise of like tenor and (ii) with respect to the Note, (a) Borrower will execute a reaffirmation of the Debt as evidenced by such Note acknowledging that Lender has informed Borrower that the Note was lost, stolen destroyed or mutilated and that such Debt continues to be an obligation and liability of the Borrower as set forth in the Note, a copy of which shall be attached to such reaffirmation and (b) if requested by Lender, Borrower will execute a replacement note and Lender or Lender's custodian (at Lender's option) shall provide to Borrower Lender's (or Lender's custodian's) then standard form of lost note affidavit and indemnity, which such form shall be reasonably acceptable to Borrower.

Section 17.2. Recording of Mortgage, etc.

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

Section 17.3. Further Acts, etc.

Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, deeds of trust, mortgages, assignments, security agreements, control agreements, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Agreement or for filing, registering or recording the Mortgage, or for complying with all Legal Requirements. Borrower hereby authorizes Lender to file one or more financing statements

and financing statement amendments to evidence more effectively, perfect and maintain the priority of the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation, such rights and remedies available to Lender pursuant to this Section 17.3.

Section 17.4. Changes in Tax, Debt, Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Agreement which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of the Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

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

Section 17.5. Expenses.

Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable, actual attorneys' fees and disbursements and the allocated costs of internal legal services and all actual disbursements of internal counsel) reasonably incurred by Lender in accordance with this Agreement in connection with (a) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (b) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (c) following a request by Borrower, Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (d) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan

Documents and any other documents or matters requested by Lender; (e) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (f) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (g) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (h) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender.

ARTICLE 18
WAIVERS

Section 18.1. Remedies Cumulative; Waivers.

The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower or Borrower Principal pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

Section 18.2. Modification, Waiver in Writing.

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

Section 18.3. Delay Not a Waiver.

Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any

other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 18.4. Trial by Jury.

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

Section 18.5. Waiver of Notice.

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

Section 18.6. Remedies of Borrower.

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

Section 18.7. Waiver of Marshalling of Assets.

To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 18.8. Waiver of Statute of Limitations.

Borrower hereby expressly waives and releases, to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 18.9. Waiver of Counterclaim.

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

Section 18.10. Gradsky Waivers.

Borrower and Borrower Principal, as applicable, hereby waive each of the following:

(a) Any rights of Borrower Principal of subrogation, reimbursement, indemnification, and/or contribution against Borrower or any other person or entity, and any other rights and defenses that are or may become available to Borrower Principal or any other person or entity by reasons of Sections 2787-2855, inclusive of the California Civil Code;

(b) Any rights or defenses that may be available by reason of any election of remedies by Lender (including, without limitation, any such election which in any manner impairs, effects, reduces, releases, destroys or extinguishes Borrower Principal's subrogation rights, rights to proceed against Borrower for reimbursement, or any other rights of Borrower Principal to proceed against any other person, entity or security, including but not limited to any defense based upon an election of remedies by Lender under the provisions of Section 580(d) of the California Code of Civil Procedure or any similar law of California or of any other State or of the United Sates); and

(c) Any rights or defenses Borrower Principal may have because its obligations under this Agreement (the "**Borrower Principal Obligations**") are secured by real property or any estate for years. These rights or defenses include, but are not limited to, any rights or defenses that are based upon, directly or indirectly, the application of Section 580(a), Section 580(b), Section 580(d) or Section 726 of the California Code of Civil Procedure to the Borrower Principal Obligations.

The provisions of this subsection (c) mean, among other things:

(y) Lender may collect from Borrower Principal without first foreclosing on any real or personal property collateral pledged by Borrower for the Debt; and

(z) If Lender forecloses on a real property pledged by Borrower:

(1) The Borrower Principal Obligations shall not be reduced by the price for which the collateral sold at the foreclosure sale or the value of the collateral at the time of the sale.

(2) Lender may collect from Borrower Principal even if Lender, by foreclosing on the real property collateral, has destroyed any right of Borrower Principal to collect from Borrower. Further, the provisions of this Agreement constitute an unconditional and irrevocable waiver of any rights and defenses Borrower Principal may have because Borrower's obligations are secured by real property. These rights and defenses, include, but are not limited to, any rights or defenses based upon Section 580(a), Section 580(b), Section 580(d) or Section 726 of the California Code of Civil Procedure.

ARTICLE 19
GOVERNING LAW

Section 19.1. Choice of Law.

This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State of New York and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York, provided however, (a) that with respect to the creation, perfection, priority and enforcement of any Lien created by the Loan Documents, and the determination of deficiency judgments, the laws of the state where the Property is located shall apply, and (b) with respect to the security interest in each of the Reserve Accounts, the Cash Management Account and the Lockbox Account, the laws of the state where each such account is located shall apply.

Section 19.2. Severability.

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

Section 19.3. Preferences.

Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any Creditors Rights Laws, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

ARTICLE 20
MISCELLANEOUS

Section 20.1. Survival.

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

Section 20.2. Lender's Discretion.

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

Section 20.3. Headings.

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

Section 20.4. Cost of Enforcement.

In the event (a) that the Mortgage is foreclosed in whole or in part, (b) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, or (c) Lender exercises any of its other remedies under this Agreement or any of the other Loan Documents, Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

Section 20.5. Schedules Incorporated.

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

Section 20.6. Offsets, Counterclaims and Defenses.

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

Section 20.7. No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

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

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

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

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

(f) Borrower recognizes and acknowledges that in accepting this Agreement, the Note, the Mortgage and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the representations and warranties set forth in Article 4 of this Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Agreement, the Note, the Mortgage and the other Loan Documents in the absence of the warranties and representations as set forth in Article 4 of this Agreement.

Section 20.8. Publicity.

All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan, Lender, Banc of America Securities LLC, or any of their Affiliates shall be subject to the prior written approval of Lender, not to be unreasonably withheld. Lender shall be permitted to make any news, releases, publicity or advertising by Lender or its Affiliates through any media intended to reach the general public which refers to the Loan, the Property, Borrower, Borrower Principal and their respective Affiliates without the approval of Borrower or any such Persons. Borrower also agrees that Lender may share any information pertaining to the Loan with Bank of America Corporation, including its bank subsidiaries, Banc of America Securities LLC and any other Affiliates of the foregoing, in connection with the sale or transfer of the Loan or any Participations and/or Securities created.

Section 20.9. Conflict; Construction of Documents; Reliance.

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

Section 20.10. Entire Agreement.

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

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

BORROWER:

FIRST STATES INVESTORS 239, LLC, a Delaware limited liability company

By: /s/ Sonya A. Huffman
Name: Sonya A. Huffman
Title: Vice President

BORROWER PRINCIPAL:

Acknowledged and agreed to with respect to its obligations set forth in Article 4, Article 13, Article 15 and Article 18 hereof:

FIRST STATES GROUP, L.P., a Delaware limited partnership

By: /s/ Sonya A. Huffman
Name: Sonya A. Huffman
Title:

LENDER:

BANK OF AMERICA, N.A., a national banking association

By: /s/ [Signature Illegible]
Name:
Title: Principal

EXHIBIT A

Annual Budget

EXHIBIT B

Borrower Equity Ownership Structure

EXHIBIT C

Form of Assignment of Management Agreement

EXHIBIT D

Existing Operations and Maintenance Program

EXHIBIT E

Form of Tenant Direction Letter

SCHEDULE I

REQUIRED REPAIRS

Defined terms used in this Schedule I, but not otherwise defined in this Agreement, shall have the meanings set forth in the Property Condition Report.

(a) The aluminum panel sidewall finishes have faded. Borrower shall pressure wash/scrape, prime and repaint all affected areas in the Short Term. Borrower shall repeat this work every five (5) years.

(b) Building One roof leaks at IRMA roof on the south side. Borrower shall replace the Roof and install ballasted EPDM with concrete window washing track in the Short Term.

(c) IVI discovered that there are several open building and fire code violations on file with the Novato Fire District. Borrower shall hire an expeditor service to research and clear all open violations, and all such open violations shall be cleared, in the Immediate Term.

(d) IVI discovered that there may be sprinkler heads at the Subject that are subject to recall, such as Star and Central. They are located at 775 San Marin Drive (Building One). Borrower shall arrange for the locations to be determined by the Fire Marshal. Repairs of all such locations shall be completed in the Immediate Term.

SCHEDULE II

REPLACEMENTS

NONE

Exhibit 10.28

FIRST AMENDMENT TO LOAN AGREEMENT

THIS FIRST AMENDMENT TO LOAN AGREEMENT (this "**Agreement**") made as of the 6th day of December, 2005, between BANK OF AMERICA, N.A., as original lender, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 ("**Lender**"), BANK OF AMERICA, N.A., as Master Servicer for Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-5 ("**Master Servicer**") and FIRST STATES INVESTORS 239, LLC, a Delaware limited liability company, having an address at c/o American Financial Realty Trust, 680 Old York Road, Suite 200, Jenkintown, Pennsylvania 19046 ("**Borrower**").

W I T N E S S E T H:

WHEREAS, Lender and Borrower are parties to that certain Loan Agreement, dated as of August 5, 2005 (the "**Loan Agreement**");

WHEREAS, the Note (as defined in the Loan Agreement) was split pursuant to that certain Note Severance Agreement, dated as of October 1, 2005, into Note A-1 and Note A-2 between Borrower and Lender, and Note A-1 was subsequently securitized as part of the Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-5;

WHEREAS, Master Servicer is acting as master servicer for Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-5 with respect to Note A-1; and

WHEREAS, Lender, Master Servicer and Borrower have agreed to amend the Loan Agreement as set forth herein.

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

1. Unless otherwise defined in this Agreement, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

2. The first sentence of Section 2.4(b)(iv) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

> For purposes of this Section 2.4, "REMIC Prohibition Period" means the earlier to conclude of (A) two-year period commencing with the latest "startup day" within the meaning of Section 860G(a)(9) of the Code of any REMIC Trust that holds the Note A-1 or Note A-2 and (B) the period commencing on the date hereof and ending on the date which is three (3) years after the first Scheduled Payment Date following the date hereof.

3. This Agreement may not be amended nor any provision hereof waived or modified except by an instrument in writing signed by Borrower, Master Servicer and Lender.

4. This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of New York.

5. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first above written.

BORROWER:

FIRST STATES INVESTORS 239, LLC, a Delaware limited liability company

By: /s/ Sonya Huffman
Name: Sonya Huffman
Title:

LENDER:

BANK OF AMERICA, N.A., a national banking association

By: /s/ [Signature Illegible]
Name:
Title: Principal

BORROWER PRINCIPAL:

Acknowledged and agreed to:

FIRST STATES GROUP, L.P., a Delaware limited partnership

By: First States Group LLC, a Delaware limited liability company, its general partner

By: /s/ Sonya Huffman
Name: Sonya Huffman
Title:

MASTER SERVICER:

BANK OF AMERICA, N.A., a national banking association, as Master Servicer for Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-5

By: /s/ Cynthia G. Downs

Name: Cynthia G. Downs
Title: Principal

2007-0030200

Recorded
Official Records
County of
Marin
JOAN C. THAYER
Assessor-Recorder

REC FEE 87.00

a
01:35PM 15-May-2007 Page 1 of 27

Recording Requested By:

And When Recorded Return To:

Sutherland Asbill & Brennan LLP
1114 Avenue of the Americas
40th Floor
New York, NY 10036
Attention: Nicole Sidman
MERS MIN: 8000101-0000001568-4

NCS-277718

A.P.N.: 125-202-03
125-202-04
125-202-05

Document Title:

Loan Assumption Agreement

BOA Loan Nos: 003214921 and 003206596
MERS MIN: 8000101-0000001568-4

LOAN ASSUMPTION AGREEMENT

THIS LOAN ASSUMPTION AGREEMENT (this "Agreement") is made and entered into as of May 15, 2007 (the "Effective Date") by and between **First States Investors 239, LLC**, a Delaware limited liability company ("Prior Owner"); **First States Group, L.P.**, a Delaware limited partnership ("Prior Guarantor"); **Novato FF Property, LLC**, a Delaware limited liability company ("Borrower"); **American Assets, Inc.**, a California corporation ("New Guarantor"); **Bank of America, N.A.**, as Master Servicer (as defined in the Intercreditor Agreement) ("Servicer") for **LaSalle Bank National Association, as Trustee for the registered holders of Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-5** ("Note A-1 Lender") and **Wells Fargo Bank, N.A., as Trustee for the benefit of holders of GE Commercial Mortgage Corporation, Mortgage Pass-Through Certificates, Series 2005-C4** ("Note A-2 Lender"; Note A-1 Lender and Note A-2 Lender are collectively hereinafter referred to as "Lender"); and **Mortgage Electronic Registration Systems, Inc.**, a Delaware stock corporation ("MERS").

RECITALS

A. Prior Owner was the maker of that certain Promissory Note (the "Original Note") dated August 5, 2005 in the original principal amount of $190,687,500.00 and payable to the order of Bank of America, N.A., as original lender ("Former Lender"). The loan evidenced by the Note is herein referred to as the "Loan." The Loan is further evidenced by that certain Loan Agreement dated August 5, 2005 between Prior Owner and Original Borrower, as amended by that certain First Amendment to Loan Agreement dated December 6, 2005 among Prior Owner, Former Lender and Servicer (as amended, the "Loan Agreement").

B. Pursuant to that certain Note Severance Agreement dated as of October 1, 2005, the Original Note was split into that certain Amended and Restated Promissory Note A-1 dated October 1, 2005 between Prior Owner and Former Lender in the original principal amount of $99,879,692.00 ("Note A-1"), and that certain Amended and Restated Promissory Note A-2 dated October 1, 2005 between Prior Owner and Former Lender in the original principal amount of $90,578,395.00 ("Note A-2"; Note A-1 and A-2 are collectively hereinafter referred to as the "Notes").

C. The Notes are secured by that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage") dated August 5, 2005 executed by Prior Owner to First American Title Insurance Company for the benefit of MERS and recorded as Document No. 05-59209 in the records of Marin County, California (the "Public Records'). The Mortgage encumbers certain real property described on **Exhibit A** attached hereto and by this reference incorporated herein (together with all other property, real and personal, encumbered by the Mortgage, the "Property").

D. The Loan is further secured by that certain (i) Assignment of Leases and Rents (the "ALR") dated August 5, 2005 executed by Prior Owner to MERS and recorded as

Document No. 2005-0059210 in the Public Records, and (ii) Assignment of Agreements, Permits and Contracts (the "Assignment of Agreements") dated August 5, 2005 executed by Prior Owner to Original Lender.

E. In connection with the Loan, Prior Owner also delivered, or caused to be delivered, the following documents to Former Lender:

(1) those certain UCC Financing Statements (collectively, the "Prior UCC") naming Prior Owner, as debtor therein, and MERS, as secured party therein, and filed in the Public Records and in the records of the Secretary of State of Delaware;

(2) that Environmental Indemnity Agreement (the "Prior Environmental Agreement") dated August 5, 2005, executed by Prior Owner and Prior Guarantor for the benefit of Former Lender; and

(3) that certain Exceptions to Non-Recourse Guaranty (the "Prior Carve Out Guaranty") dated August 5, 2005, executed by Prior Guarantor for the benefit of Former Lender.

(The Prior UCC, Prior Environmental Agreement and Prior Carve Out Guaranty are hereinafter referred to collectively as the "Prior Owner's Loan Documents.")

F. Upon the Effective Date, Borrower is executing and delivering, or is causing to be delivered, to Lender the following documents:

(1) those certain UCC Financing Statement (collectively, the "UCC") naming Borrower, as debtor therein, and naming MERS, as secured party therein, to be filed in the Public Records and the records of the Secretary of State of Delaware;

(2) that certain Environmental Indemnity Agreement (the "Environmental Agreement") dated as of the Effective Date, delivered by Borrower and New Guarantor for the benefit of Lender;

(3) that certain Exceptions to Non-Recourse Guaranty (the "Guaranty") dated as of the Effective Date, executed and delivered by New Guarantor, for the benefit of Lender;

(4) that certain Restricted Account Agreement (the "Restricted Account Agreement") dated as of the Effective Date, between Borrower, Lender and Wells Fargo Bank, National Association;

(5) that certain Certificate of Assuming Borrower ("Certificate") dated as of the Effective Date, executed and delivered by Borrower;

(6) that certain Certificate Regarding Self-Management (the "Manager's Certificate") dated as of the Effective Date, from Borrower, for the benefit of Lender, and

(7) this Agreement.

(The Notes, the Mortgage, the Loan Agreement, the ALR, the Assignment of Agreements, the UCC, the Environmental Agreement, the Guaranty, the Restricted Account Agreement, the Certificate, the Manager's Certificate and this Agreement, together with all other documents evidencing, serving or otherwise pertaining to the Loan (other than the Prior Owner's Loan Documents) are hereinafter referred to collectively as the "Loan Documents", and singularly as a "Loan Document".)

G. Original Lender assigned all of its right, title and interest in Note A-1 and the documents evidencing and securing Note A-1 to Note A-1 Lender.

H. Original Lender assigned all of its right, title and interest in Note A-2 to Note A-2 Lender.

I. Pursuant to the terms of that certain Intercreditor and Servicing Agreement dated as of October 1, 2005, by and between Original Lender, as the holder of Note A-1, and Original Lender, as the holder of Note A-2 (the "Intercreditor Agreement"), Servicer, as the Master Servicer (as defined in the Intercreditor Agreement), is authorized to administer the Loan on behalf of the Lender in accordance with the terms of the Pooling Agreement (as defined in the Intercreditor Agreement) and the lntercreditor Agreement.

J. Under the terms of the Mortgage, ALR and UCC, MERS is acting as nominee for Lender under certain agreements by and between Lender and MERS.

K. The Property is being conveyed by Prior Owner to Borrower as of the Effective Date, and as part of the consideration for such conveyance, Borrower agrees to assume all the obligations under the Loan Documents and comply with all covenants and obligations contained in the Loan Documents, as more particularly set forth herein.

L. Prior Owner and Borrower have requested that Lender consent to the assumption of the Loan and waive the due on sale restrictions of the Mortgage to permit the conveyance of the Property to Borrower.

M. Lender is willing to consent to the transfer of the Property by Prior Owner to Borrower and the assumption of the Loan by Borrower, subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars ($10.00) cash in hand paid by the parties hereto each to the other and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Loan Information. Lender certifies that the principal balance outstanding under (i) Note A-1 as of the Effective Date is $97,597,147.25, and (ii) Note A-2 as of the Effective Date is $88,508,413.00. Interest on the Loan has been paid to May 1, 2007. The next regularly scheduled payment pursuant to the Loan Documents is due on June 1, 2007. To the actual knowledge of Lender as of the Effective Date, no Event of Default, or event which with the

passage of time or the giving of notice, or both, would constitute an event of default, under the Loan Documents has occurred and is continuing. Lender reserves the right to declare any existing default which subsequently comes to the attention of Lender.

2. Organization and Authority of Borrower.

(a) Borrower represents and warrants to Lender as follows:

(1) Borrower is a limited liability company, duly formed and validly existing under the laws of the state of Delaware, and duly qualified to transact business under the laws of the state in which the Property is located. The organizational ID number of the Borrower is 4311653. On or prior to the date hereof, Borrower has delivered to Lender a fully executed IRS form W-9.

(2) No proceeding is pending for the dissolution or annulment of Borrower, and all license and franchise taxes due and payable by Borrower have been paid in full.

(3) Borrower has the full power and authority to enter into and perform this Agreement and to assume the Loan. The execution, delivery and performance of this Agreement and the other documents contemplated herein by Borrower (A) have been duly and validly authorized by all necessary action on the part of Borrower, (B) does not conflict with or result in a violation of Borrower's organizational documents or any judgment, order or decree of any court or arbiter in any proceeding to which Borrower is a party, (C) does not conflict with, or constitute a material breach of, or constitute a material default under, any contract, agreement or other instrument by which Borrower is bound or to which Borrower is a party, and (D) constitutes the valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms, as such enforceability may be affected by the application of principles of equity and laws affecting creditors' rights.

(b) New Guarantor represents and warrants to Lender as follows:

(1) New Guarantor is a corporation, duly formed and validly existing under the laws of the state of California, and to the extent required by applicable law, duly qualified to transact business under the laws of the state in which the Property is located.

(2) No proceeding is pending for the dissolution or annulment of New Guarantor, and all license and franchise taxes due and payable by New Guarantor have been paid in full.

(3) New Guarantor has the full power and authority to enter into and perform this Agreement and perform its obligations under the Guaranty. The execution, delivery and performance of this Agreement and the other documents contemplated herein by New Guarantor (A) have been duly and validly authorized by all necessary action on the part of New Guarantor, (B) does not conflict with or result in a violation of New Guarantor's organizational documents or any judgment, order or decree of any court or arbiter in any proceeding to which New Guarantor is a party, (C) dots not conflict with, or constitute a material breach of, or constitute a material default under, any contract, agreement or other instrument by which New

Guarantor is bound or to which New Guarantor is a party, and (D) constitutes the valid and binding obligations of New Guarantor, enforceable against New Guarantor in accordance with their terms, as such enforceability may be affected by the application of principles of equity and laws affecting creditors' rights.

3. Representations and Warranties.

(a) Prior Owner hereby represents and warrants to Lender and to Borrower as follows:

(1) As of the Effective Date, there is no Event of Default (as defined in the Loan Agreement) or event which with the passage of time or the giving of notice, or both, would constitute an Event of Default under the Loan Documents executed or assumed by Prior Owner or the Prior Owner's Loan Documents;

(2) There are no subordinate liens of any kind covering or relating to the Property, nor are there any mechanics' liens or liens for delinquent taxes or assessments encumbering the Property, nor has notice of a lien or notice of intent to file a lien been received;

(3) The Loan Documents and Prior Owner's Loan Documents executed by Prior Owner are in full force and effect;

(4) Prior Owner has thoroughly read and reviewed the terms and provisions of this Agreement, the Loan Documents executed by Prior Owner and the Prior Owner's Loan Documents, and is familiar with same, and Prior Owner has entered into this Agreement voluntarily, without duress or undue influence of any kind, and with the advice and representation of legal counsel, if any, selected by Prior Owner; and

(b) Prior Guarantor hereby represents and warrants to Lender and to Borrower as follows:

(1) As of the Effective Date, there is no Event of Default or event which with the passage of time or the giving of notice, or both, would constitute an Event of Default under the Loan Documents or Prior Owner's Loan Documents executed by Prior Guarantor.

(2) The Loan Documents and Prior Owner's Loan Documents executed by Prior Guarantor are in full force and effect.

(3) Prior Guarantor has thoroughly read and reviewed the terms and provisions of this Agreement, the Loan Documents and Prior Owner's Loan Documents executed by Prior Guarantor, and is familiar with same, and Prior Guarantor has entered into this Agreement voluntarily, without duress or undue influence of any kind, and with the advice and representation of legal counsel, if any, selected by Prior Guarantor.

(c) Borrower hereby represents and warrants to Lender as follows:

(1) To Borrower's knowledge as of the Effective Date, there is no Event of Default or event which with the passage of time or the giving of notice, or both, would constitute an Event of Default under the Loan Documents.

(2) Borrower has thoroughly read and reviewed the terms and provisions of this Agreement and the other Loan Documents and is familiar with same, and Borrower has entered into this Agreement voluntarily, without duress or undue influence of any kind, and with the advice and representation of legal counsel, if any, selected by Borrower.

(3) All information and materials, including financial information, regarding Borrower and its affiliates provided to Lender in connection with the assumption of the Loan were true and correct in all material respects as of the date provided to Lender and remains materially true and correct as of the date of this Agreement.

(4) There is no bankruptcy, receivership or insolvency proceeding pending or threatened against Borrower.

(d) New Guarantor represents and warrants to Lender as follows:

(1) New Guarantor has thoroughly read and reviewed the terms and provisions of this Agreement and the other Loan Documents and is familiar with same, and New Guarantor has entered into this Agreement voluntarily, without duress or undue influence of any kind, and with the advice and representation of legal counsel, if any, selected by New Guarantor.

(2) All information and materials, including financial information, regarding New Guarantor provided to Lender in connection with the assumption of the Loan were true and correct in all material respects as of the date provided to Lender and remains materially true and correct as of the date of this Agreement.

(3) There is no bankruptcy, receivership or insolvency proceeding pending or threatened against New Guarantor.

Prior Owner, Prior Guarantor, Borrower and New Guarantor acknowledge that Lender is relying upon the foregoing representations and warranties as a material inducement to Lender's execution of this Agreement.

4. Consent or Lender. Lender hereby consents to the sale of the Property by Prior Owner to Borrower and the assumption of the Loan Documents (and related transactions) described herein, and agrees that such sale shall not constitute a default under the Loan Documents. Notwithstanding the foregoing, this consent to the transfer of the Property shall not be deemed to be a waiver of the right of the Lender under the Mortgage or the Loan Documents to prohibit any future transfers of the Property or any interest therein, or of the right of the Lender to deny consent to any such transaction in the future in accordance with the provisions of the Mortgage. From and after the Effective Date, references in the Loan Documents to "Maker," "Mortgagor," "Debtor," "Borrower," or other similar references that prior to the Effective Date referred to Prior Owner shall refer to Borrower, and references in the Loan Documents to "Guarantor" or other similar references that prior to the Effective Date referred to Prior Guarantor shall refer to New Guarantors.

5. Assumption and Ratification.

(a) Borrower hereby assumes and agrees to comply with all covenants and obligations contained in the Loan Documents and henceforth shall be bound by all the terms thereof, except for those obligations which are personal to Prior Owner and cannot be cured by Borrower. Without limiting the foregoing, Borrower hereby assumes and agrees to pay in full as and when due all payments, the obligations and other indebtedness evidenced by the Notes and Lender acknowledges that Borrower shall be entitled to any and all applicable notice and cure periods as set forth in the Loan Documents with respect to such obligations.

(b) New Guarantor hereby assumes all covenants and obligations of Borrower Principal (as defined in the Loan Documents) contained in the Loan Documents to which Borrower Principal is an obligor or party occurring or arising from and after the Effective Date and agrees to comply with all covenants and obligations of Borrower Principal contained in the Loan Documents to which Borrower Principal is an obligor or party and henceforth shall be bound by all the terms thereof. Without limiting the foregoing, New Guarantor hereby assumes the obligations of Borrower Principal occurring or arising from and after the Effective Date with respect to the sections of Article 4, Article 13, Article 15 and Article 18 of the Loan Agreement to which Borrower Principal is an obligor or party. New Guarantor hereby adopts, ratifies and confirms as of the Effective Date all of the representations and warranties made by Borrower Principal in the Loan Agreement and the covenants of Borrower Principal contained in the Loan Documents.

(c) Borrower hereby authorizes the Lender to file any and all UCC financing statements as Lender may deem necessary including, without limitation, financing statements containing the description “all assets of Borrower” or “all personal property of Borrower” or similar language.

(d) As assumed hereby, the Loan Documents shall remain in full force and effect. The Borrower hereby adopts, ratifies and confirms as of the Effective Date all of the representations, warranties and covenants of Prior Owner contained in the Loan Documents.

6. Release of Claims. Prior Owner, Prior Guarantor, Borrower and New Guarantor (individually, a “Borrower Party” and collectively, the “Borrower Parties”), hereby jointly and severally, unconditionally and irrevocably, finally and completely RELEASE AND FOREVER DISCHARGE Former Lender and Lender, and their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys and agents, past, present and future (collectively and individually, “Lender Parties”), of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, debts, liens, actions and causes of action of any and every nature whatsoever, known or unknown, whether at law, by statute or in equity, in contract or in tort, under state or federal jurisdiction, and whether or not the economic effects of such alleged matters arise or are discovered in the future, which Borrower Parties have as of the Effective Date or may claim to have against Lender Parties arising out of or with respect to any and all transactions relating the Loan, the Prior Owner’s Loan Documents or the Loan Documents occurring on or before the Effective Date, including any loss, cost or damage of any kind or character arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of Lender Parties occurring on or before

the Effective Date. The foregoing release is intended to be, and is, a full, complete and general release in favor of Lender Parties with respect to all claims, demands, actions, causes of action and other matters described therein, including specifically, without limitation, any claims, demands or causes of action based upon allegations of breach of fiduciary duty, breach of any alleged duty of fair dealing in good faith, economic coercion, usury, or any other theory, cause of action, occurrence, matter or thing which might result in liability upon Lender Parties arising or occurring on or before the Effective Date. Borrower Parties understand and agree that the foregoing general release is in consideration for the agreements of Lender contained herein and that they will receive no further consideration for such release. Each Borrower Party for itself represents and warrants to Lender that such Borrower Party has not previously assigned or transferred to any person or entity any matter released hereunder, and such Borrower Party agrees to indemnify, protect and hold the Lender Parties harmless from and against any and all claims based on or arising out of any breach of the foregoing representation and warranty by such Borrower Party.

7. Default. Any default by Borrower in the performance of its obligations herein contained, or any material inaccuracy in the representations and warranties made by Borrower herein, shall constitute a default under the Loan Documents and shall entitle Lender to exercise all of its rights and remedies set forth in the Loan Documents.

8. Lift of Bankruptcy Stay. Notwithstanding any provision in the Loan Documents to the contrary, in the event Borrower shall make application for or seek relief or protection under any of the sections or chapters of the United States Bankruptcy Code (the "Code"), or in the event that any involuntary petition is filed against Borrower under any section of the Code, Borrower will not oppose Lender's application for immediate relief from any automatic stay imposed by Sec. 362 of the Code, or otherwise, or on or against the exercise of the rights and remedies otherwise available to Lender pursuant to the Loan Documents and as otherwise provided by law.

9. Fees. Borrower and Lender have agreed that, simultaneously with the execution hereof, all reasonable fees, costs, and charges arising in connection with the execution of this Agreement, including without limitation, all reasonable attorneys' fees, title company fees, title insurance premiums, recording costs, and other dosing costs reasonably incurred by Lender in connection with this Agreement, will be paid by Borrower or Prior Owner as of the Effective Date, and that Lender shall have no obligation whatsoever for payment thereof.

10. No Offsets or Defenses. Borrower hereby acknowledges, confirms and warrants to Lender that as of the Effective Date, Borrower neither has nor claims any offset, defense, claim, right of set-off or counterclaim against Lender under, arising out of or in connection with this Agreement, the Notes, the Mortgage or any other Loan Document. Borrower covenants and agrees with Lender that if any offset, defense, claim, right of set-off or counterclaim exists as of the Effective Date, Borrower does hereby irrevocably and expressly waive the right to assert such matter. Borrower understands and ogees that the foregoing release is in consideration for the agreements of Lender contained herein, and Borrower will receive no further consideration for such release.

11. Confirmation. Except as specifically set forth herein, all other terms and conditions of the Loan Documents shall remain unmodified and in full force and effect, the same being confirmed and republished hereby; and except as otherwise specifically set forth herein, the undersigned Borrower hereby assumes, affirms, reaffirms and republishes all of the warranties, covenants and agreements as set forth in the Loan Documents.

12. Usury Savings Clause. Notwithstanding anything to the contrary contained elsewhere in this Agreement, Borrower and Lender hereby agree that all agreements between them with respect to the Loan, including but not limited to the Loan Documents, whether now existing or hereafter arising are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Lender for the use, forbearance, or detention of the money loaned to Borrower, or for the performance or payment of any covenant or obligation contained herein or therein, exceed the maximum rate of interest under applicable law (the "Maximum Rate"). If from any circumstance whatsoever, fulfillment of any provisions of this Agreement or the Loan Documents at the time performance of such provisions shall be due would involve transcending the limit of validity prescribed by law, then, automatically, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstance Lender should ever receive anything of value deemed interest by applicable law which would exceed the Maximum Rate, such excessive interest shall be applied to the reduction of the principal amount owing with respect to the Loan or on account of the other indebtedness secured by the Loan Documents or Borrower's Loan Documents and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance of the Loan and such other indebtedness, such excess shall be refunded to Borrower. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Loan and other indebtedness of Borrower to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the actual rate of interest on account of all such indebtedness is uniform throughout the actual term of the Loan and does not exceed the Maximum Rate throughout the entire term of the Loan, as appropriate. The terms and provisions of this Section 12 shall control every other provision of this Agreement and all other agreements between Borrower and Lender.

13. Modifications, Waiver. No waiver, modification, amendment, discharge, or change of any of the Loan Documents shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is sought.

14. No Novation. THE PARTIES DO NOT INTEND THIS AGREEMENT NOR THE TRANSACTIONS CONTEMPLATED HEREBY TO BE, AND THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL NOT BE CONSTRUED TO BE, A NOVATION OF ANY OF THE OBLIGATIONS OWING BY THE BORROWER UNDER OR IN CONNECTION WITH THE LOAN DOCUMENTS. FURTHER, THE PARTIES DO NOT INTEND THIS AGREEMENT NOR THE TRANSACTIONS CONTEMPLATED HEREBY TO AFFECT THE PRIORITY OF ANY OF THE LENDER'S LIENS IN ANY OF THE COLLATERAL SECURING THE EXISTING NOTES IN ANY WAY, INCLUDING, BUT NOT LIMITED TO, THE LIENS, SECURITY INTERESTS AND ENCUMBRANCES CREATED BY THE MORTGAGE.

15. Recitals True. Borrower, New Guarantor, Prior Owner, Prior Guarantor and Lender each hereby approve the recitations set forth in the preamble of this Agreement and agree that said recitations are true and correct in all respects. Notwithstanding the foregoing, Borrower, New Guarantor, Prior Owner and Prior Guarantor have not reviewed and make no representations as to the Intercreditor Agreement.

16. Notices. Lender and Borrower agree that all notice provisions contained in the Loan Documents are hereby modified to amend the notice address for Borrower and Lender, and that from and after the Effective Date the notice address for Lender and Borrower are as follows:

If to Lender:

c/o Bank of America, N.A.
900 West Trade St.
Suite 650
NC1-026-06-01
Charlotte, NC 28255
Attention: Servicing Manager — Loan No. 00-3214921 and 00-3206596

If to Borrower:

Novato FF Property, LLC
11455 El Camino Real, Suite 200
San Diego, CA 92130

If to New Guarantor:

American Assets, Inc.
11455 El Camino Real, Suite 200
San Diego, CA 92130

Each party to this Agreement may designate a further change of address by notice given as required in the Loan Agreement.

17. Severability. If all or any portion of any provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

18. Counterpart. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

19. Governing Law. The terms and conditions of this Agreement shall be governed by the applicable laws of the state in which the Property is located.

20. Interpretation. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. The section headings used herein are intended for reference purposes only and shall not be considered in the interpretation of the terms and conditions hereof. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

21. Amendment. The terms and conditions hereof may not be modified, altered or otherwise amended except by an instrument in writing executed by Borrower and Lender.

22. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the modification of the Loan and fully supersedes all prior agreements and understanding between the parties pertaining to such subject matter.

23. Successors and Assigns. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors and permitted assigns.

24. TRIAL BY JURY WAIVER. BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, AND LENDER BY ITS ACCEPTANCE OF THIS AGREEMENT IRREVOCABLY AND UNCONDITIONALLY WAIVES, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THE LOAN, THIS AGREEMENT OR THE LOAN DOCUMENTS.

25. Release. Lender hereby forever releases and discharges Prior Owner and Prior Guarantor from any and all liability, obligation or duty under the Loan Documents and the Prior Owner's Loan Documents arising from and after the Effective Date, including, but not limited to, repayment of the Loan; provided, however, that Prior Owner and Prior Guarantor are not released or discharged from any liability, obligation or duty under the Loan Documents executed by Prior Owner or Prior Guarantor or Prior Owner's Loan Documents (i) arising prior to or simultaneously with the assumption of the Loan by Borrower; (ii) for any losses or damages suffered, or expenses incurred by Lender as a result of any representation or warranty of Prior Owner or Prior Guarantor in this Agreement that proves to have been false or misleading in any material respect when made or delivered, (iii) in the event the assumption of the Loan by Borrower is deemed void for any reason whatsoever, or (iv) any losses or damages suffered, or expenses incurred by Lender as a result of any fraudulent or tortious conduct by Prior Owner or Prior Guarantor. In all cases, Prior Owner and Prior Guarantor, as applicable, shall bear the burden of proof on the issue of the time at which an act or event first occurred or an obligation first arose, which is the subject of claimed liability under any of the Loan Documents or Prior Owner's Loan Documents.

26. Amendment to Loan Agreement. The Loan Agreement is hereby amended as follows:

A. Section 1.1 is hereby amended by

i. deleting the definition of "**Borrower Principal**" and replacing it with the following: "Borrower Principal shall mean American Assets, Inc., a California corporation."

ii. deleting the definition of "**Lockbox Bank**" and replacing it with the following: "Lockbox Bank shall mean Wells Fargo Bank, National Association or any successor Eligible Institution approved or appointed by Lender acting as Lockbox Bank under the Lockbox Agreement".

B. Section 4.2 is hereby amended by deleting the last sentence of the section and replacing it with the following: "Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is 4311653."

C. Section 5.14(a) is hereby amended by deleting such Section and replacing it with the following: "So long as the FFIC Lease is in full force and effect, the Property shall not be required to be managed by a Qualified Manager pursuant to a Management Agreement. However, in the event the FFIC Lease is no longer in full force and effect, the Property shall be managed by a Qualified Manager pursuant to a Management Agreement and the provisions of this Section 5.14 shall apply."

D. Section 10.1(a) is hereby amended by deleting the words "First States Investors 239, LLC" in subsection (ii) and replacing it with the following: "Novato FF Property, LLC".

E. Exhibit B is deleted in its entirety and replaced with a Borrower Equity Ownership Structure that has been provided to Lender in connection with the assumption of the Loan.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereby have all executed this Agreement under seal as of the day and year first hereinabove written.

BORROWER:

Novato FF Property, LLC, a Delaware limited liability company

By: /s/ John W. Chamberlain
Name: John W. Chamberlain
Title: President

By: /s/ Robert F. Barton
Name: Robert F. Barton
Title: Chief Financial Officer

NEW GUARANTOR:

American Assets, Inc., a California corporation

By: /s/ Ernest Rady
Name: Ernest Rady
Title: President

By: /s/ Robert F. Barton
Name: Robert F. Barton
Title: Chief Financial Officer

PRIOR OWNER:

First States Investors 239, LLC, a Delaware limited liability company

By: /s/ Glenn Blumenthal
Name: Glenn Blumenthal
Title: Vice President

PRIOR GUARANTOR:

First States Group, L.P., a Delaware limited partnership

By: First States Group, LLC, its sole general partner

By: /s/ Glenn Blumenthal
Name: Glenn Blumenthal
Title: Executive Vice President

NOTE A-1 LENDER:

LaSalle Bank National Association, as Trustee for the registered holders of Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-5

By: Bank of America, N.A., a national banking association, as Master Servicer (as defined in the Intercreditor Agreement)

By: /s/ Dean B. Roberson
Name: Dean B. Roberson
Title:

NOTE A-2 LENDER:

Wells Fargo Bank, N.A., as Trustee for the benefit of holders of GE Commercial Mortgage Corporation, Mortgage Pass-Through Certificates, Series 2005-C4

By: Bank of America, N.A., a national banking association, as Master Servicer (as defined in the Intercreditor Agreement)

By: /s/ Dean B. Roberson
Name: Dean B. Roberson
Title:

SERVICER:

Bank of America, N.A., a national banking association, as Master Servicer (as defined in the Intercreditor Agreement

By: /s/ Dean B. Roberson
Name: Dean B. Roberson
Title:

MERS:

Mortgage Electronic Registration Systems, Inc., a Delaware stock corporation

By: /s/ Catherine L. Robinson
Name: Catherine L. Robinson
Title: Asst. Sec.

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT 'A'

File No.: **NCS-277718-SD (LG)**

Property: **775,777 and 779 San Marin Drive, Novato, CA**

PARCEL A:

PARCEL ONE:

PARCEL 2, AS SHOWN UPON THAT CERTAIN PARCEL MAP ENTITLED, "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL TWO:

EASEMENTS AND RIGHTS, INCLUDING WITHOUT LIMITATION RIGHTS RELATING TO THE USE, REPAIR, MAINTENANCE OR IMPROVEMENTS OF CERTAIN REAL PROPERTY, AS PROVIDED FOR IN THE DECLARATION ESTABLISHING COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS RECORDED OCTOBER 4, 1984 AS RECORDER'S SERIAL NO. 84-047231 AND RE-RECORDED DECEMBER 20, 1984 AS RECORDER'S SERIAL NO. 84-058411, AND AMENDMENT THERETO RECORDED JUNE 1, 1989 AS RECORDER'S SERIAL NO. 89-031686, MARIN COUNTY RECORDS, OVER THAT PORTION OF PARCEL 1 DESIGNATED "COMMON AREA EASEMENT APPURTENANT TO PARCEL 2 & 3", AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR FIRE MAIN PURPOSES OVER THOSE AREAS OF PARCEL 1 DESIGNATED "C FIRE MAIN EASEMENT (10' WIDE) APPURTENANT TO PARCELS 2 & 3" AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER PARCEL 1 (22 P.M. 36) AS CONVEYED IN THAT CERTAIN RECIPROCAL GRANT OF EASEMENTS AND AGREEMENT WHICH WAS RECORDED JULY 17, 1985 AS RECORDER'S SERIAL NO. 85-029843, MARIN COUNTY RECORDS.

PARCEL B:

PARCEL ONE:

PARCEL 3, AS SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORDS OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL TWO:

EASEMENTS AND RIGHTS, INCLUDING WITHOUT LIMITATION RIGHTS RELATING TO THE USE REPAIR, MAINTENANCE OR IMPROVEMENTS OF CERTAIN REAL PROPERTY, AS PROVIDED FOR IN THE DECLARATION ESTABLISHING COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS RECORDED OCTOBER 4, 1984 AS RECORDER’S SERIAL NO, 84-47231, AND RE-RECORDED DECEMBER 20, 1984 AS RECORDER’S SERIAL NO. 84-58411, AND AMENDMENT THERETO RECORDED JUNE 1, 1989 AS RECORDER’S SERIAL NO. 89-31686, MARIN COUNTY RECORDS, OVER THAT PORTION OF PARCEL 1 DESIGNATED “COMMON AREA EASEMENT APPURTENANT TO PARCEL 2 & 3”, AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL THREE:

NON-EXCLUSIVE EASEMENT FOR FIRE MAIN PURPOSES OVER THOSE AREAS OF PARCEL 1 DESIGNATED “C FIRE MAIN EASEMENT (10’ WIDE) APPURTENANT TO PARCELS 2 & 3” AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FOUR:

NON-EXCLUSIVE EASEMENT FOR ACCESS AND PUBLIC UTILITY PURPOSES, WATER LINE AND SANITARY SEWER PURPOSES OVER THAT PORTION OF PARCEL 1 DESIGNATED “ACCESS & PUBLIC UTILITY EASEMENT & W.L.E. & S.S.E. APPURTENANT TO PARCEL 3” AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER PARCEL 1 (22 P.M. 36) AS CONVEYED IN THAT CERTAIN RECIPROCAL GRANT OF EASEMENTS AND AGREEMENT WHICH WAS RECORDED JULY 17, 1985 AS RECORDER'S SERIAL NO. 85029843, MARIN COUNTY RECORDS.

PARCEL C:

PARCEL ONE:

PARCEL 1, AS SHOWN UPON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL TWO:

EASEMENTS AND RIGHTS, INCLUDING WITHOUT LIMITATION RIGHTS RELATING TO THE USE, REPAIR, MAINTENANCE OR IMPROVEMENTS OF CERTAIN REAL PROPERTY, AS PROVIDED FOR IN THE DECLARATION ESTABLISHING COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS RECORDED OCTOBER 4, 1984 AS RECORDER'S SERIAL NO. 84-047231 AND RE-RECORDED DECEMBER 20, 1984 AS RECORDER'S SERIAL NO. 84-058411, AND AMENDMENT THERETO RECORDED JUNE 1, 1989 AS RECORDER'S SERIAL NO. 89-031686, MARIN COUNTY RECORDS.

PARCEL THREE:

AN EASEMENT FOR THE COOLING TOWER, COOLING TOWER PIPELINE AND ACCESS TO THE COOLING TOWER OVER THOSE CERTAIN EASEMENTS DESIGNATED "COOLING TOWER EASEMENT APPURTENANT TO PARCEL 1", "C COOLING TOWER PIPELINE EASEMENT (10' WIDE) APPURTENANT TO PARCEL 1", AND "COOLING TOWER ACCESS EASEMENT APPURTENANT TO PARCEL 1", ALL LYING WITHIN THE BOUNDARIES OF PARCEL 3 AS SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR FIRE MAIN PURPOSES, 10 FEET WIDE, OVER THOSE PORTION OF PARCELS 2 AND 3 DESIGNATED "C FIRE MAIN

EASEMENT (10’ WIDE) APPURTENANT TO PARCELS 1 & 2” AND “C FIRE MAIN EASEMENT (10’ WIDE) APPURTENANT TO PARCELS 1 & 3” AS SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION THEREOF CONTAINED IN THE QUITCLAIM DEED RECORDED NOVEMBER 5, 1993 AS RECORDER’S SERIAL NO. 93-093959, MARIN COUNTY RECORDS.

PARCEL FIVE:

NON-EXCLUSIVE EASEMENTS FOR FIRE MAIN PURPOSES AS CONTAINED IN THE DEED FROM 775/779 SAN MARIN ASSOCIATES, L.P. RECORDED NOVEMBER 15, 1993 AS RECORDER’S SERIAL NO. 93-093960, MARIN COUNTY RECORDS.

PARCEL SIX:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER PARCEL 2 (22 P.M. 36) AS CONVEYED IN THAT CERTAIN RECIPROCAL GRANT OF EASEMENTS AND AGREEMENT WHICH WAS RECORDED JULY 17, 1985 AS RECORDER’S SERIAL NO. 85-029843, MARIN COUNTY RECORDS.

A.P.N. 125-202-03, 125-202-04 and 125-202-05

Exhibit 10.30

AMENDED AND RESTATED PROMISSORY NOTE A-[__]

$[_____] October [__], 2005

THIS AMENDED AND RESTATED PROMISSORY NOTE (this "Note"), is made as of October [ ], 2005, by and between **FIRST STATES INVESTORS 239, LLC**, a Delaware limited liability company, as borrower, having its principal place of business at c/o American Financial Realty Trust, 680 Old York Road, Suite 200, Jenkintown, Pennsylvania 19046 ("Borrower"), and **BANK OF AMERICA, N.A.**, a national banking association, as lender, having an address at Hearst Tower, 214 North Tryon Street, Charlotte, North Carolina 28255 ("Lender").

R E C I T A L S

WHEREAS, Lender is the present owner and holder of that certain promissory note, dated as of August 5, 2005, which evidences an indebtedness of Borrower to Lender in the current outstanding principal amount of $190,458,087, together with interest (the "Original Note");

WHEREAS, on the date hereof, Borrower and Lender have entered into that certain Note Severance Agreement (the "Severance Agreement") which splits the indebtedness evidenced by the Original Note into two (2) separate obligations of indebtedness evidenced by (a) this Note evidencing the principal sum of Component A-[__] (as described in the Severance Agreement) in the aggregate principal amount of [_____] Dollars ($[_____]) and (b) that certain Amended and Restated Promissory Note A-[__] dated as of the date hereof evidencing the principal sum of Component A-[__] (as described in the Severance Agreement) in the principal amount of [_____] Dollars ($[_____]) ("Note A-[__]").

WHEREAS, each of this Note and Note A-[__] shall continue to be secured by the Mortgage (as hereinafter defined) and shall collectively be referred to as the "Note" in the Mortgage and all other Loan Documents.

NOW, THEREFORE, in consideration of the premises, the agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows, effective as of the date first above written:

A. Borrower's indebtedness is [_____] Dollars ($[_____]) as evidenced by this Note in the principal amount of [_____] Dollars ($[_____]), together with interest thereon to be computed from the date of this Note at the Note Rate (or, if applicable, the Default Rate), and to be paid to the order of Lender, or at such other place as the holder hereof may from time to time designate in writing, in lawful money of the United States of America in accordance with the terms of this Note and that certain Loan Agreement dated August 5, 2005, between Borrower and Lender (such Loan Agreement, as same may be further amended and restated from time to time, is hereinafter referred to as the "Loan Agreement"). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

B. Borrower and Lender hereby agree that the portion of the Original Note, having been severed pursuant to the Severance Agreement into this Note, is hereby amended, restated and replaced in its entirety with respect to the principal indebtedness evidenced by this Note.

ARTICLE 1

PAYMENT TERMS

Borrower agrees to pay the principal sum of this Note and interest on the unpaid principal sum of this Note from time to time outstanding at the rate and at the times specified in Article 2 of the Loan Agreement and the outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon shall be due and payable on the Maturity Date.

ARTICLE 2

DEFAULT AND ACCELERATION

The Debt shall without notice become immediately due and payable at the option of Lender if any portion of the Debt is not paid on or prior to the date the same is due or if the entire Debt is not paid on or before the Maturity Date, provided, however, Borrower shall not be in default so long as there is sufficient money in the Lockbox Account for payment of all amounts then due and payable (including deposits to Reserve Accounts) and Lender's access to such money has not been constrained or constricted in any manner.

ARTICLE 3

LOAN DOCUMENTS

This Note is secured by the Mortgage and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Mortgage and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

ARTICLE 4

SAVINGS CLAUSE

Notwithstanding anything to the contrary contained in this Note or the other Loan Documents, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the lawful maximum, any such

excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

ARTICLE 5

NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 6

WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind except as provided in the Loan Agreement. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Loan Agreement or the other Loan Documents made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other Person who may become liable for the payment of all or any part of the Debt, under this Note, the Loan Agreement or the other Loan Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Loan Agreement or the other Loan Documents. If Borrower is a limited liability company, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the individuals comprising the limited liability company, and the term “Borrower,” as used herein, shall include any alternate or successor limited liability company, but any predecessor limited liability company and its members shall not thereby be released from any liability. If Borrower is a partnership, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the individuals comprising the partnership, and the term “Borrower,” as used herein, shall include any alternate or successor partnership, but any predecessor partnership and their partners shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and be applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term “Borrower” as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. (Nothing in the foregoing sentence shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such borrowing entity which may be set forth in the Loan Agreement, the Mortgage or any other Loan Documents.) If Borrower consists of more than one person or party, the obligations and liabilities of each person or party shall be joint and several.

ARTICLE 7

TRANSFER

Upon the transfer of this Note, Borrower hereby waiving notice of any such transfer other than in connection with the Securitization, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights herein or under applicable law given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter arising from events thereafter occurring; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

ARTICLE 8

EXCULPATION

The provisions of Article 15 of the Loan Agreement are hereby incorporated by reference into this Note to the same extent and with the same force as if fully set forth herein.

ARTICLE 9

GOVERNING LAW

(A) THE PARTIES AGREE THE STATE OF NEW YORK HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS NOTE AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, LENDER AND BORROWER EACH HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS NOTE AND THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS NOTE MAY AT LENDER'S OR BORROWER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE STATE OF NEW YORK, AND LENDER AND BORROWER EACH WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING.

ARTICLE 10

NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 16.1 of the Loan Agreement.

ARTICLE 11

CONFLICT

If any provision of this Note shall conflict with any provision of the Loan Agreement the provisions of the Loan Agreement shall control.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

BORROWER:

FIRST STATES INVESTORS 239, LLC, a
Delaware limited liability company

By: _____
Name: _____
Title: _____

34
6 R130

RECORDING REQUESTED BY
First American Title Insurance Company
National Commercial Services

AND WHEN RECORDED MAIL TO:
Cadwalader, Wickersham & Taft LLP
227 West Trade Street, Suite 2400
Charlotte, North Carolina 28202
Attention: James P. Carroll, Esq.

2005-0059209

Recorded Official Records County Of Marin JOAN C. THAYER Recorder
REC FEE 122.00
11:33AM 05-Aug-2005
pa
Page 1 of 34

Space Above This Line for Recorder's Use Only

A.P.N.: 125-202-03 and 125-202-04 and 125-202-05

File No.: NCS-172761-SM (km)

Document Title

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

SEPARATE PAGE PURSUANT TO GOVT CODE 27361.6

LOAN NO.: 59227
SERVICING NO.: 3206596

FIRST STATES INVESTORS 239, LLC, as grantor
(Borrower)

to

FIRST AMERICAN TITLE INSURANCE COMPANY, as trustee
(Trustee)

for the benefit of

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as beneficiary
(Beneficiary)

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

Dated: As of August 5, 2005

Location: 775, 777 and 779 San Marin Drive
Novato, California

County: Marin

MERS MIN: 8000101-0000001568-4

PREPARED BY AND UPON
RECORDATION RETURN TO:

Cadwalader, Wickersham & Taft LLP
227 West Trade Street, Suite 2400
Charlotte, North Carolina 28202
Attention: James P. Carroll, Esq.

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THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of this 5th day of August, 2005, by FIRST STATES INVESTORS 239, LLC, a Delaware limited liability company, having its principal place of business at c/o American Financial Realty Trust, 680 Old York Road, Suite 200, Jenkintown, Pennsylvania 19046, as grantor ("Borrower") to FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, having an address at 555 Marshall Street, Redwood City, California 94063, as trustee ("Trustee") for the benefit of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware stock corporation, as beneficiary ("Beneficiary"). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement (defined below).

RECITALS:

This Security Instrument is given to Trustee for the benefit of Beneficiary, in its capacity as nominee for Lender (defined below) in accordance with Section 16.2 below, to secure a loan (the "Loan") in the principal sum of ONE HUNDRED NINETY MILLION SIX HUNDRED EIGHTY-SEVEN THOUSAND FIVE HUNDRED and No/100 Dollars ($190,687,500.00) advanced pursuant to that certain Loan Agreement, dated as of the date hereof, between Borrower and Bank of America, N.A., a national banking association ("Lender"), among others (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") and evidenced by that certain Promissory Note, dated as of the date hereof, made by Borrower in favor of Lender (such Promissory Note, together with all extensions, renewals, replacements, restatements or modifications thereof; being hereinafter referred to as the "Note");

Borrower desires to secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents (as defined in the Loan Agreement); and

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

ARTICLE 1

GRANTS OF SECURITY

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

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

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

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

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

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

(f) Leases and Rents. All leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under any Creditors Rights Laws (collectively, the "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties

(including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Property, including, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or Manager and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Borrower of any petition for relief under any Creditors Rights Laws (collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

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

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

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

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

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

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

(m) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including, without limitation, the Reserve Accounts including,

without limitation, the Lockbox Account, the Cash Management Account and all accounts established pursuant to Article 9 of the Loan Agreement together with all deposits or wire transfers made to the Lockbox Account and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

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

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

Section 1.2 Assignment of Rents. Borrower hereby absolutely unconditionally and irrevocably assigns to Beneficiary and Trustee all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Beneficiary is hereby granted and assigned by Borrower the right to enter the Property for the purpose of enforcing its right in the Leases and Rents. Nevertheless, subject to the terms of the Loan Agreement and Section 8.1(h) of this Security Instrument, Beneficiary grants to Borrower a revocable license to collect, receive, use and enjoy the Rents and Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums. Upon or at any time after the occurrence and continuation of an Event of Default, the license granted to Borrower herein may be revoked by Beneficiary, and Beneficiary may enter upon the Property, and collect, retain and apply the Rents toward payment of the Debt in accordance with the Note and the Loan Agreement. The foregoing assignment shall be fully operative without any further action on the part of either party and Beneficiary shall be entitled to the Leases and Rents whether or not Beneficiary takes possession of the Property or any part thereof.

Section 1.3 Security Agreement. This Security Instrument is both a real property deed of trust and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property, including, but not limited to, the Leases and Rents and all proceeds thereof. By executing and delivering this Security Instrument, Borrower hereby grants to Beneficiary and Trustee, as security for the Obligations (hereinafter defined), a security interest in the Personal Property to the full extent that the Personal Property may be subject to the Uniform Commercial Code.

Section 1.4 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. With respect to said fixture filing, (i) the debtor is Borrower, and Borrower's name and address appear in the first paragraph of this Security Instrument, and (ii) the secured party is Beneficiary, and Beneficiary's name and address appear in the first paragraph of this Security Instrument.

Section 1.5 Conditions to Grant. TO HAVE AND TO HOLD the above granted and described Property unto Trustee for and on behalf of Beneficiary and to the use and benefit of Beneficiary and Trustee and their successors and assigns, forever; IN TRUST, WITH POWER OF SALE, to secure payment to Lender of the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument. PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

Section 1.6 Grants to Beneficiary. This Security Instrument and the grants, assignments and transfers made to Beneficiary in this Article 1 shall inure to Beneficiary solely in its capacity as Lender's nominee in accordance with Section 16.2 below.

ARTICLE 2

DEBT AND OBLIGATIONS SECURED

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

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

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

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

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

ARTICLE 3

PROPERTY COVENANTS

Borrower covenants and agrees that:

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

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

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

Section 3.4 Warranty of Title. Borrower has good, indefeasible, marketable and insurable fee simple title to the real property comprising part of the Property and good indefeasible and marketable title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the Lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all Persons whomsoever.

Section 3.5 Payment for Labor and Materials. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any Lien or security interest, even though inferior to the Liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the Liens or security interests hereof except for the Permitted Encumbrances. Borrower represents there are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents.

ARTICLE 4

FURTHER ASSURANCES

Section 4.1 Compliance with Loan Agreement. Borrower shall comply with the covenants set forth in Article 17 of the Loan Agreement in order to protect and perfect the Lien or security interest hereof upon, and in the interest of Lender in, the Property.

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

ARTICLE 5

DUE ON SALE/ENCUMBRANCE

Section 5.1 No Sale/Encumbrance. Borrower shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Property or any part thereof, Borrower or any Restricted Party, other than in accordance with the provisions of Article 7 of the Loan Agreement, without the prior written consent of Lender.

ARTICLE 6

PREPAYMENT; RELEASE OF PROPERTY

Section 6.1 Prepayment. The Debt may not be prepaid in whole or in part except in strict accordance with the express terms and conditions of the Note and the Loan Agreement.

Section 6.2 Prepayment on Casualty/Condemnation and Change in Tax and Debit Credit Laws. Provided no Event of Default exists under any of the Loan Documents, in the event of any prepayment of the Debt pursuant to the terms of Article 8 or Section 17.4 of the Loan Agreement, no prepayment premium shall be due in connection therewith, but Borrower shall be responsible for all other amounts due under any of the Loan Documents.

Section 6.3 Involuntary Prepayment. If there is an involuntary prepayment during the Lockout Period (as defined in the Note), then Borrower shall, in addition to any portion of the Loan prepaid (together with all interest accrued and unpaid thereon), pay to Lender a prepayment premium in an amount calculated in accordance with Section 5(c) of the Note.

Section 6.4 Release of Property. Borrower shall not be entitled to a release of any portion of the Property from the lien of this Security Instrument except in accordance with terms and conditions of the Loan Agreement and the Note.

ARTICLE 7

DEFAULT

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

ARTICLE 8

RIGHTS AND REMEDIES UPON DEFAULT

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

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

(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

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

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

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

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

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender or Trustee may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its uncontrolled discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including, without limitation, advances made by Lender pursuant to the terms of this Security Instrument;

(k) surrender the Policies maintained pursuant to the Loan Agreement, collect the unearned insurance premiums for the Policies and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such insurance premiums;

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or

(m) pursue such other remedies as Lender may have under applicable law.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Section 11.1(f) of the Loan Agreement shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender or Beneficiary.

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

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

the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

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

Section 8.5 Recovery of Sums Required to be Paid. Subject to Article 15 of the Loan Agreement, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

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

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

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender or Trustee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Trustee thereafter to foreclose this Security Instrument. The rights of Lender or Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender, Beneficiary or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Lender, Beneficiary nor Trustee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

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

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

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

(b) If there shall be filed by or against Borrower a petition under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code"), and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

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

ARTICLE 9

ENVIRONMENTAL HAZARDS

Section 9.1 Environmental Covenants. Borrower has provided representations and warranties regarding environmental matters set forth in Section 12.1 of the Loan Agreement and shall comply with the covenants regarding environmental matters set forth in Section 12.2 of the Loan Agreement.

Section 9.2 Lender's Rights. Lender and any other person or entity designated by Lender, including but not limited to any representative of a Governmental Authority, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender.

ARTICLE 10

WAIVERS

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

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

Section 10.3 Waiver of Statute of Limitations. Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

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

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

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

Section 10.7 Failure to Act. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the failure of Beneficiary to take any action hereunder or under any other Loan Document shall not (i) be deemed to be a waiver of any term or condition of this Security Instrument or any of the other Loan Documents, (ii) adversely effect any rights of Lender hereunder or under any other Loan Document and (iii) relieve Borrower of any of Borrower's obligations hereunder or under any other Loan Document.

ARTICLE 11

EXCULPATION

Section 11.1 Exculpation. The provisions of Article 15 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

ARTICLE 12

NOTICES

Section 12.1 Notices. All notices or other written communications hereunder shall be delivered in accordance with the applicable terms and conditions of the Loan Agreement.

Section 12.2 Addresses. Notices to Beneficiary and Trustee hereunder and under each other Loan Document shall include a copy thereof to Lender (to be addressed and delivered in accordance with the Loan Agreement) and shall to be sent as follows:

If to Beneficiary: MERS Commercial
P.O. Box 2300
Flint, Michigan 48501-2300
Attention: Corporate Secretary
Facsimile No.: (703) 748-0183

If to Trustee: First American Title Insurance Company
555 Marshall Street
Redwood City, California 94063
Facsimile No.: (650) 364-3015

ARTICLE 13

APPLICABLE LAW

Section 13.1 Governing Law. This Security Instrument shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located and applicable laws of the United States of America.

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

ARTICLE 14

DEFINITIONS

Section 14.1 Defined Terms. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word ‘Borrower” shall mean “each Borrower and any subsequent permitted owner or owners of the Property or any part thereof or any interest therein,” the word “Lender” shall mean “Lender and any subsequent holder of the Note,” the word “Trustee” shall mean “Trustee and any substitute Trustee of the estates, properties, powers, trusts and rights conferred upon Trustee pursuant to this Security Instrument, the word “Note” shall mean “the Note and any other evidence of indebtedness secured by this Security Instrument,” the word “Property” shall include any portion of the Property and any interest therein, and the phrases “attorneys’ fees”, “legal fees” and “counsel fees” shall include any and all reasonable attorneys’, paralegal and law clerk fees and disbursements, including, but

not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

ARTICLE 15

MISCELLANEOUS PROVISIONS

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

Section 15.2 Successors are Assigns. This Security Instrument shall be binding upon and inure to the benefit of (a) Beneficiary and Lender and their respective successors and assigns forever, and (b) Borrower and its permitted successors and assigns forever.

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

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

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

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

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

ARTICLE 16

STATUS OF PARTIES

Section 16.1 Status of Borrower. Borrower's exact legal name is correctly set forth in the first paragraph of this Security Instrument and the signature block at the end of this Security Instrument. Borrower is an organization of the type specified in the first paragraph of this Security Instrument. Borrower is incorporated in or organized under the laws of the state specified in the first paragraph of this Security Instrument. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Borrower) the address of Borrower set forth on the first page of this Security Instrument. Borrower will not change or permit to be changed (a) Borrower's came, (b) Borrower's identity (including its trade name or names), (c) Borrower's principal place of business set forth on the first page of this Security Instrument, (d) the corporate, partnership or other organizational structure of Borrower, (e) Borrower's state of organization, or (f) Borrower's organizational number, without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender. if Borrower does not now have an organizational identification number and later obtains one, Borrower promptly shall notify the Lender of such organizational identification number.

Section 16.2 Beneficiary as Nominee. (a) Beneficiary is acting as nominee under certain agreements by and between Lender and Beneficiary as the same may have been or may be amended, restated, replaced, supplemented or otherwise modified from time to time.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, all references herein and in any other Loan Document to "Lender" shall be deemed to collectively or individually (as the context requires) refer to Lender or to Beneficiary acting on behalf of and at the sole direction of Lender in its capacity as Lender's nominee.

(c) Unless Lender, in its sole discretion, shall determine otherwise, only Lender (and not Beneficiary) shall be deemed to be "Lender" with respect to (i) any consent, determination or similar approval right granted to Lender under the Loan Documents (including, without limitation, any consent or similar approval right that is deemed granted if not approved or denied within a specified time period), (ii) any items, documents or other information required to be delivered to Lender under the Loan Documents (other than notices) or (iii) any future funding or other obligations of Lender to Borrower or any affiliate of Borrower under the Loan Documents, if any.

ARTICLE 17

STATE-SPECIFIC PROVISIONS

Section 17.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 17 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 17 shall control and be binding.

Section 17.2 Certain Matters Relating to Property Located in the State of California. With respect to the Property which is located in the State of California, notwithstanding anything contained herein to the contrary:

(a) General. (i) Full Reconveyance. Upon written request of Lender stating that all sums secured hereby have been paid, that Borrower has well and truly abided by and complied with each and every covenant and condition set forth herein and in the Note and the other Loan Documents, and upon surrender to Trustee of the Note and the original or a certified copy of this Security Instrument for cancellation and retention, and upon payment of its fees, Trustee shall fully reconvey, without warranty, the entire remaining Property then held hereunder. The recitals in such reconveyance of any matters of facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(ii) Dwellings. No portion of the proceeds of the Loan shall be used by Borrower to finance the purchase or construction of real property containing four (4) or fewer residential units or on which four (4) or fewer residential units are to be constructed. As of the date hereof, Borrower represents, warrants and covenants that no portion of the Property is or will be a "dwelling" within the meaning of Section 10240.1 or Section 10240.2 of the California Business and Professions Code.

(iii) Civil Code. Borrower represents, warrants and acknowledges that the Loan is not subject to the provisions of Chapter 3, Title IV, Part 4, Division Third of the Civil Code of the State of California (Civil Code Sections 1912 et seq.) other than Section 1916.1 thereof.

(iv) Indemnity; Expenses. Borrower will pay or reimburse the Trustee, Beneficiary and Lender for all reasonable attorneys' fees, costs and expenses incurred by any of them in any suit, action, legal proceeding or dispute of any kind in which any of them is made a party or appears as party plaintiff or defendant, affecting the Debt, this Security Instrument or the interest created herein, or the Property, or any appeal thereof, including, but not limited to, activities related to enforcement of the remedies of Beneficiary or Lender, activities related to protection of Beneficiary's or Lender's collateral, any foreclosure action or exercise of the power of sale, any condemnation action involving the Property or any action to protect the security hereof, any bankruptcy or other insolvency proceeding commenced by or against Borrower, and any such amounts paid or incurred by the Trustee, Beneficiary or Lender shall be added to the Debt and shall be secured by this Security Instrument. The agreements of this subsection shall expressly survive in perpetuity satisfaction of this Security Instrument and repayment of the Debt, any release, reconveyance, discharge of foreclosure of this Security Instrument, conveyance by deed in lieu of foreclosure, sale, and any subsequent transfer by trustee's conveyance of the Property.

(v) Supplemental Environmental Provisions. In the event that any portion of the Property is determined to be "environmentally impaired" (as "environmentally impaired" is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as "affected parcel" is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting Beneficiary's, Lender's or Trustee's rights and remedies under this Security Instrument, Beneficiary or Lender may elect to exercise its right under California Code of Civil Procedure Section 726.5(a) to (i) waive its lien on such environmentally impaired or affected portion of the Property, and (ii) exercise the rights and remedies of an unsecured creditor, including reduction of its claim against Borrower to judgment and any other rights and remedies permitted by law. For purposes of determining Beneficiary's or Lender's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Borrower shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant or user of any portion of the Property and Borrower knew or should have known of the activity by such lessee, occupant or user which caused or contributed to the release or threatened release. Beneficiary and Lender shall have the right to allocate amounts recovered on the Debt first to those portions thereof other than damages and other amounts recoverable under California Code of Civil Procedure Section 736, and thereafter to damages and other amounts recoverable hereunder.

(vi) Foreclosure By Power of Sale. (A) Should Beneficiary or Lender elect to foreclose by exercise of the power of sale herein contained, Beneficiary or Lender shall deliver to Trustee a written declaration of default and demand for sale, and shall deposit with Trustee this Security Instrument and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(B) Upon receipt of notice from Beneficiary or Lender, Trustee shall cause to be recorded, published and delivered to Borrower such notice of default and election to sell as is then required by law. Trustee shall, without demand on Borrower, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Property at the time and place of sale fixed by it in said notice of sale, either as a whole, or in separate lots or parcels or items and in such order as Beneficiary or Lender may direct Trustee so to do, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matter or fact shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Borrower, Trustee, Beneficiary, or Lender may purchase at such sale, and Borrower hereby covenants to warrant and defend the title of such purchaser or purchasers.

(C) Subject to applicable law, Trustee may postpone the sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(vii) Separate Sales. The Property may be sold in one or more parcels and in such manner and order as Beneficiary or Lender, in its respective sole discretion, may direct Trustee so to do. A sale of less than the whole of the Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein, and subsequent sales may be made hereunder until all obligations secured hereby have been satisfied, or the entire Property sold, without defect or irregularity.

(viii) Release of and Resort to Collateral. Beneficiary or Lender may release, regardless of consideration and without the necessity for any notice to a consent by the holder of any subordinate lien on the Property, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Property. For payment of the Debt, Beneficiary or Lender may resort to any other security in such order and manner as Beneficiary or Lender may elect.

(ix) Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Borrower hereby irrevocably and unconditionally waives and releases (i) all benefit that might accrue to Borrower by virtue of any present or future statute of limitations or law or judicial decision exempting the Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (ii) all notices of any Event of Default or of Trustee's election to exercise or his actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (iii) any right to a marshalling of assets or a sale in inverse order of alienation.

(x) Discontinuance of Proceedings. If Beneficiary or Lender shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary or Lender, as applicable, shall have the unqualified right to do so and, in such an event, Borrower, Beneficiary and Lender shall be restored to their former positions with respect to the Debt, the obligations secured by this Security Instrument, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary and Lender shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary or Lender thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

(xi) No Beneficiary in Possession. Neither the enforcement of any of the remedies under this Security Instrument nor any other remedies afforded to Beneficiary or Lender under the Loan Documents, at law or in equity, shall cause Beneficiary, Lender or Trustee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Beneficiary, Lender or Trustee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 18

DEED OF TRUST PROVISIONS

Section 18.1 Concerning the Trustee. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Borrower, Beneficiary and Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 18.2 Trustee's Fees. Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 18.3 Certain Rights. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the Other Security Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender and Beneficiary may instruct Trustee to take to protect or enforce Lender's and Beneficiary's rights hereunder. Trustee shall not be

personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 18.4 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 18.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute trustee to more fully and certainly vest in and confirm to Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

Section 18.6 Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in Trustee's place.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower as of the day and year first above written.

BORROWER:

FIRST STATES INVESTORS 239, LLC,
a Delaware limited liability company

By: /s/ Sonya A. Huffman
Name: SONYA A. HUFFMAN
Title: Vice President

EXHIBIT A

(Legal Description)

Legal Description

Real property in the City of Novato , County of **Marin**, State of **California**:

PARCEL A:

PARCEL ONE:

PARCEL 2, AS SHOWN UPON THAT CERTAIN PARCEL MAP ENTITLED, “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL TWO:

EASEMENTS AND RIGHTS, INCLUDING WITHOUT LIMITATION RIGHTS RELATING TO THE USE, REPAIR, MAINTENANCE OR IMPROVEMENTS OF CERTAIN REAL PROPERTY, AS PROVIDED FOR IN THE DECLARATION ESTABLISHING COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS RECORDED OCTOBER 4, 1984 AS RECORDER’S SERIAL NO, 84-047231 AND RE-RECORDED DECEMBER 20, 1984 AS RECORDER’S SERIAL NO. 84-058411, AND AMENDMENT THERETO RECORDED JUNE 1, 1989 AS RECORDER’S SERIAL NO. 89-031686, MARIN COUNTY RECORDS, OVER THAT PORTION OF PARCEL 1 DESIGNATED “COMMON AREA EASEMENT APPURTENANT TO PARCEL 2 & 3”, AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR FIRE MAIN PURPOSES OVER THOSE AREAS OF PARCEL 1 DESIGNATED “C FIRE MAIN EASEMENT (10’ WIDE) APPURTENANT TO PARCELS 2 & 3” AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER PARCEL 1 (22 P.M. 36) AS CONVEYED IN THAT CERTAIN RECIPROCAL GRANT OF EASEMENTS AND AGREEMENT WHICH WAS RECORDED JULY 17, 1985 AS RECORDER’S SERIAL NO. 85-029843, MARIN COUNTY RECORDS.

PARCEL B:

PARCEL ONE:

PARCEL 3, AS SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORDS OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL TWO

EASEMENTS AND RIGHTS, INCLUDING WITHOUT LIMITATION RIGHTS RELATING TO THE USE REPAIR, MAINTENANCE OR IMPROVEMENTS OF CERTAIN REAL PROPERTY, AS PROVIDED FOR IN THE DECLARATION ESTABLISHING COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS RECORDED OCTOBER 4, 1984 AS RECORDER’S SERIAL NO. 84-47231, AND RE-RECORDED DECEMBER 20, 1984 AS RECORDER’S SERIAL NO. 84-58411, AND AMENDMENT THERETO RECORDED JUNE 1, 1989 AS RECORDER’S SERIAL NO. 89-31686, MARIN COUNTY RECORDS, OVER THAT PORTION OF PARCEL 1 DESIGNATED “COMMON AREA EASEMENT APPURTENANT TO PARCEL 2 & 3”, AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL THREE:

NON-EXCLUSIVE EASEMENT FOR FIRE MAIN PURPOSES OVER THOSE AREAS OF PARCEL 1 DESIGNATED “C FIRE MAIN EASEMENT (10’ WIDE) APPURTENANT TO PARCELS 2 & 3” AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA’’, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FOUR:

NON-EXCLUSIVE EASEMENT FOR ACCESS AND PUBLIC UTILITY PURPOSES, WATER LINE AND SANITARY SEWER PURPOSES OVER THAT PORTION OF PARCEL 1 DESIGNATED “ACCESS & PUBLIC UTILITY EASEMENT & W.L.E. & S.S.E. APPURTENANT TO PARCEL 3” AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER PARCEL 1 (22 P.M. 36) AS CONVEYED IN THAT CERTAIN RECIPROCAL GRANT OF EASEMENTS AND AGREEMENT WHICH WAS RECORDED JULY 17, 1985 AS RECORDER’S SERIAL NO. 85029843, MARIN COUNTY RECORDS.

PARCEL C:

PARCEL ONE:

PARCEL 1, AS SHOWN UPON THAT CERTAIN PARCEL MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL TWO:

EASEMENTS AND RIGHTS, INCLUDING WITHOUT LIMITATION RIGHTS RELATING TO THE USE, REPAIR, MAINTENANCE OR IMPROVEMENTS OF CERTAIN REAL PROPERTY, AS PROVIDED FOR IN THE DECLARATION ESTABLISHING COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS RECORDED OCTOBER 4, 1984 AS RECORDER’S SERIAL NO. 84-047231 AND RE-RECORDED DECEMBER 20, 1984 AS RECORDER’S SERIAL NO. 84-058411, AND AMENDMENT THERETO RECORDED JUNE 1, 1989 AS RECORDER’S SERIAL NO. 89-031686, MARIN COUNTY RECORDS

AN EASEMENT FOR THE COOLING TOWER, COOLING TOWER PIPELINE AND ACCESS TO THE COOLING TOWER OVER THOSE CERTAIN EASEMENTS DESIGNATED “COOLING TOWER EASEMENT APPURTENANT TO PARCEL 1”, “C COOLING TOWER PIPELINE EASEMENT (10’ WIDE) APPURTENANT TO PARCEL 1”, AND “COOLING TOWER ACCESS EASEMENT APPURTENANT TO PARCEL 1”, ALL LYING WITHIN THE BOUNDARIES OF PARCEL 3 AS SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR FIRE MAIN PURPOSES, 10 FEET WIDE, OVER THOSE PORTION OF PARCELS 2 AND 3 DESIGNATED “C FIRE MAIN EASEMENT (10’ WIDE) APPURTENANT TO PARCELS 1 & 2” AND “C FIRE MAIN EASEMENT (10’ WIDE) APPURTENANT TO PARCELS 1 & 3” AS SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS. EXCEPTING THEREFROM THAT PORTION THEREOF CONTAINED IN THE QUITCLAIM DEED RECORDED NOVEMBER 5, 1993 AS RECORDER’S SERIAL NO. 93-093959, MARIN COUNTY RECORDS.

PARCEL FIVE:

NON-EXCLUSIVE EASEMENTS FOR FIRE MAIN PURPOSES AS CONTAINED IN THE DEED FROM 775/779 SAN MARIN ASSOCIATES, L.P. RECORDED NOVEMBER 15, 1993 AS RECORDER’S SERIAL NO. 93-093960, MARIN COUNTY RECORDS.

PARCEL SIX:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER PARCEL 2 (22 P.M. 36) AS CONVEYED IN THAT CERTAIN RECIPROCAL GRANT OF EASEMENTS AND AGREEMENT WHICH WAS RECORDED JULY 17, 1985 AS RECORDER'S SERIAL NO. 85-029843, MARIN COUNTY RECORDS.

Exhibit 10.32

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING (this "**Security Instrument**") is made as of the 15th day of February, 2007, by **ABW HOLDINGS LLC,** a Delaware limited liability company ("**Borrower**"), as mortgagor, having an address at 2375 Kuhio Avenue, Honolulu, Hawaii 96815 (and with a copy of all notices to: c/o American Assets, Inc., 11455 El Camino Real, Suite 200, San Diego, California 92130, Attention: John Chamberlain and Robert Barton) to **COLUMN FINANCIAL, INC.**, a Delaware corporation (together with its successors and assigns, **"Lender**"), having an address at 11 Madison Avenue, New York, New York 10010, as mortgagee.

RECITALS:

Borrower by that certain Promissory Note given to Lender dated as of the date hereof (together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to herein as the "**Note**") is indebted to Lender in the aggregate principal sum of $**[150,000,000.00]** (the "**Loan**") in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note.

Borrower desires to secure the payment of the Debt (as defined in Article 2) and the performance of all of the Other Obligations (as defined in Article 2).

Article 1. GRANTS OF SECURITY

Section 1.1. PROPERTY GRANTED. For the purpose of securing payment and performance of the Obligations (as defined in Article 2), Borrower, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration in hand paid, the receipt of which hereby is acknowledged, and the further consideration, uses, purposes and trusts herein set forth and declared, has granted, deeded, mortgaged, sold, bargained, transferred, assigned, set-over and conveyed and by these presents does grant, deed, mortgage, bargain, sell, transfer, assign, set-over and convey unto Lender and its successors and assigns all of Borrower's right, title and interest in and to the following property, rights, interests and estates to the extent now owned, or hereafter acquired by Borrower (collectively, the "**Property**"):

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

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

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

(d) Condominium Interests and Rights.

(i) The Retail Apartment (as defined in the BW Condominium Documents (defined below)) of the condominium (the "**BW Condominium**") created pursuant to that certain Declaration of Condominium Property Regime of Beach Walk Condominium Project dated November 10, 2005, and recorded on November 10, 2005 as Document No. 2005-230978 in the Bureau of Conveyances of the State of Hawaii (the "**Recorder's Office**") and as Document No. 3353847 in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "**Land Court**"), as the same may be supplemented and/or modified pursuant to (A) the Bylaws of the Association of Apartment Owners of Beach Walk recorded on November 10, 2005 as Document No. 2005-230979 in the Recorder's Office and as Document No. 3353848 in the Land Court, (B) Plans filed in the Recorder's Office as Condominium File Plan No. 4113 and Condominium Map No. 1757 and (C) an estoppel and agreement executed in favor of Lender with respect to the foregoing (the "**BW Condominium Estoppel**") (each of the foregoing and together with any amendments, restatements, replacements or other modifications thereof, collectively, the "**BW Condominium Documents**") and the appurtenant common elements of the BW Condominium (the "**BW Common Elements**") as described in the BW Condominium Documents and the rights of Borrower under the BW Condominium Documents (including, without limitation, Borrower's Developer's Rights (as defined therein));

(ii) Each of Retail Apartments 1 through 6 (inclusive) and the Parking Apartment (as each of the same are defined in the 227 Condominium Documents (defined below)) of the condominium (the "**227 Condominium**") created pursuant to that certain Amended and Restated Declaration of Condominium Property Regime of 227 Lewers dated October 28, 2005, and filed on November 7, 2005 as Document No. 2005-227313 in the Recorder's Office, as the same may be supplemented and/or modified pursuant to (A) the Amended and Restated Bylaws of the Association of Apartment Owners of 227 Lewers recorded on November 7, 2005 as Document No. 2005-227314 in the Recorder's Office, (B) plans and elevations for the project filed in the Recorder's Office as Condominium File Plan No. 3920, as amended by Plans dated October 26, 2005 and (C) an estoppel and agreement executed in favor of Lender with respect to the foregoing (the "**227 Condominium Estoppel**") (each of the foregoing and together with any amendments, restatements, replacements or other modifications thereof, collectively, the "**227 Condominium Documents**") and the appurtenant common elements of the 227 Condominium (the "**227 Common Elements**") as described in the 227 Condominium Documents and the rights of Borrower under the 227 Condominium Documents (including, without limitation, Borrower's Developer's Reserved Rights (as defined therein));

(iii) Apartment C (as the same is defined in the 2181 Condominium Documents (defined below)) of the condominium (the "**2181 Condominium**"; the BW Condominium, the 227 Condominium and the 2181 Condominium are collectively herein referred to as the "**Condominium**") created pursuant to that certain Amended and Restated Declaration of Condominium Property Regime of 2181 Kalakaua Condominium Project dated June 5, 2006, and recorded on June 5, 2006 as Document No. 2006-103815 in the Recorder's Office, as the same may be supplemented and/or modified pursuant to (A) the Bylaws of the Association of Apartment Owners of 2181 Kalakaua recorded on March 27, 2001 as Document No. 2001-043083 in the Recorder's Office, (B) Plans filed in the Recorder's Office as Condominium File Plan No. 3235 and (C) an estoppel and agreement executed in favor of Lender with respect to the foregoing (the "**2181 Condominium Estoppel**"; the BW

Condominium Estoppel, the 227 Condominium Estoppel and the 2181 Condominium Estoppel are collectively herein referred to as the "**Condominium Estoppel**") (each of the foregoing and together with any amendments, restatements, replacements or other modifications thereof, collectively, the "**2181 Condominium Documents**"; the BW Condominium Documents, the 227 Condominium Documents and the 2181 Condominium Documents are collectively herein referred to as the "**Condominium Documents"**) and the appurtenant common elements of the 2181 Condominium (the "**2181 Common Elements**"; the BW Common Elements, the 227 Common Elements and the 2181 Common Elements are collectively herein referred to as the **"Common Elements**"**)** as described in the 2181 Condominium Documents and the rights of Borrower under the 2181 Condominium Documents;

(e) Easements. All easements, rights of way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

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

(g) Leases and Rents. All leases and other agreements (including, without limitation, the Master Lease (defined below)) affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, including, without limitation, any guaranty of any of the foregoing leases (a "**Lease**" or "**Leases**"), including, without limitation, those Leases listed on Exhibit C hereto, and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents (including, without limitation, the Master Lease Rents (defined below)), additional rents, revenues, issues

and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements (the "**Rents**"), subject to the license to collect and use such Rents pursuant to the provisions of the Cash Management Agreement (defined below), and all proceeds from the sale or other disposition of the Leases;

(h) FHB Sublease. That certain (i) unrecorded Sublease (together with the following documents and any other amendments, modifications, supplements, restatements or replacements of such Sublease, collectively, the "**FHB Sublease**") dated November 7, 2005 between ABW Lewers LLC, Borrower's predecessor-in-interest, as sublessee, and First Hawaiian Bank, a Hawaii corporation, as sublessor (together with its successors and assigns, the "**FHB SL**"), as such FHB Sublease (A) was referenced of record by a short form thereof dated June 5, 2006 and recorded on June 5, 2006 as Document No. 2006-103820 in the Recorder's Office and (B) amended by (I) that certain unrecorded First Amendment of Sublease dated as of April 12, 2006 and (II) that certain estoppel and agreement by and among Borrower, Lender and FHB SL dated on or about the date hereof (the "**FHB Sublease Estoppel**") and (ii) leasehold estate created by the FHB Sublease (the "**Leasehold Estate**");

(i) Assignments/Modifications. All assignments, modifications, extensions and renewals of the FHB Sublease and all credits, deposits, options, privileges and rights of Borrower as subtenant under the FHB Sublease, including, but not limited to, rights of first refusal, if any, and the right, if any, to renew or extend the FHB Sublease for a succeeding term or terms, and also including all the right, title, claim or demand whatsoever of Borrower either in law or in equity, in possession or expectancy, of, in and to Lender's right, as subtenant under the FHB Sublease, to elect under Section 365(h)(1) of the Bankruptcy Code (defined below) to terminate or treat the FHB Sublease as terminated in the event (i) of the bankruptcy, reorganization or insolvency of FHB SL, and (ii) the rejection of the FHB Sublease by FHB SL, as debtor in possession, or by a trustee for FHB SL, pursuant to Section 365 of 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**");

(j) Master Lease. That certain Lease Agreement (the "**Master Lease**") between Borrower, as landlord, and Guarantor, as tenant (the "**Master Lessee**") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder, if any, to secure the performance by Master Lessee of its obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements (the "**Master Lease Rents**"), subject to the license to collect and use the same pursuant to the provisions of the Cash Management Agreement (defined below), and all proceeds from the sale or other disposition of the Master Lease;

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

(l) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property (whether or not Borrower is required to carry such

insurance by Lender hereunder), including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property, subject to the provisions hereof;

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

(n) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

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

(p) Intangibles. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property (including, without limitation, those granted pursuant to that certain Trademark License Agreement between Outrigger Hotels Hawaii and Borrower's predecessor in interest dated December 15, 2005 (as the same may have been or may be amended, restated, replaced or otherwise modified));

(q) Letter of Credit Rights. All letter of credit rights (whether or not the letter of credit is evidenced by a writing) Borrower now has or hereafter acquires relating to the properties, rights, titles and interest referred to in this Section 1.1;

(r) Tort Claims. All commercial tort claims Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(s) Borrower Accounts. All payments for goods or property sold or leased or for services rendered arising from the operation of the Land and the Improvements, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper;

(t) Reserve Accounts. All reserves, escrows and deposit accounts required under the Loan Documents and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof (collectively, the "**Reserve Accounts**");

(u) Collateral. The Collateral (as defined in that certain Pledge and Security Agreement (the "**Pledge Agreement**") dated on or about the date hereof executed by Borrower in favor of Lender and joined in by WBW CHP, LLC (**"WBW"**));

(v) Proceeds. All proceeds of any of the foregoing items set forth in subsections (a) through (u); and

(w) Other Rights. Any and all other rights of Borrower in and to the items set forth in subsections (a) though (v) above.

Section 1.2. ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Notwithstanding the foregoing or anything to the contrary contained herein, until (a) the occurrence and continuance of an Event of Default in connection with which Lender has elected to accelerate the Loan in accordance with the applicable terms hereof and (b) such Event of Default has continued up to the earliest date of the following occurrences: (i) ninety (90) days after Lender's delivery to Borrower of written notice of the commencement of such Event of Default, (ii) Lender's commencement of a foreclosure action (either judicial or non-judicial), or (iii) Lender's acceptance of a deed-in lieu of foreclosure (the event described in (a) and (b) above, the "**Foreclosure Trigger**"), all Rents shall be deposited, held and applied pursuant to that certain Restricted Account Agreement by and between (among others) Borrower and Lender (the "**Restricted Account Agreement**") and that certain Cash Management Agreement dated as of the date hereof between Borrower and Lender (the "**Cash Management Agreement**").

Section 1.3. SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations, a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code. To the extent permitted by law, Borrower and Lender agree that with respect to all items of Personal Property, which are or will become fixtures on the Land, this Security Instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the applicable provisions of the Uniform Commercial Code. Borrower is the record owner of the Land.

Section 1.4. PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies belonging to Borrower which are now or hereafter held by Lender, and which are (i) deposited in the Escrow Fund (as defined in Section 3.5) or in the other Reserve Accounts, (ii) Net Proceeds (as defined in Section 4.4), and/or (iii) condemnation awards or payments described in Section 3.6, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender its successors and assigns, forever, however, upon the terms and conditions set forth herein;

PROVIDED, HOWEVER, these presents are upon the express condition that, when all of the Obligations have been paid in full, Lender shall re-convey the Property and shall surrender this Security Instrument and all notes and instruments evidencing or securing the Obligations to Borrower.

Article 2. PAYMENTS

Section 2.1. DEBT AND OBLIGATIONS SECURED. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the "**Debt**"): (a) the payment of the indebtedness evidenced by the Note in lawful money of the United States of America; (b) the payment of interest, prepayment premiums, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the other Loan Documents (defined below); (c) the payment of all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument or the other Loan Documents (collectively sometimes referred to herein as the "**Loan Documents**"); (d) the payment of all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and (e) the payment of all sums reasonably advanced and costs and expenses reasonably incurred (including unpaid or unreimbursed servicing and special servicing fees) by Lender in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of all other obligations of Borrower contained herein and the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of this Security Instrument, the Note, or the other Loan Documents (collectively, the "**Other Obligations**"). Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations**."

Section 2.2. PAYMENTS. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall not cure any then-existing Event of Default (defined below).

Article 3. BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1. PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

Section 3.2. INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note and (b) the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3. INSURANCE.

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall obtain and maintain, or cause to be maintained, during the entire term of this Security Instrument policies of insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk insurance ("**Special Form**") including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Loan; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of Fifty Thousand and No/100 Dollars ($50,000.00) for all such insurance coverage and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the Full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to (A) the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such lesser amount as Lender shall require plus (B) excess flood insurance in an amount equal to the building value of the first floor of the Improvements plus three (3) months worth of the coverage set forth in subsection (ii) hereof; and (z) earthquake insurance in amounts and in form and substance reasonably satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance required to be maintained pursuant to clauses (y) and (z) above shall be on terms consistent with the Special Form policy required pursuant to this subsection (i). Notwithstanding anything to the contrary in this Security Instrument, the insurance coverage described in the foregoing subparagraphs (y) and (z) shall be required (1) as of the date hereof only if determined to be necessary by Lender based upon its reasonable evaluation of third party reports, and (2) at any time hereafter in the event subsequent third party reports indicate a change in the condition of or circumstances surrounding the Property;

(ii) rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an

annual aggregate amount equal to 100% of all rents or estimated gross revenues from the operation of the Property (as reduced to reflect actual vacancies and expenses not incurred during a period of Restoration) and covering rental losses for a period of at least eighteen (18) months after the date of the casualty and notwithstanding that the Policy may expire prior to the end of such period and (D) containing an extended period of indemnity endorsement which provides that after physical loss to the Improvements and the Personal Property has been repaired, the continued loss of income will be insured until such income returns to the same level it was prior to the loss, or the expiration of six (6) months from the date of completion of the Restoration, whichever first occurs and notwithstanding that the policy may expire prior to the end of such period. The amount of such rental loss insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Property for the succeeding eighteen (18) month period and a five percent (5%) vacancy factor. Provided no Event of Default has occurred and is continuing, all proceeds payable to Lender pursuant to this subsection (the "**Rent Loss Proceeds**") shall (i) to the extent such proceeds are not paid in a lump sum in advance, be disbursed by Lender (A) to Borrower provided a Cash Management Period (as defined in the Cash Management Agreement) does not exist or (B) to the extent a Cash Management Period exists, into the Cash Management Account (as defined in the Cash Management Agreement) to be further disbursed in accordance with the applicable terms and conditions of the Cash Management Agreement or (ii) in the event such Rent Loss Proceeds are paid in a lump sum in advance, be held by Lender in a segregated interest-bearing escrow account and Lender shall estimate the number of months required for Borrower to restore the damage caused by the applicable casualty, shall divide the applicable aggregate Rent Loss Proceeds by such number of months and shall, provided no Event of Default has occurred and is continuing, disburse such monthly installment of Rent Loss Proceeds from such escrow account to (A) if a Cash Management Period then exists, the Cash Management Account to be further disbursed in accordance with the applicable terms and conditions of the Cash Management Agreement or (B) if a Cash Management Period does not then exist, Borrower each month during the performance of such Restoration. During the continuance of an Event of Default, all Rent Loss Proceeds shall be held by Lender in the Cash Management Account and may be applied by Lender in the same manner as Rents held therein pursuant to the terms thereof and of the other Loan Documents. Nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such Rent Loss Proceeds;

(iii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form referenced in subsection (i), above, does not otherwise apply, (A) owner's contingent or protective liability insurance, otherwise known as Owner Contractor's Protective Liability, covering claims not covered by or under the terms or provisions of the commercial general liability insurance policy in (v) below; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(iv) comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(v) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars ($2,000,000.00) in the aggregate and One Million and No/100 Dollars ($1,000,000.00) per occurrence; (B) to continue at not less than the aforesaid limit until reasonably required to be changed by Lender as provided in subsection 3.3(b) below; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability and (5) contractual liability covering the indemnities contained in Section 13.1 to the extent the same is available;

(vi) automobile liability coverage for all owned and non-owned vehicles, if any, used by Borrower in the operation of the Property, including rented and leased vehicles containing minimum limits per occurrence of One Million and No/100 Dollars ($1,000,000.00);

(vii) umbrella liability insurance in an amount not less than Thirty Million and No/100 Dollars ($30,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above, including, but not limited to, supplemental coverage for workers' compensation and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (vi) above;

(viii) so-called "dramshop" insurance, if applicable, or other liability insurance required in connection with the sale of alcoholic beverages; and

(ix) workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least $1,000,000 per accident and per disease per employee, and $1,000,000 for disease aggregate in respect of any work or operations on or about the Property, or in connection with the Property or its operation (if applicable);

(x) (A) such insurance as may be required pursuant to the terms of the Property Documents and (B) upon sixty (60) days' written notice, such other reasonable insurance (such as sinkhole or land subsidence insurance) in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 3.3(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and (i) shall be issued by financially sound and responsible insurance companies reasonably approved by Lender, and authorized or licensed to do business in the state where the Property is located, with (A) general policy ratings of A or better and financial classes of X or better by A.M. Best Company, Inc. and (B) either (i) such insurance companies having claims paying ability/financial strength ratings of "A" (or its equivalent) or better by the Rating Agencies or (ii) to the extent

that the Policies are issued by a syndicate of not less than five (5) insurance companies each otherwise meeting the requirements set forth herein, sixty percent (60%) of such insurance companies having a claims paying ability/financial strength rating of "A" (or its equivalent) or better by the Rating Agencies (with the first layers of the coverages required hereunder provided by such insurance companies) and the remaining forty percent (40%) of such insurance companies having a claims paying ability/financial strength rating of "BBB" (or its equivalent) or better by the Rating Agencies; (ii) shall name Borrower as the insured and Lender as an additional insured, as its interests may appear; (iii) in the case of property damage, boiler and machinery and, if required pursuant to the provisions hereof, flood and earthquake insurance, shall contain a so called New York Non Contributory Standard Mortgagee Clause and (other than those strictly limited to liability protection) a Lender's Loss Payable Endorsement (Form 438 BFU NS), or their equivalents, naming Lender as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Lender; (v) shall be maintained throughout the term of this Security Instrument without cost to Lender; (vi) shall be assigned and, if requested in writing by Lender, the originals (or duplicate originals certified to be true and correct by the applicable insurer or its agent) delivered to Lender; and (vii) shall contain such provisions, consistent with the provisions hereof, as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements or clauses providing that (I) neither Borrower, Lender nor any other party shall be a co insurer under said Policies, (II) that Lender shall receive at least ten (10) days prior written notice of any modification, reduction or cancellation of any Policy, (III) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned, (IV) Lender shall not be liable for any Insurance Premiums (defined below) thereon or subject to any assessments thereunder, and (V) such Policies do not exclude coverage for acts of terror or similar acts of sabotage. Any blanket Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 3.3(a). Borrower shall pay the premiums for such Policies (the "**Insurance Premiums**") as the same become due and payable and shall furnish to Lender evidence of the renewal of each of the new Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided that such Insurance Premiums have not been paid to Lender or Lender's servicing agent pursuant to Section 3.5 hereof). If Borrower does not furnish such evidence and receipts at least twenty (20) days prior to the expiration of any apparently expiring Policy, then Lender may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Borrower agrees to reimburse Lender for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like; provided, however, such increased coverages shall not be requested more frequently than once every three years, and shall only be requested if such coverage is commercially available at commercially reasonable rates and such rates are consistent with those paid in respect of comparable properties in comparable locations, and Lender also reasonably determines that

either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including, without limitation, investment banks) to such owners are generally requiring that such owners maintain such insurance.

(c) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be approved by Lender (the "**Restoration**") and otherwise in accordance with Section 4.4 of this Security Instrument. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. In case of loss covered by Policies, Lender may either (1) settle and adjust any claim, or (2) allow Borrower to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that (A) provided no Event of Default shall have occurred and be continuing, Borrower may adjust losses aggregating not in excess of the Threshold Amount (defined below) if such adjustment is carried out in a competent and timely manner and (B) if no Event of Default shall have occurred and be continuing, Lender shall not settle or adjust any such claim under clause (1), above, without the consent of Borrower, which consent shall not be unreasonably withheld or delayed. In any case Lender shall and is hereby authorized to collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Borrower to Lender upon demand.

Section 3.4. PAYMENT OF TAXES, ETC. (a) Subject to the provisions of Sections 3.4(b) and 3.5 hereof, Borrower shall pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "**Taxes**"), all ground rents (including, without limitation, any rents or other charges payable under the FHB Sublease), Assessments (defined below), maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "**Other Charges**"), and all charges for utility services provided to the Property prior to the same becoming delinquent. Borrower will deliver to Lender, promptly upon Lender's written request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge against the Property arising out of such Taxes, Other Charges and utility service charges. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish to Lender, promptly upon Lender's written request, paid receipts for the payment of the Taxes and Other Charges.

(b) Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the other Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the

collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, and (vii) Borrower shall have furnished the security as may be required in the proceeding to insure the payment of any contested Taxes, together with all interest and penalties thereon.

Section 3.5. ESCROW FUND. In addition to any initial deposits to the Escrow Fund (defined below) on the date hereof (if any), except as provided below, Borrower shall pay to Lender on the first day of each calendar month (a) one twelfth of an amount which would be sufficient to pay the Taxes payable, or reasonably estimated by Lender to be payable, during the next ensuing twelve (12) months and (b) one twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the amounts in (a) and (b) above shall be called the "**Escrow Fund**"). Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has obtained knowledge and authorizes Lender or its agent to obtain the bills for Taxes and Other Charges directly from the appropriate taxing authority. The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Provided no Event of Default has occurred and is continuing, Lender will timely apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3.3 and 3.4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 3.3 and 3.4 hereof, Lender shall, provided no Event of Default has occurred and is continuing, promptly return any excess to Borrower. In disbursing such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Escrow Fund shall be payable to Borrower. Notwithstanding the foregoing, Borrower shall not be required to make deposits to the Escrow Fund for Insurance Premiums pursuant to this Section 3.5 so long as (i) no Event of Default occurs and is continuing hereunder, (ii) Borrower pays all Insurance Premiums by no later than ten (10) Business Days prior to the delinquency thereof, and (iii) Borrower provides Lender paid receipts for the payment of the Insurance Premiums by no later than one (1) Business Day prior to the delinquency thereof. Upon the occurrence of a failure of any of the conditions specified in clauses (i) through (iii) above, Borrower shall, upon Lender's written demand therefor, commence making the deposits to the Escrow Fund for Insurance Premiums required pursuant to this Section 3.5 commencing with the next Monthly Payment Date (as defined in the Note), which payments shall continue until Borrower corrects each such failure (at which time any funds remaining in the Escrow Fund and attributable to Insurance Premiums will be promptly released to Borrower provided no Event of Default is continuing). Borrower shall provide Lender with evidence of the payment of Taxes attributable to the entirety of the FHB Tax Parcel prior to the delinquency thereof. To the extent that Lender is at any time

not in receipt of said evidence, Lender may, at its option, (A) pay such sums and/or (B) require Borrower to increase any applicable monthly deposits to the Escrow Fund such that sums on deposit therein are sufficient to pay Taxes attributable to the entirety of the FHB Tax Parcel. Any such sums so paid by Lender pursuant to subsection (A) above shall be deemed protective advances hereunder and shall be added to the Debt

Section 3.6. CONDEMNATION. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting the Land and/or the Improvements and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender is hereby irrevocably appointed as Borrower's attorney in fact coupled with an interest, with exclusive powers to collect, receive and apply to the Debt (or provide to Borrower to pay for Restoration) any award or payment for any taking accomplished through a condemnation or eminent domain proceeding and, at any time during which an Event of Default has occurred and is continuing, to make any compromise or settlement in connection therewith. All condemnation awards or proceeds shall be either (a) paid to Lender for application against the Debt or (b) applied to Restoration of the Property in accordance with Section 4.4 hereof. Notwithstanding any taking by any public or quasi public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. Any award or payment to be applied to the reduction or discharge of the Debt or any portion thereof may be so applied whether or not the Debt or such portion thereof is then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been or may be sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the unpaid portion of the Debt.

Notwithstanding anything contained in this Section 3.6 or this Security Instrument to the contrary, but subject to the provisions of Section 4.4, below, Lender may elect to (y) apply the net proceeds of any condemnation award (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) in reduction of the Debt in such order and manner as Lender may elect, whether due or not, or (z) make the proceeds available to Borrower for the restoration or repair of the Property. Any implied covenant in this Security Instrument restricting the right of Lender to make such an election is waived by Borrower. In addition, Borrower hereby waives the provisions of any law prohibiting Lender from making such an election.

Section 3.7. LEASES AND RENTS. (a) All Leases entered into after the date hereof shall be written on (i) the standard form of lease which has been approved by Lender or (ii) an Acceptable Chain Tenant Form (defined below). Commercially reasonable changes may be made to the Lender-approved standard lease or an Acceptable Chain Tenant Form without the prior written consent of Lender in the ordinary course of Borrower's business. All Leases

(including any Acceptable Chain Tenant Form) shall provide that they are subordinate to this Security Instrument (subject to Lender's agreement (by Lender's acceptance of this Security Instrument hereby given) not to disturb such tenant's tenancies while they are in compliance with the terms of their Lease) and that the tenant thereunder agrees to attorn to Lender. As used herein, the term "**Acceptable Chain Tenant Form**" shall mean the form of lease promulgated by a prospective national or regional chain tenant that generally insists, on a programmatic or institutional basis (although an occasional exception to such requirement shall not cause this provision to fail), on using its own form of lease; provided, that, the provisions contained in such form of lease (A) are commercially reasonably for properties similar to the Property, (B) do not contain any rights, options (including, without limitation, rights to purchase the Property or any interest therein) or obligations that would be unacceptable to a prudent secondary market lender substantially similar to Lender and (C) do not have a Material Adverse Effect (defined below). As used herein, the term "**Material Adverse Effect**" shall mean a material adverse effect on (1) the Property, (2) the business, profits, prospects, management, operations or condition (financial or otherwise) of Borrower, Guarantor or the Property, (3) the enforceability, validity, perfection or priority of the lien of this Security Instrument or the other Loan Documents, or (4) the ability of Borrower to perform its obligations under this Security Instrument or the other Loan Documents.

(b) Borrower (i) shall observe and perform all material obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall receive thereunder; (iii) shall not collect any of the Rents more than one (1) month in advance (other than security deposits and prepaid first and last month's rent collected in the ordinary course of Borrower's business); and (iv) shall not execute any other assignment of the lessor's interest in the Leases or the Rents. Borrower (A) shall enforce all material terms, covenants and conditions contained in the Leases upon the part of the lessees thereunder to be observed or performed, short of termination thereof and short of instituting litigation (provided, that, Borrower (1) shall be obligated to so institute litigation if the failure to do so would have a Material Adverse Effect and (2) may terminate a Lease only in the event of (aa) a monetary event of default under such Lease or (bb) a material non-monetary default under such Lease where the tenant fails to cure such event of default (i) to the extent the Sponsorship Condition remains satisfied, beyond the cure period set forth in the subject Lease or (ii) to the extent the Sponsorship Condition is not satisfied, within thirty (30) days beyond the cure period set forth in the subject Lease); (B) may alter, modify or change the terms of the Leases in any material respect without the prior written consent of Lender, provided that such alterations, modifications or changes are commercially reasonable alterations, modifications or changes agreed to in the ordinary course of Borrower's business; (C) shall not, without Lender's consent, convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights, or a termination or material diminution of the obligations of, tenants under the Leases; (D) may approve or consent to any assignment of or subletting under the Leases in accordance with the terms of such Leases, without the prior written consent of Lender; and (E) shall not cancel the Leases or accept a surrender thereof, except that any Lease may be canceled if at the time of the cancellation thereof a new Lease is entered into on substantially the same terms or more favorable terms than those contained in the canceled Lease.

(c) Borrower, as the lessor thereunder, may enter into proposed lease renewals and new leases without the prior written consent of Lender, provided each such proposed lease: (i) shall have an initial term of not less than three (3) years or greater than ten (10) years; (ii) shall provide for rental rates (including rates during any renewal or option term or rates applicable to any expansion space) comparable to then existing local market rates that would be agreed to in an arm's length transaction; (iii) shall be to a tenant which Borrower reasonably determines to be capable and reputable; and (iv) shall comply with the provisions of subsection (a) above (except that any lease renewals may be on the same form as the original lease). Borrower may enter into a proposed lease which does not satisfy all of the conditions set forth in clauses (i) through (iv) immediately above, provided Lender consents in writing to such proposed lease, such consent not to be unreasonably withheld or delayed. Borrower expressly understands that any and all proposed leases are included in the definition of "Lease" or "Leases" as such terms may be used throughout this Security Instrument, the Note and the other Loan Documents. Borrower shall furnish Lender with executed copies of all Leases and any amendments or other agreements pertaining thereto.

(d) Notwithstanding anything to the contrary contained herein or in any other Loan Document, Borrower shall not, without the prior written consent of Lender, enter into, renew, extend, terminate (for reasons other than non-payment of rent (provided, that, with respect to the Master Lease, the same shall not be terminated without Lender's prior written consent unless in connection with a Permitted ML Termination (defined below))), reduce rents under (which shall not be deemed to include any rent reductions explicitly provided for under the terms and conditions of said Lease occurring automatically and not requiring Borrower or any other party's consent thereto or approval thereof), permit an assignment or subleasing of (other than in accordance with its express terms) or otherwise amend, modify or waive any material or economic provisions of, accept a surrender of space under, or shorten the term of, any Major Lease or any instrument guaranteeing or providing credit support for any Major Lease. As used herein, the term "**Major Lease**" shall mean (i) the Master Lease, (ii) any Lease which, individually or when aggregated with all other Leases at the Property with the same tenant or any Affiliate (defined below) of such tenant, demises 5,000 square feet or more of the Property's net rentable square footage, (iii) any Lease which contains any option, offer, right of first refusal or other similar entitlement to purchase all or any portion of the Property (which such rights shall be deemed to be exclusive of any rights under any Lease to extend the term thereof or to lease additional space at the Property) or (iv) any instrument guaranteeing or providing credit support for any Lease meeting the requirements of (i), (ii) or (iii) above. As used above, the term "**Affiliate**" shall mean, with respect to any tenant under any Lease at the Property, any affiliate of such tenant, unless such affiliate (A) operates under a separate trade name and under a separate corporate or other similar division from such tenant and (B) is otherwise treated as a separate tenant under a separate Lease by Borrower. Notwithstanding the foregoing or anything to the contrary contained herein or in the other Loan Documents, Borrower shall be entitled to terminate the Master Lease without Lender's prior consent with respect to any portion of the space leased thereunder (the "**Master Lease Space**") which is hereafter leased pursuant to a Qualifying MLS Lease (hereafter defined). As used herein, a "**Qualifying MLS Lease**" shall mean a Lease entered into in accordance with the terms hereof (which may be an amendment to the QS Lease (defined below) (whether contained in a formal amendment or in such other agreement amending the QS Lease as may be reasonably acceptable to Lender (such as an SNDA)) providing for each of the following) which, in each case (1) leases all or any portion of

the Master Lease Space, (2) has a term of not less than the term of the current Lease (the "**QS Lease**") of the QS Space (as defined in the Note), (3) provides for base rent per square foot equal to or greater than that of the QS Lease and (4) does not also lease, provides that it is independent and exclusive of any sub-sublease for the FHB Space or provides that such Lease will continue following any termination of any sub-sublease for the FHB Space such that, in each such case, any termination of such tenant's rights (if any) to the FHB Space shall not allow such tenant to terminate or withhold or reduce Rent payable under the applicable Qualifying MLS Lease. Any termination of the Master Lease with respect to all or any portion of the Master Lease Space as permitted and in accordance with the terms and conditions above shall be herein referred to as a "**Permitted ML Termination**".

(e) Notwithstanding anything to the contrary contained herein, to the extent Lender's prior approval is required for any leasing matters set forth in this Section, Lender shall have ten (10) Business Days from receipt of written request and all reasonably required information and documentation relating thereto in which to approve or disapprove such matter, provided that such request to Lender is marked in bold lettering with the following language: "LENDER'S RESPONSE IS REQUIRED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF A MORTGAGE BETWEEN THE UNDERSIGNED AND LENDER". In the event that Lender fails to respond to the leasing matter in question within such time, Lender's approval shall be deemed given for all purposes. Borrower shall provide Lender with such information and documentation as may be reasonably required by Lender, including, without limitation, lease comparables and other market information as reasonably required by Lender. Lender shall not be entitled to any fee or reimbursement in connection with any such review and approval process in excess of the reasonable fees or reimbursements customarily charged by lenders or servicers of secondary market loans similar to the Loan for actions similar to the foregoing.

(f) Within ten (10) Business Days after receipt of written request therefor and a copy of the executed corresponding Lease, Lender shall execute and deliver to Borrower a subordination, non-disturbance and attornment agreement (an "**SNDA**") with respect to any Lease approved or deemed approved hereunder or otherwise entered into in accordance with the terms and provisions hereof. If the form of the SNDA shall be prescribed by the Lease in question, and Lender shall have approved (or been deemed to have approved) such Lease (including all of the Leases reflected on the Rent Roll delivered by Borrower to Lender in connection with the making of the Loan - it being understood that all of the Leases on the rent roll of the Property as of the date hereof are deemed approved), Lender shall execute and deliver the SNDA in the form prescribed by such Lease. In the case of any other Lease or any Lease as to which Lender's approval is not required pursuant to the terms hereof where such tenant thereunder requests an SNDA, the SNDA to be executed and delivered by Lender shall be in substantially the form attached hereto as Exhibit B, as such form may be modified to reflect reasonable changes thereto negotiated by Lender and such tenant. Lender agrees to negotiate in good faith the terms of the SNDA with any tenant under any Lease. All reasonable attorneys' fees and disbursements incurred by Lender in connection with the negotiation of material changes to such form SNDA shall be payable by Borrower within ten (10) Business Days after Lender's written request therefor, whether or not the SNDA is ultimately executed and/or recorded. No attorney's fees will be charged for merely conforming such SNDA to the terms of the Lease in question (as opposed to material changes to the substantive content thereof).

Section 3.8. MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof which may have a Material Adverse Effect. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or abandoned without the express written consent of Lender.

Section 3.9. WASTE. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.10. COMPLIANCE WITH LAWS. Borrower shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted to affect Borrower, the Property or the use of the Property, including, without limitation, the Prescribed Laws (defined below) ("**Applicable Laws**"). Borrower shall from time to time, upon Lender's request, based on Lender's belief, in the exercise of Lender's reasonable judgment, that the Property or Borrower is in violation of any Applicable Law, provide Lender with evidence satisfactory to Lender that the Property or Borrower (as applicable) complies with the Applicable Laws which Lender believes the Property or Borrower (as applicable) is in violation of or is exempt from compliance with such Applicable Laws. Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws. As used herein, the term "**Prescribed Laws**" shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et. seq. and (d) all other Applicable Laws relating to money laundering or terrorism.

Section 3.11. BOOKS AND RECORDS. (a) Borrower shall keep adequate books and records of account in accordance with Borrower's current methods (which such methods are tax

basis accounting) or such other comprehensive basis of accounting as may be acceptable to Lender in its reasonable discretion, in each case consistently applied (each or any of the foregoing, the "**Approved Accounting Method**") and furnish to Lender:

(i) prior to Securitization (defined below), monthly (but in no event for a period of more than two (2) years from the date hereof) and, thereafter, quarterly, rent rolls signed, dated and certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) to be true and complete to the best knowledge of such person, detailing the names of all tenants of the Improvements, the portion of Improvements occupied by each tenant, the base rent and any other charges payable under each Lease and the term of each Lease, including the expiration date, and any other information as is reasonably required by Lender, within thirty (30) days after the end of each calendar month or quarter (as applicable);

(ii) prior to Securitization (defined below), monthly (but in no event for a period of more than two (2) years from the date hereof) and, thereafter, quarterly, operating statements of the Property certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) to be true and complete to the best knowledge of such person, detailing the total revenues received, total expenses incurred, total capital expenditures (including, but not limited to, all capital improvements (including, but not limited to, tenant improvements)), leasing commissions and other leasing costs, total debt service and total cash flow, and if available, any quarterly operating statement prepared by an independent certified public accountant, within thirty (30) days after the close of each calendar month or quarter (as applicable); and

(iii) an annual balance sheet and profit and loss statement of Borrower, prepared and certified by Borrower, and, if available, any financial statements prepared by an independent certified public accountant within ninety (90) days after the close of each fiscal year of Borrower.

(b) Upon request from Lender, Borrower shall furnish to Lender: (1) an accounting of all security deposits held in connection with any Lease of any part of the Property; and (2) an annual operating budget presented on a monthly basis consistent with the annual operating statement described above for the Property and all proposed capital replacements and improvements.

(c) Borrower shall furnish Lender with such other additional financial or management information regarding Borrower and/or the Property as may, from time to time, be reasonably required by Lender.

(d) If, at the time a Disclosure Document (defined below) is being prepared for a Securitization (defined below), Lender expects that Borrower alone or Borrower and one or more affiliates of Borrower collectively, or the Property alone or the Property and Related Properties (defined below) collectively, will be a Significant Obligor (defined below), Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans (defined below) as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans

as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the Securitization, or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after notice from Lender in connection with the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than seventy-five (75) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Exchange Act in connection with or relating to the Securitization (an "**Exchange Act Filing**") is not required. If requested by Lender, Borrower shall furnish to Lender financial data and/or financial statements for any tenant of the Property if, in connection with a Securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the mortgage loans included or expected to be included, as applicable, in the Securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor.

(e) All financial data and financial statements provided by Borrower hereunder pursuant to Section 3.11(d) hereof shall be prepared in accordance with GAAP, and shall meet the requirements of Regulation AB and other applicable legal requirements. All financial statements referred to in Section 3.11(d) above shall be audited by independent accountants of Borrower acceptable to Lender in accordance with Regulation AB and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation AB and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as "experts" in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided. All financial data and financial statements (audited or unaudited) provided by Borrower under Section 3.11(d) shall be accompanied by an executed certificate of a responsible officer of Borrower, which certification shall state that such financial statements meet the requirements set forth in the first sentence of this Section 3.11(e).

(f) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall determine to be required pursuant to Regulation AB or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by Lender.

(g) In the event Lender determines, in connection with a Securitization, that the financial data and financial statements required in order to comply with Regulation AB or any amendment, modification or replacement thereto or other legal requirements are other than as provided herein, then notwithstanding the provisions of this Section, Lender may request, and Borrower shall promptly provide, such other financial data and financial statements as Lender determines to be necessary or appropriate for such compliance.

(h) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, (ii) on a diskette, and (iii) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section in connection with the Securitization to such parties requesting such information in connection with such Securitization.

(i) As used above, the following defined terms have the following meanings:

(i) "**Regulation AB**" shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

(ii) "**Related Loan**" shall mean a loan to an affiliate of Borrower or secured by a Related Property, that is included in a Securitization with the Loan.

(iii) "**Related Property**" shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is "related" within the meaning of the definition of Significant Obligor, to the Property.

(iv) "**Significant Obligor**" shall have the meaning set forth in Item 1101(k) of Regulation AB under the Securities Act.

Section 3.12. PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist (subject to Borrower's right to contest any such matter as described below) beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof. Nothing contained herein shall, however, affect or impair Borrower's ability to diligently and in good faith contest any lien or bill for labor or materials, provided that any lien placed upon the Property must be fully and irrevocably discharged (by bond or otherwise) at least 30 days prior to the date such lien could otherwise be foreclosed upon pursuant to Applicable Law.

Section 3.13. PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing an obligation secured hereby and any amendments, modifications or changes thereto.

Section 3.14. PROPERTY MANAGEMENT.

(a) Borrower shall (i) promptly perform and observe all of the covenants required to be performed and observed by it under the agreement between Manager and Borrower pursuant to which the property manager of the Property (the "**Manager**") is employed to perform management services for the Property (the "**Management Agreement**") and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of any notice of default or other material notice received by Borrower under the Management Agreement; (iv) promptly give notice to Lender of any notice or information that Borrower receives which indicates that Manager is terminating the Management Agreement or that Manager is otherwise discontinuing its management of the Property; and (v) promptly enforce the performance and observance of all of the material covenants required to be performed and observed by Manager under the Management Agreement. Subject to the last sentence of this subsection, Borrower shall not, without the prior written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed): (i) surrender, terminate or cancel the Management Agreement or otherwise replace Manager or enter into any other management agreement with respect to the Property (provided, that, the foregoing shall not be deemed to prohibit Manager from sub-contracting some of its responsibilities under the Management Agreement provided that Manager retains responsibility and control of all material management decisions); (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. In the event that Borrower replaces Manager at any time during the term of Loan, such Manager shall be a Qualified Manager (defined below). Notwithstanding anything to the contrary contained herein or in the other Loan Documents, Lender's receipt of a New Non-Consolidation Opinion shall be a condition precedent to any appointment of an Affiliated Manager (defined below) as Manager for the Property. Borrower may terminate any Manager without Lender's consent, provided, that, Borrower provides Lender (A) ten (10) days prior written notice of such termination, (B) evidence that a Qualified Manager has been engaged to manage the Property pursuant to a Replacement Management Agreement (defined below) effective as of the date of termination of the terminated Manager, (C) a duly executed copy of the Replacement Management Agreement, (D) to the extent such replacement Manager is an Affiliated Manager, a New Non-Consolidation Opinion and (E) evidence reasonably acceptable to Lender that either (I) no termination or similar fees are due in connection with the termination of the then current Manager or (II) Borrower has sufficient sums to pay any such fees without adversely impacting the cash flow of the Property and/or Borrower ability to perform hereunder or under the other Loan Documents.

(b) During the existence of a Manager Termination Event (defined below), Borrower shall, at Lender's direction, immediately terminate the Management Agreement and enter into a new property management agreement reasonably acceptable to Lender with a management company reasonably acceptable to Lender, which such new property management company must

(i) be a Qualified Manager, (ii) not be an affiliate of, or controlled by, Lender, and (iii) have not provided (nor agreed to provide) Lender (or its affiliates) with any compensation for being so named. In the event Lender directs Borrower to engage a professional third party property manager or such manager is otherwise engaged in accordance with the terms and conditions hereof, then Borrower shall engage such a property manager pursuant to an agreement reasonably acceptable to Lender, and Borrower and such manager shall execute an agreement acceptable to Lender conditionally assigning Borrower's interest in such management agreement to Lender and subordinating manager's right to receive fees and expenses under such agreement while the Debt remains outstanding (such replacement management agreement and such assignment and subordination thereof in favor of Lender, collectively, the "**Replacement Management Agreement**"). In no event shall Lender or Borrower be liable for any termination, severance or other fees to Manager or others resulting from any termination of any property management agreement (including, without limitation the Management Agreement).

(c) As used herein, (1) the term "**Qualified Manager**" shall mean (I) American Assets, Inc. or Outrigger Enterprises, Inc**.** (unless such entity (A) is the entity being replaced as property manager or (B) has suffered a material adverse change in its general business standing or reputation from that as exists as of the date hereof (as reasonably determined by Lender)), or (II) a reputable and experienced professional management organization (a) which manages, together with its affiliates, at least 2,000,000 square feet of gross leasable area (including all anchor space), exclusive of the Property (or such lesser amount as may be reasonably acceptable to Lender) and (b) approved by Lender, which approval may not unreasonably be withheld or delayed, and for which Lender shall have received written confirmation from the Rating Agencies (as defined in the Cash Management Agreement) that the employment of such manager will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization and (2) the term "**Manager Termination Event**" shall be an event occurring upon (i) the occurrence of an Event of Default (which such Manager Termination Event shall continue until Borrower's cure, if applicable, of the applicable Event of Default and Lender's acceptance of such cure (whether voluntarily or required by law), provided, that, so long as Manager is one of the entities referenced in clause (I) of this paragraph, Lender shall provide notice to Borrower and Manager of the applicable Event of Default and shall give Borrower an opportunity to cure such Event of Default within ten (10) days of such notice before such Event of Default will constitute a Manager Termination Event), (ii) Manager becoming insolvent or a debtor in a proceeding under any applicable Insolvency Laws (as defined in the Note), or (iii) the occurrence and continuance of a material default under the Management Agreement by Manager beyond any applicable grace, notice or cure periods.

Section 3.15. REA COVENANTS. Borrower agrees that without the prior consent of Lender, Borrower will not enter into any new REA or execute modifications to any existing REA if such new REA or such modifications will have a Material Adverse Effect. Borrower shall enforce, shall comply with, and shall use commercially reasonable efforts to cause each of the parties to each REA to comply with all of the terms and conditions contained in such REA. As used herein, "**REA**" shall mean, individually or collectively (as the context requires), each reciprocal easement or similar agreement affecting the Property as more particularly described on Schedule 3 hereto (if any) and any future reciprocal easement or similar agreement affecting the Property entered into in accordance with the applicable terms and conditions hereof.

Section 3.16. PARKING MANAGEMENT.

(a) Borrower shall (i) promptly perform and observe all of the covenants required to be performed and observed by it under the agreement between Parking Manager and Borrower pursuant to which the parking manager of the parking areas of the Property (the "**Parking Manager**") is employed to perform parking management services for the Property (the "**Parking Management Agreement**") and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any default under the Parking Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of any notice of default or other material notice received by Borrower under the Parking Management Agreement; (iv) promptly give notice to Lender of any notice or information that Borrower receives which indicates that Parking Manager is terminating the Parking Management Agreement or that Parking Manager is otherwise discontinuing its management of the paring areas of the Property; and (v) promptly enforce the performance and observance of all of the material covenants required to be performed and observed by Parking Manager under the Parking Management Agreement. Subject to the last sentence of this subsection, Borrower shall not, without the prior written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed): (i) surrender, terminate or cancel the Parking Management Agreement or otherwise replace Parking Manager or enter into any other parking management agreement with respect to the Property; (ii) reduce or consent to the reduction of the term of the Parking Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Parking Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Parking Management Agreement in any material respect. In the event that Borrower replaces Parking Manager at any time during the term of Loan, such Parking Manager shall be a Qualified Parking Manager (defined below). Notwithstanding anything to the contrary contained herein or in the other Loan Documents, Lender's receipt of a New Non-Consolidation Opinion shall be a condition precedent to any appointment of an Affiliated Manager (defined below) as Parking Manager for the Property. Borrower may terminate any Parking Manager without Lender's consent, provided, that, Borrower provides Lender (A) ten (10) days prior written notice of such termination, (B) evidence that a Qualified Parking Manager has been engaged to manage the Property pursuant to a Replacement Parking Management Agreement (defined below) effective as of the date of termination of the terminated Parking Manager, (C) a duly executed copy of the Replacement Parking Management Agreement, (D) to the extent such replacement Parking Manager is an Affiliated Manager, a New Non-Consolidation Opinion and (E) evidence reasonably acceptable to Lender that either (I) no termination or similar fees are due in connection with the termination of the then current Parking Manager or (II) Borrower has sufficient sums to pay any such fees without adversely impacting the cash flow of the Property and/or Borrower ability to perform hereunder or under the other Loan Documents.

(b) During the existence of a Parking Manager Termination Event (defined below), Borrower shall, at Lender's direction, immediately terminate the Parking Management Agreement and enter into a new parking management agreement reasonably acceptable to Lender with a parking management company reasonably acceptable to Lender, which such new parking management company must (i) be a Qualified Parking Manager, (ii) not be an affiliate of, or controlled by, Lender, and (iii) have not provided (nor agreed to provide) Lender (or its affiliates) with any compensation for being so named. In the event Lender directs Borrower to

engage a professional third party parking manager or such parking manager is otherwise engaged in accordance with the terms and conditions hereof, then Borrower shall engage such a parking manager pursuant to an agreement reasonably acceptable to Lender, and Borrower and such parking manager shall execute an agreement acceptable to Lender conditionally assigning Borrower's interest in such parking management agreement to Lender and subordinating parking manager's right to receive fees and expenses under such agreement while the Debt remains outstanding (such replacement parking management agreement and such assignment and subordination thereof in favor of Lender, collectively, the "**Replacement Parking Management Agreement**"). In no event shall Lender or Borrower be liable for any termination, severance or other fees to Parking Manager or others resulting from any termination of any parking management agreement (including, without limitation the Parking Management Agreement).

(c) As used herein, (1) the term "**Qualified Parking Manager**" shall mean (I) American Assets, Inc. or Outrigger Enterprises, Inc**.** (unless such entity (A) is the entity being replaced as property manager or (B) has suffered a material adverse change in its general business standing or reputation from that as exists as of the date hereof (as reasonably determined by Lender)), or (II) a reputable and experienced professional management organization (a) which manages, together with its affiliates, at least 2,000,000 square feet of gross leasable parking area, exclusive of the Property and (b) approved by Lender, which approval may not unreasonably be withheld or delayed, and for which Lender shall have received written confirmation from the Rating Agencies that the employment of such manager will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization and (2) the term "**Parking Manager Termination Event**" shall be an event occurring upon (i) the occurrence of an Event of Default (which such Parking Manager Termination Event shall continue until Borrower's cure, if applicable, of the applicable Event of Default and Lender's acceptance of such cure (whether voluntarily or required by law), provided, that, so long as Parking Manager is one of the entities referenced in clause (I) of this paragraph, Lender shall provide notice to Borrower and Parking Manager of the applicable Event of Default and shall give Borrower an opportunity to cure such Event of Default within ten (10) days of such notice before such Event of Default will constitute a Parking Manager Termination Event), (ii) Parking Manager becoming insolvent or a debtor in a proceeding under any applicable Insolvency Laws (as defined in the Note), or (iii) the occurrence and continuance of a material default under the Parking Management Agreement by Parking Manager beyond any applicable grace, notice or cure periods.

Section 3.17. PRESERVATION SITE. With respect to the Preservation Site (defined below), Borrower hereby agrees that it will (i) (or will cause) all requirements of Applicable Law related thereto to be complied with, (ii) provide Lender with all material notices transmitted or received with respect thereto and (iii) upon request by Lender, provide Lender evidence reasonably acceptable to Lender that the requirements of Applicable Law related thereto have been satisfied.

Article 4. SPECIAL COVENANTS

Borrower covenants and agrees that:

Section 4.1. PROPERTY USE. The Property shall be used only as a retail shopping center and appurtenant and related uses typical of a property such as the Property allowed by the Property's zoning classification and all agreements pertaining to the Property and for no other use without the prior written consent of Lender, which consent may be withheld in Lender's reasonable discretion.

Section 4.2. ERISA. (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Security Instrument and the other Loan Documents) to be a non exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**").

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Security Instrument, as requested by Lender in its reasonable discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended (the "**Code**"), or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

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

(B) Less than 25 percent (25%) of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R.§ 2510.3 101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R § 2510.3 101(c) or (e) or an investment company registered under The Investment Company Act of 1940.

Section 4.3. SINGLE PURPOSE ENTITY.

(a) Borrower has not and shall not:

(i) Own any asset or property other than (A) the Property, and (B) incidental personal property necessary for the ownership or operation of the Property.

(ii) Engage in any business other than the ownership, management and operation of the Property or fail to conduct and operate its business as presently conducted and operated.

(iii) Enter into any contract or agreement with any affiliate of Borrower, any constituent party of Borrower or any affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(iv) Incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Debt, (B) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than sixty (60) days past the date incurred and paid on or prior to such date, and/or (C) financing leases and purchase money indebtedness incurred in the ordinary course of business relating to personal property on commercially reasonable terms and conditions; provided however, the aggregate amount of the indebtedness described in (B) and (C) shall not exceed at any time three percent (3%) of the outstanding principal amount of the Debt. No Indebtedness other than the Debt may be secured (subordinate or pari passu) by the Property.

(v) Make any loans or advances to any third party (including any affiliate or constituent party) or acquire obligations or securities of its affiliates.

(vi) Fail to remain solvent or fail to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(vii) Fail to do or cause to be done and will do all things necessary to observe organizational formalities and preserve its existence, or permit any constituent party to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of Borrower or such constituent party without the prior consent of Lender in any manner that (i) violates the single purpose covenants set forth in this Section, or (ii) amends, modifies or otherwise changes any provision thereof that by its terms cannot be modified at any time when the Loan is outstanding or by its terms cannot be modified without Lender's consent.

(viii) Fail to maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party. Borrower's assets have not been and will not be listed as assets on the financial statement of any other person or entity, provided, however, that Borrower's assets may be included in a consolidated financial statement of its affiliates provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such affiliates or any other person or entity and (B) such assets shall be listed on Borrower's own separate balance sheet. Borrower will file its own tax returns (to the extent Borrower is required to file any such tax returns) and will not file a consolidated federal income tax return with any other person or entity. Borrower shall maintain its books, records, resolutions and agreements as official records.

(ix) Fail to be, or fail to hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Borrower or any constituent party of Borrower), fail to correct any known misunderstanding regarding its status as a separate entity, fail to conduct business in its own name, identify itself or any of its affiliates as a division or part of the other, fail to allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an affiliate) among the persons or entities sharing such expenses or fail to maintain and utilize separate stationery, invoices and checks bearing its own name.

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

(xi) Seek or effect the liquidation, dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of Borrower.

(xii) Commingle the funds and other assets of Borrower with those of any affiliate or constituent party or any other person or entity or fail to hold all of its assets in its own name. Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party or any other person or entity.

(xiii) Guarantee or become obligated for the debts of any other person or entity or hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other person or entity.

(xiv) Fail to conduct its business so that the assumptions made with respect to Borrower in that certain non-consolidation opinion delivered by Solomon Ward Seidenwurm & Smith, LLP in connection with the Loan (together with any subsequently delivered confirmations or amendments thereto or any subsequent substantive non-consolidation opinions, collectively, the "**Non-Consolidation Opinion**") shall fail to be true and correct in all respects.

(xv) Permit any affiliate or constituent party independent access to its bank accounts (other than in accordance with the express terms and conditions of the Management Agreement or the Loan Documents).

(xvi) Fail to pay the salaries of its own employees (if any) from its own funds or fail to maintain a sufficient number of employees (if any) in light of its contemplated business operations.

(xvii) Fail to compensate each of its consultants and agents from its funds for services provided to it or fail to pay from its own assets all obligations of any kind incurred.

(xviii) Fail to observe all corporate, limited liability company or limited partnership (as applicable) required formalities.

(xix) Own any subsidiary, or make any investment in, any person or entity (other than WBW in connection with the Collateral).

(xx) If Borrower is a partnership or limited liability company, without the unanimous written consent of all of its partners or members, as applicable, and the written consent of 100% of the board of directors or managers of Borrower (if Borrower is an Acceptable Delaware LLC or a corporation) or each SPE Component Entity (defined below) (if Borrower is an entity other than an Acceptable Delaware LLC or a corporation), including,

without limitation, each Independent Director (defined below) (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable Insolvency Laws, (b) seek or consent to the appointment of a receiver, liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, or (d) make an assignment for the benefit of creditors (each of (a) through (d) above, a "**Material Action**").

(b) If Borrower is a partnership or limited liability company (other than an Acceptable Delaware LLC), each general partner in the case of a general partnership, each general partner in the case of a limited partnership, or the managing member in the case of a limited liability company (each an "**SPE Component Entity**") of Borrower, as applicable, shall be a corporation or an Acceptable Delaware LLC whose sole asset is its interest in Borrower. Each SPE Component Entity (i) will own at least a 0.5% direct equity interest in Borrower, (ii) will at all times comply with each of the covenants, terms and provisions contained in Section 4.3(a) above, to the extent applicable, as if such representation, warranty or covenant was made directly by such SPE Component Entity; (iii) will not engage in any business or activity other than owning an interest in Borrower; (iv) will not acquire or own any assets other than its partnership, membership, or other equity interest in Borrower; (v) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (vi) will cause Borrower to comply with the provisions of Section 4.3. Prior to the withdrawal or the disassociation of any SPE Component Entity from Borrower, Borrower shall immediately appoint a new general partner or managing member whose articles of incorporation are substantially similar to those of such SPE Component Entity and deliver a New Non-Consolidation Opinion to Lender and the Rating Agencies with respect to the new SPE Component Entity and its equity owners. Notwithstanding the foregoing, to the extent Borrower is a Delaware limited liability company whose organizational documents contain springing member provisions satisfying the requirements hereof and of the Delaware Limited Liability Company Act and are otherwise acceptable to Lender (an "**Acceptable Delaware LLC**"), so long as Borrower maintains such formation status, no SPE Component Entity shall be required.

(c) (i) The organizational documents of each SPE Component Entity (if any) or Borrower (to the extent Borrower is a Delaware single member limited liability company or a corporation) shall provide that at all times there shall be, and Borrower shall cause there to be, at least one duly appointed member of the board of directors or managers (an "**Independent Director**") of such SPE Component Entity or Borrower (as applicable) reasonably satisfactory to Lender each of whom are not at the time of such individual's initial appointment, and shall not have been at any time during the preceding five (5) years, and shall not be at any time while serving as a director of such SPE Component Entity or Borrower (as applicable), either (i) a shareholder (or other equity owner) of, or an officer, director, partner, manager, member (other than as a Special Member in the case of Acceptable Delaware LLC's), employee, attorney or counsel of, Borrower, such SPE Component Entity or any of their respective shareholders, partners, members, subsidiaries or affiliates; (ii) a customer or creditor of, or supplier to, Borrower or any of its respective shareholders, partners, members, subsidiaries or affiliates who derives any of its purchases or revenue from its activities with Borrower or such SPE Component Entity or any affiliate of any of them; (iii) a Person who Controls (defined below) or is under common Control with any such shareholder, officer, director, partner, manager, member, employee, supplier, creditor or customer; or (iv) a member of the immediate family of any such shareholder, officer, director, partner, manager, member, employee, supplier, creditor or

customer. Notwithstanding the foregoing, a person who serves as an independent director for affiliates of Borrower may serve as an Independent Director so long as (A) such person is appointed by a nationally recognized provider of independent directors (such as CT Corporation) or (B) such person derives less than 5% of their total annual income from their service as independent director for Borrower and each applicable affiliate of Borrower.

(ii) The organizational documents of each SPE Component Entity (if any) or Borrower (as applicable) shall provide that (A) the board of directors or board of managers of such SPE Component Entity or Borrower (as applicable) shall not take any action which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to any common stock, requires an unanimous vote of the board of directors or managers of such SPE Component Entity or Borrower (as applicable) unless at the time of such action there shall be at least one member of the board of directors or managers who is an Independent Director and (B) such SPE Component Entity or Borrower (as applicable) will not, without the unanimous written consent of its board of directors or managers including each Independent Director, on behalf of itself or Borrower, (i) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable Insolvency Laws; (ii) seek or consent to the appointment of a receiver, liquidator or any similar official; (iii) take any action that might cause such entity to become insolvent; or (iv) make an assignment for the benefit of creditors.

(d) (I) In the event Borrower or any SPE Component Entity is an Acceptable Delaware LLC, the limited liability company agreement of Borrower or such SPE Component Entity (as applicable) (the "**LLC Agreement**") shall provide that (i) upon the occurrence of any event that causes the sole member of Borrower or such SPE Component Entity (as applicable) ("**Member**") to cease to be the member of Borrower or such SPE Component Entity (as applicable) (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower or such SPE Component Entity (as applicable) and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower or such SPE Component Entity (as applicable) in accordance with the terms of the Loan Documents and the LLC Agreement), any person acting as Independent Director of Borrower or such SPE Component Entity (as applicable) shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower or such SPE Component Entity (as applicable), automatically be admitted to Borrower or such SPE Component Entity (as applicable) ("**Special Member**") and shall continue Borrower or such SPE Component Entity (as applicable) without dissolution and (ii) Special Member may not resign from Borrower or such SPE Component Entity (as applicable) or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower or such SPE Component Entity (as applicable) as Special Member in accordance with requirements of Delaware law and (B) such successor Special Member has also accepted its appointment as an Independent Director. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower or such SPE Component Entity (as applicable) upon the admission to Borrower or such SPE Component Entity (as applicable) of a substitute Member, (ii) Special Member shall be a member of Borrower or such SPE Component Entity (as applicable) that has no interest in the profits, losses and capital of Borrower or such SPE Component Entity (as applicable) and has no right to receive any distributions of Borrower or such SPE Component Entity (as applicable) assets, (iii) pursuant to Section 18-301 of the Delaware Limited Liability

Company Act (the "**Act**"), Special Member shall not be required to make any capital contributions to Borrower or such SPE Component Entity (as applicable) and shall not receive a limited liability company interest in Borrower or such SPE Component Entity (as applicable), (iv) Special Member, in its capacity as Special Member, may not bind Borrower or such SPE Component Entity (as applicable), (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower or such SPE Component Entity (as applicable), including, without limitation, the merger, consolidation or conversion of Borrower or such SPE Component Entity (as applicable); provided, however, such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Director, to vote on such matters required by the Loan Documents or the LLC Agreement, (vi) in order to implement the admission to Borrower or such SPE Component Entity (as applicable) of Special Member, Special Member shall execute a counterpart to the LLC Agreement and (vii) prior to its admission to Borrower or such SPE Component Entity (as applicable) as Special Member, Special Member shall not be a member of Borrower or such SPE Component Entity (as applicable).

(II) The LLC Agreement shall further provide that (i) upon the occurrence of any event that causes the Member to cease to be a member of Borrower or such SPE Component Entity (as applicable), to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower or such SPE Component Entity (as applicable), agree in writing (A) to continue Borrower or such SPE Component Entity (as applicable) and (B) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower or such SPE Component Entity (as applicable), effective as of the occurrence of the event that terminated the continued membership of Member of Borrower or such SPE Component Entity (as applicable) in Borrower or such SPE Component Entity (as applicable), (ii) any action initiated by or brought against Member or Special Member under any applicable Insolvency Laws shall not cause Member or Special Member to cease to be a member of Borrower or such SPE Component Entity (as applicable) and upon the occurrence of such an event, the business of Borrower or such SPE Component Entity (as applicable) shall continue without dissolution and (iii) each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower or such SPE Component Entity (as applicable) upon the occurrence of any action initiated by or brought against Member or Special Member under any applicable Insolvency Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower or such SPE Component Entity (as applicable).

(e) Borrower shall not change or permit to be changed (i) Borrower's name, (ii) Borrower's identity (including its trade name or names), (iii) Borrower's principal place of business set forth on the first page of this Security Instrument, (iv) the corporate, partnership or other organizational structure of Borrower, each SPE Component Entity (if any), or Guarantor, (v) Borrower's state of organization, or (vi) Borrower's organizational identification number, without in each case notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's or any SPE Component Entity's structure, without first obtaining the prior written consent of Lender. In addition, Borrower shall not change or permit to be changed any organizational documents of Borrower or any SPE Component Entity (if any) if such change would adversely impact the

covenants set forth in this Section 4.3. Borrower authorizes Lender to file any financing statement or financing statement amendment required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property. If Borrower does not now have an organizational identification number and later obtains one, or if the organizational identification number assigned to Borrower subsequently changes, Borrower shall promptly notify Lender of such organizational identification number or change.

(f) Notwithstanding anything to the contrary contained herein, upon written notice from Lender following the occurrence and during the continuance of an Additional Director Trigger Event (hereafter defined), Borrower shall amend its own (or any SPE Component Entity's (as applicable)) organizational documents to require the appointment and maintenance of no less than two (2) Independent Directors for Borrower or such SPE Component Entity (as applicable) for the remaining term of the Loan. Thereafter and during the continuance of an Independent Director Trigger Event, any provision herein relating to any Independent Director shall be deemed to relate to both Independent Directors (for example (and by way of illustration only), any provision herein (i) requiring that an Independent Director be in place for any vote to be effective shall require that both Independent Directors be in place for such vote to be effective or (ii) requiring the vote of the Independent Director shall require the vote of both Independent Directors). Borrower shall cause its (or the applicable SPE Component Entity's) organizational documents to be amended to be consistent with the foregoing. Borrower's compliance with the foregoing shall be at Borrower's sole cost and expense. Failure of Borrower to comply with this subsection (f) shall, at Lender's option, constitute an immediate Event of Default. As used herein, the term "**Additional Director Trigger Event**" shall mean an event (i) occurring upon the Debt Service Coverage Ratio falling below 1.15 to 1.00 and (ii) ending upon the Debt Service Coverage Ratio being in excess of 1.15 to 1.00 for four (4) consecutive calendar quarters. For the purposes hereof, the Debt Service Coverage Ratio shall be calculated monthly as of the first day of each calendar month. Notwithstanding the foregoing, prior to a Securitization, the provisions hereof relating to the Additional Director Trigger Event shall only be deemed to be applicable after the first date the Property achieves a Debt Service Coverage Ratio equal to or greater than 1.15 to 1.00.

(g) Borrower hereby represents that WBW has complied with the single purpose, bankruptcy remote representations and covenants (the "**WBW SPE Requirements**") contained in each of the Pledge Agreement and WBW's Organizational Documents (as defined in the Pledge Agreement). Borrower shall cause WBW to comply with the WBW SPE Requirements and shall not permit WBW to take any Material Action without Lender's prior written consent.

Section 4.4. RESTORATION AFTER CASUALTY/CONDEMNATION. In the event of a casualty or a taking by eminent domain, the following provisions shall apply in connection with the Restoration of the Property:

(a) If the Net Proceeds (defined below) shall be less than the Threshold Amount (defined below) and the costs of completing the Restoration shall be less than the Threshold Amount, the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that

all of the conditions set forth in Subsection 4.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Security Instrument. As used herein, the term "**Threshold Amount**" shall mean (i) for any period that the Sponsorship Condition (defined below) remains satisfied, an amount equal to seven percent (7%) of the original aggregate principal amount of the Loan and (ii) for any period that the Sponsorship Condition is not satisfied, an amount equal to five percent (5%) of the original aggregate principal amount of the Loan. As used herein, the term "**Sponsorship Condition**" shall mean a condition which shall be deemed satisfied so long as Sponsor owns a 51% direct and/or indirect interest in Borrower and Controls Borrower.

(b) If the Net Proceeds are equal to or greater than the Threshold Amount or the costs of completing the Restoration is equal to or greater than the Threshold Amount, Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Subsection 4.4(b); provided, that, with the exception of Section 4.4(b)(i), the following subsections of this Section 4.4(b) shall not be deemed to apply to any Net Proceeds to be disbursed pursuant to Section 4.4(a) above. The term "**Net Proceeds**" for purposes of this Section 4.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Subsection 3.3(a)(i), (iii), (iv) and (ix) of this Security Instrument as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same or (ii) the net amount of all awards and payments received by Lender with respect to a taking referenced in Section 3.6 of this Security Instrument, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same, whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for the Restoration provided that each of the following conditions are met: (A) no Event of Default shall have occurred and be continuing under the Note, this Security Instrument or any of the other Loan Documents or an event which after the passage of time or the giving of notice would constitute an Event of Default; (B) Borrower shall deliver or cause to be delivered to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, reasonably satisfactory to Lender; (C) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's reasonable discretion to cover the cost of the Restoration; (D) Borrower shall deliver to Lender, at its expense, the proceeds of the insurance described in Subsection 3.3(a)(ii) hereof (which such proceeds shall be held and disbursed in accordance with Subsection 3.3(a)(ii) hereof); (E) Borrower shall commence the Restoration as soon as reasonably practicable and shall diligently pursue the same to satisfactory completion; (F) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note at the Applicable Interest Rate (as defined in the Note), which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Subsection 3.3(a)(ii), if applicable, or (3) by other funds of Borrower which are deposited with Lender prior to the commencement of the Restoration; (G) Lender shall be satisfied that, upon the completion of the Restoration and following a rent-up period from the time such Restoration is complete through the date which is three (3) months prior to the expiration of the rental loss insurance coverage maintained by Borrower pursuant to Section 3.3(a)(ii) above, the (1) fair

market value of the Property, as reasonably determined by Lender, is equal to or greater than the fair market value of the Property immediately prior to the casualty or condemnation, and (2) gross cash flow and the net cash flow of the Property will be restored to a level sufficient to cover all carrying costs and operating expenses of the Property, including, without limitation, a Debt Service Coverage Ratio of at least 1.00 to 1.00; (H) Lender shall be reasonably satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date (as defined in the Note), (2) one (1) year after the occurrence of such fire or other casualty or taking, whichever the case may be, or (3) such time as may be required under (I) the Property Documents and (II) applicable zoning laws, ordinances, rules or regulations in order to repair and restore the Property to the condition it was in immediately prior to such fire or other casualty or to as nearly as possible the condition it was in immediately prior to such taking, as applicable; (I) the Property and the use thereof after the Restoration will be in compliance with and permitted under (I) the Property Documents and (II) all applicable zoning laws, ordinances, rules and regulations; (J) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with (I) the Property Documents and (II) all applicable governmental laws, rules and regulations (including, without limitation, all applicable Environmental Laws (defined below)); (K) such fire or other casualty or taking, as applicable, does not result in a loss of access to the Property or the Improvements which will exist following Restoration; (L) (1) in the event the Net Proceeds are insurance proceeds, less than thirty-five percent (35%) of each of (i) fair market value of the Property as reasonably determined by Lender, and (ii) rentable area of the Property has been damaged, destroyed or rendered unusable as a result of a casualty or (2) in the event the Net Proceeds are condemnation proceeds, less than fifteen percent (15%) of each of (i) the fair market value of the Property as reasonably determined by Lender and (ii) rentable area of the Property is taken and such land is located along the perimeter or periphery of the Property; (M) the Required Leases (defined below) shall remain in full force and effect during and after the completion of the Restoration and (N) the Property Documents will remain in full force and effect during and after the Restoration and a Property Document Event shall not occur as a result of the applicable casualty, condemnation and/or Restoration. Lender agrees to use due diligence and good faith efforts to process its determination of Borrower's compliance with the requirements of this Paragraph 4.4(b)(i) as promptly as possible, recognizing the need for a quick determination in order to avoid delay in Restoration of the Property. As used above, the term "**Required Leases**" shall mean Leases encumbering, in the aggregate, 65% of the rentable square footage at the Property.

(ii) The Net Proceeds shall be held by Lender, and until disbursed in accordance with the provisions of this Subsection 4.4(b), shall constitute additional security for the Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower on a monthly basis during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Lender that (A) all materials installed and work and labor performed to date (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialmen's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property (other than items being disputed by Borrower in accordance with Borrower's contest rights contained in Section 3.12 hereof) arising out of the Restoration which have not either been fully bonded to the reasonable satisfaction of Lender and discharged of record or in the alternative fully insured to the reasonable satisfaction of Lender by the title company insuring the lien of this Security Instrument.

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior reasonable review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "**Casualty Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior reasonable review and acceptance by Lender and the Casualty Consultant. All reasonable costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, the Casualty Consultant's fees, shall be paid by Borrower. Lender shall not require Borrower to pay attorney's fees and expenses in connection therewith unless such process involves unusual circumstances that cannot reasonably be handled by Lender (or its Servicer) in-house and which otherwise reasonably justify the need for counsel.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds under this Subsection 4.4(b) in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "**Casualty Retainage**" as used in this Subsection 4.4(b) shall mean an amount equal to 10% of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until such time as the Casualty Consultant certifies to Lender that 50% of the required Restoration has been completed. There shall be no Casualty Retainage with respect to costs actually incurred by Borrower for work in place in completing the last 50% of the required Restoration. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Subsection 4.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b) and that all approvals necessary for the re occupancy and use of the Property have been obtained from all appropriate governmental and quasi governmental authorities, and Lender receives evidence reasonably satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage, provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, and the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company insuring the lien of this Security Instrument. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**") with Lender in an interest-bearing account before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Subsection 4.4(b) shall constitute additional security for the Obligations.

(vii) With respect to Restorations related to casualties, the excess, if any, of the Net Proceeds, and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b), and the receipt by Lender of evidence reasonably satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Security Instrument or any of the other Loan Documents.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection 4.4(b)(vii) may, at Lender's election, be retained and applied by Lender toward the payment of the principal balance of the Debt whether or not then due and payable, either in whole or in part, or disbursed to Borrower. If Lender shall receive and retain Net Proceeds, as permitted above, the lien of this Security Instrument shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt. Notwithstanding the foregoing, if Lender does not make the Net Proceeds available for Restoration, Lender shall allow Borrower to prepay the Debt in whole (but not in part) at par, without penalty or premium, provided, that, (A) such prepayment is made by Borrower by no later than the date which is sixty (60) days prior to the expiration of the rental loss insurance coverage maintained by Borrower pursuant to Section 3.3(a)(ii) above, (B) no Event of Default is continuing and (C) if such prepayment is made on a date other than a Monthly Payment Date, Borrower pays Lender, concurrently with such prepayment, a sum equal to the amount of interest which would have accrued on the Note if such prepayment had occurred on the next occurring Monthly Payment Date.

Article 5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1. WARRANTY OF TITLE. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same, and that Borrower possesses an unencumbered fee simple absolute in the Land and the Improvements, and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions (other than standard printed exceptions) shown

in the title insurance policy insuring the lien of this Security Instrument (the "**Permitted Exceptions**"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever. Borrower hereby represents and warrants that none of the Permitted Exceptions will materially and adversely affect the ability of the Borrower to pay in full the Loan, the use of the Property for the use currently being made thereof, the operation of the Property or the value thereof.

Section 5.2. AUTHORITY. Borrower has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

Section 5.3. LEGAL STATUS AND AUTHORITY. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the State where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted and proposed to be conducted. Borrower now has and shall continue to have the full right, power and authority to operate and lease the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Note, this Security Instrument and the other Loan Documents. Borrower's exact legal name and Borrower's organization identification number assigned by its state of formation, if any, is correctly set forth on the first page of this Security Instrument.

Section 5.4. VALIDITY OF DOCUMENTS. The execution, delivery and performance of the Note, this Security Instrument and the other Loan Documents and the borrowing evidenced by the Note (i) are within the corporate/partnership/limited liability company (as the case may be) power of Borrower; (ii) have been authorized by all requisite corporate/partnership/limited liability company (as the case may be) action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by laws, partnership, trust or operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby).

Section 5.5. LITIGATION. There is no action, suit or proceeding (including any condemnation or similar proceeding), or any governmental investigation or any arbitration, in each case pending or, to the knowledge of Borrower, threatened against Borrower or the Property before any governmental or administrative body, agency or official which (i) challenges the validity of this Security Instrument, the Note or any of the other Loan Documents or the

authority of Borrower to enter into this Security Instrument, the Note or any of the other Loan Documents or to perform the transactions contemplated hereby or thereby or (ii) if adversely determined would have a material adverse effect on the occupancy of the Property or the business, financial condition or results of operations of Borrower or the Property.

Section 5.6. STATUS OF PROPERTY. (a) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.3 hereof, if required under the terms of that Section.

(b) Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(c) The Property and the present and contemplated use and occupancy thereof are in compliance in all material respects with all applicable zoning ordinances, building codes, land use and Environmental Laws and other similar laws. Borrower and the Property each comply in all material respects with Prescribed Laws.

(d) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all weather and are physically and legally open for use by the public.

(f) The Property is served by public water and sewer systems.

(g) The Property is free from damage caused by fire or other casualty.

(h) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.

(i) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(j) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.

Section 5.7. NO FOREIGN PERSON. Borrower is not a "foreign person" within the meaning of Sections 1445(f)(3) of the Code and the related Treasury Department regulations, including temporary regulations.

Section 5.8. SEPARATE TAX LOT. Other than with respect to that portion of the Property demised pursuant to the FHB Sublease (the "**FHB Space**"), the Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof. The FHB Space is situated on Apartment A (as defined in the 2181 Condominium Documents) of the 2181 Condominium (the "**FHB Tax Parcel**") which is itself a wholly independent tax lot, separate from any adjoining land or improvements not constituting a part of such lot, and no other land or improvements is assessed and taxed together with Apartment A or any portion thereof.

Section 5.9. ERISA COMPLIANCE. (a) As of the date hereof and throughout the term of this Security Instrument, (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the Code, and (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA or Section 4975 of the Code; and

(b) As of the date hereof and throughout the term of this Security Instrument (i) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA and (ii) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

Section 5.10. LEASES. (a) Borrower is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable; (c) the terms of all alterations, modifications and amendments to the Leases are reflected in the certified rent roll delivered to and approved by Lender; (d) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (e) none of the Rents have been collected for more than one (1) month in advance (other than typical last month's rent and security deposits); (f) the premises demised under the Leases have been completed for the tenants who have accepted and have taken possession of the same on a rent paying basis; (g) to Borrower's Knowledge (defined below), there exist no offsets or defenses to the payment of any portion of the Rents; and (h) the number and type of parking spaces available at the Property as of the date hereof satisfy any applicable requirements relating thereto contained in the Leases. As used herein, "**Borrower's Knowledge**" shall mean the actual knowledge of (i) Richard W. Gushman, II, (ii) Barbara Campbell, (iii) John Chamberlain and (iv) Mel Wilinsky.

Section 5.11. FINANCIAL CONDITION. (a) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated, and (b) Borrower has received reasonably equivalent value for the granting of this Security Instrument. Borrower has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditors.

Section 5.12. BUSINESS PURPOSES. The loan evidenced by the Note is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 5.13. TAXES. Borrower has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Borrower does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.14. MAILING ADDRESSES. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

Section 5.15. NO CHANGE IN FACTS OR CIRCUMSTANCES. All information submitted to Lender in connection with any request by Borrower for the loan evidenced by the Note and/or any letter of application, preliminary commitment letter, final commitment letter or other application or letter of intent (including, but not limited to, all financial statements, rent rolls, reports and certificates) were accurate, complete and correct in all respects when delivered. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading.

Section 5.16. DISCLOSURE. To the best of Borrower's Knowledge, Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 5.17. LETTER-OF-CREDIT RIGHTS. If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 of this Security Instrument now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall, pursuant to an agreement in form and substance satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing in each case that upon an Event of Default, the proceeds of any drawing under the letter of credit are to be applied as provided in Section 11.2 of this Security Agreement.

Section 5.18. AUTHORIZATION TO FILE FINANCING STATEMENTS, POWER OF ATTORNEY. Borrower hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of Borrower as authorized by Applicable Law, as applicable to all or part of the fixtures or Personal Property. For purposes of such filings, Borrower agrees to furnish any information requested by Lender promptly upon request by Lender. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and

authority in the place and stead of Borrower or in Borrower's own name to execute in Borrower's name any documents and otherwise to carry out the purposes of this Section, to the extent that Borrower authorization above is not sufficient. To the extent permitted by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

Section 5.19. EMBARGOED PERSONS. To the best of Borrower's Knowledge, as of the date hereof and at all times throughout the term of the Loan, including after giving effect to any transfers of interests permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Sponsor or Guarantor constitute (or will constitute) property of, or are (or will be) beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Borrower, Sponsor and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan made by Lender is in violation of Applicable Law ("**Embargoed Person**"); (b) no Embargoed Person has (or will have) any interest of any nature whatsoever in Borrower, Sponsor or Guarantor, as applicable, with the result that the investment in Borrower, Sponsor and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan is in violation of Applicable Law; and (c) none of the funds of Borrower, Sponsor or Guarantor, as applicable, have been (or will be) derived from any unlawful activity with the result that the investment in Borrower, Sponsor and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan is in violation of Applicable Law.

Section 5.20. PATRIOT ACT. All capitalized words and phrases and all defined terms used in the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) and in other statutes and all orders, rules and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including Executive Order 13224 effective September 24, 2001 (collectively referred to in this Section only as the "**Patriot Act**") and are incorporated into this Section. Borrower hereby represents and warrants that Borrower, Sponsor and Guarantor and each and every person affiliated with Borrower, Sponsor and/or Guarantor or that to Borrower's knowledge has an economic interest in Borrower, or, to Borrower's knowledge, that has or will have an interest in the transaction contemplated by this Agreement or in the Property or will participate, in any manner whatsoever, in the Loan, is: (i) not a "blocked" person listed in the Annex to Executive Order Nos. 12947, 13099 and 13224 and all modifications thereto or thereof (as used in this Section only, the "**Annex**"); (ii) in full compliance with the requirements of the Patriot Act and all other requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury (as used in this Section only, "**OFAC**"); (iii) operated under policies, procedures and practices, if any, that are in compliance with the Patriot Act and available to Lender for Lender's review and inspection during normal business hours and upon reasonable prior notice; (iv) not in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States claiming a violation or possible violation of the Patriot Act; (v) not listed as a Specially Designated Terrorist or as a "blocked" person on any lists maintained by the OFAC pursuant to the Patriot

Act or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of the OFAC issued pursuant to the Patriot Act or on any other list of terrorists or terrorist organizations maintained pursuant to the Patriot Act; (vi) not a person who has been determined by competent authority to be subject to any of the prohibitions contained in the Patriot Act; and (vii) not owned or controlled by or now acting and or will in the future act for or on behalf of any person named in the Annex or any other list promulgated under the Patriot Act or any other person who has been determined to be subject to the prohibitions contained in the Patriot Act. Borrower covenants and agrees that in the event Borrower receives any notice that Borrower, Sponsor or Guarantor (or any of their respective beneficial owners, affiliates or participants) become listed on the Annex or any other list promulgated under the Patriot Act or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Borrower shall immediately notify Lender. It shall be an Event of Default hereunder if Borrower, Guarantor, Sponsor or any other party to any Loan Document becomes listed on any list promulgated under the Patriot Act or is indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

Section 5.21. REA REPRESENTATIONS. Each REA is in full force and effect and neither Borrower nor, to Borrower's knowledge, any other party to any REA, is in default thereunder, and to the best of Borrower's knowledge, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder. Except as set forth on Schedule 3 hereto, no REA has been modified, amended or supplemented.

Section 5.22. BROKER. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Security Instrument.

Section 5.23. HOCOH AGREEMENT. The "Hocoh Agreement" as defined in each of the FHB Lease and FHB Sublease has expired and is of no further force or effect.

Section 5.24. PRESERVATION SITE. With respect to that certain portion of the Property designated a "preservation site" under Applicable Law due to the human remains uncovered therein (the "**Preservation Site**"**),** Borrower hereby represents and warrants that (i) upon the initial discovery thereof and at all times subsequent thereto, all actions required under Applicable Law with respect to the Preservation Site have been taken, (ii) all required governmental filings, approvals and consents related to the Preservation Site have been made and granted and (iii) the Property and the Preservation Site are both in compliance with all Applicable Laws related thereto.

Article 6. OBLIGATIONS AND RELIANCES

Section 6.1. RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 6.2. NO RELIANCE ON LENDER. The general partners, shareholders, members, principals or other beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 6.3. NO LENDER OBLIGATIONS. (a) Notwithstanding any of the provisions of this Security Instrument (including, but not limited to, the provisions of Subsections 1.1(f) and (l), or Section 1.2 or Section 3.7), Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

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

Section 6.4. RELIANCE. Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 5 without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Note, this Security Instrument and the other Loan Documents; and that Lender would not be willing to make the loan evidenced by the Note, this Security Instrument and the other Loan Documents and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 5.

Article 7. FURTHER ASSURANCES

Section 7.1. RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all reasonable expenses (the "**Expenses**") incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state,

county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law to do so.

Section 7.2. FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender pursuant to this Section 7.2.

Section 7.3. CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS. (a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

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

Section 7.4. ESTOPPEL CERTIFICATES. (a) After request by Lender, Borrower, within ten (10) Business Days, shall furnish Lender or any proposed assignee or Investor (as

defined in Section 19.1) with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Loan, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, to Borrower's Knowledge, there exist no defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under the Note or the Security Instrument, (vii) that the Note and this Security Instrument are valid, legal and binding obligations (except as may be limited by (A) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and (B) general principles of equity) and have not been modified or if modified, giving particulars of such modification, (viii) whether, to Borrower's Knowledge, any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect, (x) the date to which the Rents thereunder have been paid pursuant to the Leases, (xi) whether or not, to Borrower's Knowledge, any of the lessees under the Leases are in default under the Leases, and, if any of the aforesaid lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other factual matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or this Security Instrument.

(b) Borrower shall use its commercially reasonable good faith efforts to deliver to Lender, promptly upon request (provided such request is not made more than once in any calendar year other than any request by Lender made in connection with the securitization of the Loan or following an Event of Default), duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding the Lease as Lender may require, including but not limited to attestations that each Lease covered thereby is in full force and effect (and to the best of lessee's knowledge) with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) Lender, by its acceptance of this Security Instrument, agrees to deliver to Borrower promptly upon Borrower's request therefor (provided such request is not made more than twice in any calendar year) a written statement setting forth the unpaid principal amount of the Note, the accrued and unpaid interest thereon, the date on which an installment of interest and/or principal were last paid thereunder and whether there are any Events of Default which currently exist and are actually known to Lender.

(d) Borrower shall use its commercially reasonable best efforts to deliver to Lender, promptly upon request (provided such request is not made more than once in any calendar year other than any request by Lender made in connection with the securitization of the Loan or following an Event of Default), duly executed estoppel certificates from any one or more parties to the Property Documents as reasonably required by Lender attesting to such facts regarding the Property Documents as Lender may reasonably require.

Section 7.5. FLOOD INSURANCE. After Lender's request, Borrower shall deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally designated "special flood hazard area." or, if any of the Improvements are located within any such area Borrower will obtain and maintain the insurance required prescribed in Section 3.3 hereof, if required under the terms of that section.

Section 7.6. SPLITTING OF SECURITY INSTRUMENT. This Security Instrument and the Note shall, at any time following during the continuance of an Event of Default, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender and at Lender's sole cost and expense, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of this Security Instrument, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be reasonably required by Lender. Borrower's obligations hereunder are conditioned upon Lender's agreement, as evidenced by its acceptance hereof, that such splitting or division shall not result in any decrease of any rights of Borrower or any Indemnitor (as defined in the Indemnity Agreement (defined below)) hereunder or under any other Loan Document or any additional cost or potential liability to Borrower or any Indemnitor that exceeds that which exists hereunder prior to such splitting or division.

Section 7.7. REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record: (i) with respect to any Loan Document other than the Note, Borrower will issue, in lieu thereof, a replacement of such other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Loan Document in the same principal amount thereof and otherwise of like tenor and (ii) with respect to the Note, (a) Borrower will execute a reaffirmation of the portion of the Debt as evidenced by the Note acknowledging that Lender has informed Borrower that the Note was lost, stolen destroyed or mutilated and that such portion of the Debt continues to be an obligation and liability of the Borrower as set forth in the Note, a copy of which shall be attached to such reaffirmation or (b) if requested by Lender, Borrower will execute a replacement note, provided, that Lender or Lender's custodian (at Lender's option) shall provide to Borrower Lender's (or Lender's custodian's) then standard form of lost note affidavit and indemnity, which such form shall be reasonably acceptable to Borrower.

Article 8. DUE ON SALE/ENCUMBRANCE

Section 8.1. LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the loan secured hereby, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 8.2. NO SALE/ENCUMBRANCE.

(a) Except as provided in this Security Instrument, Borrower shall not cause or permit a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein nor permit a Sale or Pledge of an interest in any Restricted Party (in each case, a "**Prohibited Transfer**"), other than pursuant to Leases of space at the Property to tenants in accordance with the applicable provisions hereof, without the prior written consent of Lender.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder; (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to (A) any Leases or any Rents or (B) the Property Documents; (iv) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (v) any action for partition of the Property (or any portion thereof or interest therein) or any similar action instituted or prosecuted by any Borrower, as a tenant-in-common, or by any other person or entity, pursuant to any contractual agreement or other instrument or under Applicable Law (including, without limitation, common law) and/or any other action instituted by (or at the behest of) Borrower or its affiliates or consented to or acquiesced in by Borrower or its affiliates which results in a Property Document Event; (vi) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new partnership interests; (vii) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of any member or any profits or proceeds relating to such membership interest; (viii) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (ix) the removal or the resignation of Manager (including, without limitation, an Affiliated Manager) other than in accordance with the applicable terms and conditions hereof.

Section 8.3. PERMITTED EQUITY TRANSFERS. Notwithstanding anything to the contrary contained in this Article 8, the following transfers shall not be Prohibited Transfers and shall be permitted without Lender's consent: (a) a transfer (but not a pledge) by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party, (b) the transfer (but not the pledge), in one or a series of transactions, of the stock, partnership interests or membership interests (as the case may be) in a Restricted Party, (c) in addition to the transfers permitted by clause (b), any other transaction involving the direct and/or indirect equity interests in a Restricted Party (other than a pledge) that would fit within the definition of Prohibited Transfer (including, without limitation, a transaction of the type described in clauses (iv), (vi), (vii) or (viii) of Section 8.2(b) hereof) constituting a transfer of less than 10% of the direct and/or indirect equity ownership of any Borrower, Guarantor, Sponsor any SPE Component Entity and/or Affiliated Manager and (d) the sale, transfer or issuance of shares of common stock in any Restricted Party that is a publicly traded entity, provided such shares of common stock are listed on the New York Stock Exchange or another nationally recognized

stock exchange; provided, that, with respect to the transfers listed in clauses (a), (b) or (c) above, each of the following are complied with in connection with any such transfer: (A) Lender shall receive not less than five (5) days prior written notice thereof, (B) no such transfers shall result in a change in Control of Sponsor or Affiliated Manager (provided, however, a "change in Control" of Sponsor or Affiliated Manager shall not be deemed to have occurred for the purposes of this subsection (B) if any one of the persons or entities comprising the definition of "Sponsor" contained herein succeeds to the interest of the then current Sponsor and such successor Sponsor Controls the Affiliated Manager), (C) after giving effect to such transfers, Sponsor shall (I) own at least a 51% direct or indirect equity interest in each of Borrower and any SPE Component Entity, (II) Control Borrower and any SPE Component Entity and (III) control the day-to-day operation of the Property, (D) after giving effect to such transfers, the Property shall continue to be managed by Affiliated Manager or a Qualified Manager, (E) in the case of the transfer of any direct or indirect equity ownership interests in Borrower or in any SPE Component Entity, the relevant provisions of Sections 4.2, 4.3 and 5.9 hereof shall continue to be complied with after giving effect to such transfers, (F) in the case of (1) the transfer of the management of the Property to a new Affiliated Manager in accordance with the applicable terms and conditions hereof, or (2) the transfer (in one or in a series of transactions) in excess of 49% (in the aggregate) of any equity ownership interests (I) directly in Borrower or in any SPE Component Entity, or (II) in any Restricted Party whose sole asset is a direct or indirect equity ownership interest in Borrower or in any SPE Component Entity, Lender shall receive a substantive non-consolidation opinion, which such opinion shall be provided by outside counsel acceptable to Lender and the Rating Agencies and shall otherwise be in form, scope and substance reasonably acceptable to Lender and acceptable to the Rating Agencies (such opinion, the **"New Non-Consolidation Opinion"**) addressing the relevant transfer and (G) such transfers shall not cause a Property Document Event.

Section 8.4. PERMITTED PROPERTY TRANSFERS (ASSUMPTION). Notwithstanding anything to the contrary contained in this Article 8 and in addition to the transfers permitted under Section 8.3, the following transfers shall not be Prohibited Transfers and Lender's consent to the first four (4) other transfers of the Property (at any time after the first (1st) anniversary of the closing of the Loan or at any time prior to such date if Lender determines that such assignment or transfer will not hinder, delay or prevent Lender from completing a Secondary Market Transaction (as defined in Section 19.3)) shall not be withheld; provided, that, in each case, Lender receives sixty (60) days prior written notice of each such transfer hereunder and no Event of Default has occurred and is continuing, and further provided that, the following additional requirements are satisfied:

(a) With respect to the (i) first such transfer, Borrower shall not be required to pay Lender any transfer fee other than the out-of-pocket costs referenced in Section 8.4(b), below, (ii) second such transfer, Borrower shall pay Lender a transfer fee equal to 0.25% of the outstanding principal balance of the Loan at the time of such transfer, (iii) third such transfer, Borrower shall pay Lender a transfer fee equal to 0.75% of the outstanding principal balance of the Loan at the time of such transfer and (iv) fourth such transfer, Borrower shall pay Lender a transfer fee equal to 1.0% of the outstanding principal balance of the Loan at the time of such transfer;

(b) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with each transfer of the Property (including, without limitation, Lender's reasonable counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and the fees and expenses of the Rating Agencies pursuant to clause (j) below);

(c) The proposed transferee (the "**Transferee**") or Transferee's Principals (hereinafter defined) must have demonstrated expertise in owning and operating properties similar in location, size and operation to the Property, which expertise shall be reasonably determined by Lender; provided, however, in the event that any Sponsor owns 51% or more of Transferee and Controls Transferee and provided there has been no material adverse change in the general business standings or credit of such Sponsor from that which exists as of the date hereof, this subsection (c) shall be deemed satisfied (each of the aforesaid conditions, collectively, the "**Sponsor Conditions**" and any transfer of the Property to such Transferee, an "**Sponsor Transfer**"). The term "**Transferee's Principals**" shall include Transferee's (A) managing members, general partners or Controlling shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a 15% or greater interest in Transferee;

(d) Transferee's Principals shall, as of the date of such transfer, have an aggregate net worth and liquidity reasonably acceptable to Lender; provided, however, to the extent the Sponsor Conditions have been satisfied, this subsection (d) shall also be deemed satisfied;

(e) Transferee, Transferee's Principals and all other entities which may be owned or controlled directly or indirectly by Transferee's Principals ("**Related Entities**") must not have been a party to any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed transfer of the Property;

(f) Transferee shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance reasonably satisfactory to Lender (but which does not materially adversely affect the rights of the Borrower under this Security Instrument, the Note, or any of the other instruments and documents relating to the Loan);

(g) There shall be no material litigation or regulatory action pending or threatened against, as applicable, Transferee, Transferee's Principals or Related Entities which is not reasonably acceptable to Lender;

(h) Transferee's Principals and Related Entities shall not have defaulted (beyond applicable notice and cure periods) under its or their obligations with respect to any other indebtedness in a manner which is not reasonably acceptable to Lender;

(i) Transferee must be able to satisfy all the representations and covenants set forth in Section 4.3 hereof, and both Transferee and Transferee's Principals must be able to satisfy all the representations and covenants set forth in Sections 4.2, 4.3 and 5.9 hereof, no Event of Default or event which, with the giving of notice, passage of time or both, shall constitute an

Event of Default, shall otherwise occur as a result of such transfer, and Transferee and Transferee's Principals shall deliver (A) all organizational documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender, and (B) all certificates, agreements and covenants reasonably required by Lender (including, without limitation, hazard insurance endorsements or certificates or other similar evidence that the Policies required hereunder have been obtained or maintained, as applicable);

(j) At Lender's option, Transferee shall be approved by the Rating Agencies selected by Lender; provided, however, to the extent that the Sponsor Conditions have been satisfied, this subsection (j) shall be deemed satisfied;

(k) Transferee shall furnish to Lender (I) a New Non-Consolidation Opinion and (II) an opinion of counsel reasonably satisfactory to Lender and its counsel (A) that the assumption of the Debt has been duly authorized, executed and delivered, and that the Note, this Security Instrument, the assumption agreement and the other Loan Documents are valid, binding and enforceable against Transferee in accordance with their terms, and (B) that Transferee and any entity which is a controlling stockholder, member or general partner of Transferee have been duly organized, and are in existence and good standing;

(l) Borrower shall deliver, at its sole cost and expense, an endorsement to the existing title policy insuring the Security Instrument, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the title policy issued on the date hereof. Immediately upon a transfer of the Property to such Transferee and the satisfaction of all of the above requirements, the named Borrower herein shall be released from all liability under this Security Instrument, the Note and the other Loan Documents accruing after such transfer, and the Indemnitor under that certain Indemnity Agreement in favor of Lender relating hereto (the "**Indemnity Agreement**"), dated of even date herewith, shall be released from its obligations and liabilities thereunder accruing after such transfer provided that a new indemnitor approved by Lender, which approval shall be granted or withheld pursuant to Lender's customary underwriting procedures, enters into and delivers to Lender a new indemnity agreement in the form and content of the Indemnity Agreement. The foregoing release shall be effective upon the date of such transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower;

(m) Lender shall have received evidence reasonably acceptable to Lender that a Property Document Event will not occur as a result of the proposed transfer; and

(n) Borrower's obligations under the contract of sale pursuant to which the transfer is proposed to occur shall expressly be subject to the satisfaction of the terms and conditions of this Section.

Any transfer made pursuant to and in accordance with the terms and provisions of this Section 8.4 shall not be deemed to be a Prohibited Transfer. A consent by Lender with respect to a transfer of the Property in its entirety to, and the related assumption of the Loan by, a Transferee pursuant to this Section shall not be construed to be a waiver of the right of Lender to consent to any subsequent transfer of the Property.

Section 8.5. LENDER'S RIGHTS. Lender reserves the right to condition the consent to a Prohibited Transfer requested hereunder upon (a) a modification of the terms hereof and an assumption of the Note and the other Loan Documents as so modified by the proposed Prohibited Transfer, (b) receipt of payment of a transfer fee equal to one percent (1%) of the outstanding principal balance of the Loan and all of Lender's expenses incurred in connection with such Prohibited Transfer, (c) receipt of written confirmation from the Rating Agencies (a **"Rating Agency Confirmation"**) that the Prohibited Transfer will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization, (d) the proposed transferee's continued compliance with the covenants set forth in this Security Instrument (including, without limitation, the covenants in Sections 4.2 , 4.3 and 5.9) and the other Loan Documents, (e) a new manager for the Property and a new management agreement satisfactory to Lender, and (f) the satisfaction of such other conditions and/or legal opinions as Lender shall determine in its sole discretion to be in the interest of Lender. All reasonable expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Prohibited Transfer made without Lender's consent. This provision shall apply to each and every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer.

Section 8.6. DEFINITIONS. As used in this Article 8 (and elsewhere in this Security Instrument), the following terms shall have the following meanings:

(a) **"AAI Party"** shall mean any one or more of (i) American Assets, Inc., (ii) Ernest Rady or (iii) a Rady Family Entity

(b) **"Affiliated Manager"** shall mean any managing agent of the Property in which Borrower, Guarantor, Sponsor, any SPE Component Entity or any affiliate of such entities has, directly or indirectly, any legal, beneficial or economic interest.

(c) **"Control"** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of an entity, whether through ownership of voting securities, by contract or otherwise.

(d) **"Guarantor"** shall mean American Assets, Inc. and Outrigger Enterprises, Inc**.**

(e) "**Property Documents**" shall mean (individually or collectively as the context requires) the FHB Lease, the FHB Sublease, each REA and the Condominium Documents.

(f) "**Property Document Event**" shall mean any event which would, directly or indirectly, cause a termination right under the Property Documents, right of first refusal under the Property Documents, first offer under the Property Documents or any other similar right under the Property Documents, cause any termination fees to be due under the Property

Documents or would cause a Material Adverse Effect to occur under the Property Documents; provided, however, any of the foregoing shall not be deemed a Property Document Event to the extent Lender's prior written consent is obtained with respect to the same.

(g) "**Rady Family Entity**" shall mean an entity (i) in which Ernest S. Rady or a spouse, siblings, children or grandchildren, nieces, nephews or cousins of Ernest S. Rady or trusts for the benefit of any such persons or any combination of such individuals and/or trusts (collectively, the **"Rady Family Group"**) own at least a 51% direct or indirect equity interest, and (ii) which is Controlled by one or more members of the Rady Family Group having commercial real estate experience at least comparable to that of the current management of American Assets, Inc.

(h) "**Restricted Party**" shall mean Borrower, Guarantor, Sponsor, any SPE Component Entity, any Affiliated Manager, or any shareholder, partner, member, non-member manager or any direct or indirect legal or beneficial owner of any of the foregoing.

(i) **"Sale or Pledge"** shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

(j) "**Sponsor"** shall mean (i) Outrigger Enterprises, Inc**.** or (ii) an AAI Party. For purposes of clarification, (I) any entity comprising the defined term "Sponsor" above shall not be deemed to be the "Sponsor" hereunder unless a state of facts exists that would require such entity to be the "Sponsor" hereunder in order to satisfy the conditions set forth in Sections 8.3(B) and 8.3(C) above, to the extent applicable in the particular context in which the term "Sponsor" is being used and (II) no transfer fee shall be payable in connection with an equity ownership transfer consummated under Section 8.3 hereof.

Section 8.7. EASEMENT AGREEMENTS. By acceptance hereof, Lender agrees that it shall execute and subordinate this Security Instrument and the other Loan Documents to (and Borrower shall be permitted to enter into without Lender's consent) reasonable easements, restrictions, covenants, reservations and rights of way in the ordinary course of Borrower's business for traffic circulation, ingress, egress, parking, access, utilities lines or for other similar purposes (including, without limitation, easements for fire exiting purposes, traffic and pedestrian circulation, landscaping and easements to governmental entities for road widening and corner roundings); provided, that, in each case or taken as a whole, the same do not have a Material Adverse Effect.

Article 9. PREPAYMENT

Section 9.1. PREPAYMENT. The Debt may be prepaid only in strict accordance with the express terms and conditions of the Note and this Security Instrument including the payment (if applicable) of any prepayment consideration or premium due under the Note (whether due prior to or after the occurrence of an Event of Default).

Article 10. DEFAULT

Section 10.1. EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "**Event of Default**":

(a) (i) any Monthly Payment (as defined in the Note) is not paid within five (5) days of the date when due, (ii) any other portion of the Debt is not paid within five (5) days of the date when due or (iii) the entire Debt is not paid on or before the Maturity Date; provided, however, Borrower shall not be in default so long as there is sufficient money in the Cash Management Account for payment of all amounts then due and payable (including any deposits into Reserve Accounts (as such term is defined in that certain Reserve Agreement by and among Borrower and Lender executed in connection with the Loan (the **"Reserve Agreement"**))), Lender's access to such money has not been constrained or constricted in any manner and no other Event of Default has occurred and is continuing;

(b) if any of the Taxes or Other Charges are not paid within ten (10) days following the date the same is due and payable except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument;

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender within ten (10) days of Lender's request;

(d) if the Property is subject to actual waste;

(e) if Borrower violates or does not comply with any of the provisions of Sections 3.7 (and does not cure such failure within ten days of written notice) or 4.3 or Articles 8, 12 or 13;

(f) if any representation or warranty of Borrower or any person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument (including, without limitation, Guarantor) or any general partner, managing member, principal or beneficial owner of any of the foregoing, made herein or any guaranty or indemnity, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;

(g) if (i) Borrower or any general partner or managing member of Borrower or any SPE Component Entity shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower or any general partner or managing member of Borrower or any SPE Component Entity shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or any general partner or managing member of Borrower or any SPE Component Entity any case, proceeding or other action of a nature referred to in clause (i) above which (A)

results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of ninety (90) days; or (iii) there shall be commenced against Borrower or any general partner or managing member of Borrower or any SPE Component Entity any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; or (iv) Borrower or any general partner or managing member of Borrower or any SPE Component Entity shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower or any general partner of Borrower or any SPE Component Entity shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

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

(i) subject to Borrower's contest rights contained in Section 3.12 hereof, if the Property becomes subject to any mechanic's, materialman's or other lien (other than a lien for local real estate taxes and assessments not then due and payable) and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of ninety (90) days;

(j) if any federal tax lien is filed against Borrower, any general partner or managing member of Borrower, or the Property and same is not discharged of record within ninety (90) days after same is filed;

(k) if Borrower fails to cure any violations of Applicable Laws within ninety (90) days, of first having received notice thereof;

(l) if (i) Borrower fails to timely provide Lender with the written certification and evidence referred to in Section 4.2 hereof, or (ii) Borrower consummates a transaction which would cause the Security Instrument or Lender's exercise of its rights under this Security Instrument, the Note or the other Loan Documents to constitute a nonexempt prohibited transaction under ERISA or result in a violation of a state statute regulating governmental plans, subjecting Lender to liability for a violation of ERISA or a state statute;

(m) if Borrower shall fail to reimburse Lender within ten (10) days of written demand, with interest calculated at the Default Rate (defined below), for all Insurance Premiums or Taxes, together with interest and penalties imposed thereon, paid by Lender pursuant to this Security Instrument (other than amounts paid by Lender from the Escrow Fund prior to the continuance of an Event of Default);

(n) if Borrower shall fail to timely deliver to Lender an estoppel certificate pursuant to the terms of Subsections 7.4(a) and does not cure such failure within ten (10) days of written notice;

(o) if Borrower shall fail to timely deliver to Lender, after request by Lender, the statements referred to in Section 3.11 in accordance with the terms thereof and does not cure such failure within ten (10) days of written notice;

(p) if any default occurs in the performance of any guarantor's or indemnitor's (including, without limitation, Guarantor's) obligations under any guaranty or indemnity executed in connection herewith (including, without limitation, the Indemnity Agreement) and such default continues after the expiration of applicable grace periods set forth in such guaranty or indemnity, or if any representation or warranty of any guarantor or indemnitor thereunder shall be false or misleading in any material respect when made;

(q) if (A) Borrower shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by the FHB Sublease as and when such rent or other charge is payable (unless waived by FHB SL), (B) there shall occur any default (beyond any applicable notice and/or cure period) by Borrower under the FHB Sublease, in the observance or performance of any term, covenant or condition of the FHB Sublease on the part of Borrower to be observed or performed, (C) if any one or more of the events referred to in the FHB Sublease shall occur which would cause the FHB Sublease to terminate without notice or action by FHB SL or which would entitle FHB SL to terminate the FHB Sublease and the term thereof by giving notice to Borrower (unless waived by FHB SL), (D) if the leasehold estate created by the FHB Sublease shall be surrendered or the FHB Sublease shall be terminated or canceled for any reason or under any circumstances whatsoever or (E) if any of the terms, covenants or conditions of the FHB Sublease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender except as otherwise permitted by this Agreement;

(r) if (i) Borrower defaults under the Property Documents beyond the expiration of applicable notice and grace periods, if any, thereunder, (ii) any of the Property Documents are amended, supplemented, replaced, restated or otherwise modified without Lender's prior written consent or if Borrower consents to a transfer of any party's interest thereunder without Lender's prior written consent, (iii) any Property Document is canceled, terminated, surrendered or expires pursuant to its terms, unless in such case Borrower enters into a replacement thereof in accordance with the applicable terms and provisions hereof or (iv) a Property Document Event occurs (provided, however, with respect to the events described in subsections (i) through (iv) above, any such events shall not constitute an Event of Default hereunder to the extent that (A) the same is curable by Borrower and (B) Borrower cures the same within the earlier of (I) the timeframe required prior to the period in which any such event would no longer be curable or (II) thirty (30) days after Borrower's receipt of notice thereof);

(s) if for more than thirty (30) days after notice from Lender, Borrower shall continue to be in default under any other term, covenant or condition of the Note, this Security Instrument or the other Loan Documents in the case of any default which can be cured by the payment of a sum of money or for sixty (60) days after notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such sixty (60) day period and Borrower shall have commenced to cure such default within such sixty (60) day period and thereafter diligently and expeditiously proceeds to cure the same, such sixty (60) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days; or

(t) a default beyond applicable notice or cure periods (if any) shall occur under any other Loan Documents.

Section 10.2. LATE PAYMENT CHARGE. If any monthly installment of principal or interest is not paid on the date on which it was due, Borrower shall pay to Lender upon demand an amount equal to the lesser of 2.5% of such unpaid portion of the outstanding monthly installment of principal or interest then due or the maximum amount permitted by Applicable Law, to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment, and such amount shall be secured by this Security Instrument and the other Loan Documents.

Section 10.3. DEFAULT INTEREST. Borrower will pay, from the date of an Event of Default through the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal balance of the Note at a per annum rate equal to the lesser of (a) four percent (4%) plus the Applicable Interest Rate (as defined in the Note), and (b) the maximum interest rate which Borrower may by law pay or Lender may charge and collect (the "**Default Rate**"). Notwithstanding the foregoing, in the event Borrower becomes liable for interest at the Default Rate under this Section 10.3 (such interest, the "**Default Interest**") due to the occurrence of a Qualifying Non-Monetary Default (as defined in the Note), Borrower shall only be liable for such Default Interest for a period not to exceed six (6) months unless (i) Lender actively pursues a foreclosure action (or non-judicial foreclosure) as a result of such Qualifying Non-Monetary Default (in which case, Borrower shall be liable for Default Interest for a period equal to (I) the duration of Lender's pursuit of the remedies described above plus (II) the first six (6) months following the occurrence of the applicable Qualifying Non-Monetary Default (less any portion of such six (6) month period occurring after Lender's commencement of its pursuit of the remedies described above)) or (ii) a monetary Event of Default shall at any time exist (in which case, Borrower shall be liable for Default Interest from the date of the occurrence of the applicable Qualifying Non-Monetary Default).

Article 11. RIGHTS AND REMEDIES

Section 11.1. REMEDIES. Except as limited hereby or by the other Loan Documents, upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender: (a) declare the entire unpaid Debt to be immediately due and payable; (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner; (c) with or without entry, to the extent permitted and pursuant to the procedures provided by Applicable Law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject

to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority; (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law; (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents; (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents; (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower or of any person, firm or other entity liable for the payment of the Debt (provided, that, any such receivership shall only be permitted to take effect following a Foreclosure Trigger); (h) following a Foreclosure Trigger, Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and, subject to the Cash Management Agreement, receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower, following a Foreclosure Trigger, to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) following a Foreclosure Trigger, apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; (i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute

commercially reasonable notice to Borrower; (j) apply any sums then deposited in the Escrow Fund, the Reserve Accounts and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any other Loan Document to the payment of the following items in any order in its discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) any other items or expenses for which such Reserve or escrow was established; or (iv) following a Foreclosure Trigger, (A) interest on the unpaid principal balance of the Note, (B) the unpaid principal balance of the Note; or (C) all other sums payable pursuant to the Note, this Security Instrument and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument; (k) after a Foreclosure Trigger and prior to Borrower's cure, if applicable, of the Event of Default giving rise thereto and Lender's acceptance of such cure (whether voluntarily or required by law) surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney in fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums; (l) pursue such other remedies as Lender may have under Applicable Law (provided, that, such remedies are consistent with the restrictions contained herein limiting certain of Lender's remedies until the occurrence and continuance of a Foreclosure Trigger); (m) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or (n) under the power of sale hereby granted, Lender shall have the discretionary right to cause some or all of the Property, including any Personal Property, to be sold or otherwise disposed of in any combination and in any manner permitted by Applicable Law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. In the event of a sale, by foreclosure, power of sale, or otherwise, Lender may bid for and acquire the Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder and any other sums which Lender is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid. Notwithstanding the provisions of this Section 11.1 to the contrary, if any Event of Default as Subsection 10.1(g) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 11.2. APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender after the occurrence of an Event of Default pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Upon any foreclosure sale or sales of all or any portion of the Property under the power of sale herein granted, Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

Section 11.3. RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 11.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 11.4. ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 11.5. RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 11.6. EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower and each other "Indemnitor" under the Indemnity Agreement delivered in connection herewith which reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower or such other Indemnitor or where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower and such other Indemnitor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower and such other Indemnitor where the books and records are located.

Section 11.7. OTHER RIGHTS, ETC. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of

the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

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

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

Section 11.8. RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 11.9. VIOLATION OF LAWS. If the Property is not in compliance with Applicable Laws, Lender may impose additional requirements upon Borrower in connection therewith including, without limitation, monetary reserves or financial equivalents.

Section 11.10. RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 11.11. EXCULPATION. All rights and remedies of Lender under this Security Instrument and the other Loan Documents are expressly made subject to the limitations and exculpations set forth in Article 15, below.

Article 12. ENVIRONMENTAL HAZARDS

Section 12.1. ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants, based upon an environmental assessment of the Property and to Borrower's Knowledge that: (a) there are no Hazardous Substances (defined below) or underground storage tanks in, on, or under the Property, except those that are both (i) in

compliance with, if required, Environmental Laws (defined below) and with permits issued pursuant thereto or (ii) fully disclosed to Lender by Borrower in writing or pursuant to the written reports resulting from the environmental assessments of the Property delivered to Lender (the "**Environmental Report**"); (b) there are no past, present or threatened Releases (defined below) of Hazardous Substances in, on, under or from the Property except as described in the Environmental Report; (c) there is no likely threat of any Release of Hazardous Substances migrating to the Property except as described in the Environmental Report; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Report; (e) Borrower has not received, any written or oral notice from any person or entity (including but not limited to a governmental entity) relating to any unlawful accumulations of Hazardous Substances or Remediation (defined below) thereof on the Property, or of possible liability of any person or entity pursuant to violation of any Environmental Law in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to conditions in, on, under or from the Property that is within Borrower's Knowledge and that is contained in Borrower's files and records, including but not limited to any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property.

"**Environmental Law**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right to Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. "Environmental Law" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law; conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property. "**Hazardous Substances**" include but are not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances,

hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives provided, however, that "Hazardous Substances" shall not include cleaning materials, office supplies, cleaning supplies and other substances commonly used or sold by establishments similar to those leasing space at the Property in the ordinary course of their business and customarily used at properties similar to the Property, to the extent such materials are used, stored and disposed of in accordance with Environmental Laws.

"**Release**" of any Hazardous Substance means any unlawful release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

"**Remediation**" means any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in Article 12.

Section 12.2. ENVIRONMENTAL COVENANTS. Borrower covenants and agrees that so long as Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property: (a) all uses and operations on or of the Property shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances by Borrower, its agents or employees in, on, under or from the Property; (c) Borrower shall not knowingly permit any Hazardous Substances in, on, or under the Property, except those that are in compliance with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required; (d) the Property shall be kept free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other person or entity (the "**Environmental Liens**"); (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 12.3 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any written request of Lender (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties (as defined herein) shall be entitled to rely on such reports and other results thereof provided, however, that no such request shall be made by Lender unless Lender has reasonable grounds to believe that a Release of Hazardous Substances or a violation of Environmental Law has occurred; (g) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate Remediation of any condition (including but not limited to a Release of a Hazardous Substance) in, on, under or from the Property; (ii) comply with any Environmental Law; (iii) comply with any directive from any governmental authority; and (iv) take any other reasonable

action necessary or appropriate for protection of human health or the environment; (h) Borrower shall not do or knowingly allow any tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; (i) Borrower shall immediately notify Lender in writing of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property; (B) any non compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication which Borrower becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Substances or Remediation thereof affecting the Property, possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Article 12; and (j) Borrower shall, at Borrower's sole cost and expense, sample suspect asbestos-containing materials ("**ACMs**") (as defined by the EPA "Green Book") prior to commencing a repair, renovation or demolition project at the Property that will disturb suspect ACMs to the extent that Borrower has a reasonable basis to believe such ACM's exist. Any failure of Borrower to perform its obligations pursuant to this Section 12.2 shall constitute bad faith waste with respect to the Property.

Section 12.3. LENDER'S RIGHTS. Subject to the rights of quiet enjoyment of tenants under existing Leases, Lender and any other person or entity designated by Lender, including but not limited to any receiver, any representative of a governmental entity, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender. The costs and expenses of such assessments shall be borne by Lender except in instances where such report or assessment is performed due to Borrower's failure to comply with its obligations under Section 12.2(f), in which cases the costs and expenses of such assessments shall be paid for by Borrower.

Article 13. INDEMNIFICATION

Section 13.1. GENERAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to attorneys' fees and other costs of defense) (the "**Losses**") imposed upon or incurred by or asserted against any Indemnified Parties (defined below) and directly or

indirectly arising out of or in any way relating to any one or more of the following which shall have occurred prior to the foreclosure of this Security Instrument (or delivery and acceptance of a deed in lieu of such foreclosure), except to the extent any of the following are attributable to the gross negligence or willful misconduct of an Indemnified Party: (a) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (e) the failure of any person other than an Indemnified Party to file timely with the Internal Revenue Service an accurate Form 1099 B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (f) any failure of the Property to be in compliance with any Applicable Laws; (g) the enforcement by any Indemnified Party of the provisions of this Article 13; (h) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (i) the payment and/or non-payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the loan evidenced by the Note and secured by this Security Instrument; or (j) any misrepresentation made by Borrower in this Security Instrument or any other Loan Document. Any amounts payable to Lender by reason of the application of this Section 13.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date written notice of such loss or damage is delivered to Borrower by Lender until paid. As used herein, the term "**Indemnified Parties**" means Lender and any person or entity who is or will have been involved in the origination of the loan evidenced by the Note, any person or entity who is or will have been involved in the servicing of the loan evidenced by the Note, any person or entity in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the loan evidenced by the Note (including, but not limited to, Investors (as defined herein) or prospective Investors in the Securities (as defined herein), as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the loan evidenced by the Note as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the loan evidenced by the Note or the Property, whether during the term of the loan evidenced by the Note or as a part of or following a foreclosure of the loan evidenced by the Note and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business)).

Section 13.2. MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Document, except for income taxes and franchise taxes (imposed in lieu of income taxes) imposed on an Indemnified Party as a result of a present or former connection between the jurisdiction of the government or taxing authority imposing such tax and the Indemnified Party (excluding a connection arising solely from the Indemnified Party having executed, delivered, or performed its obligations or received a payment under, or enforced, this Security Instrument, the Note and the other Loan Documents) or any political subdivision or taxing authority thereof or therein.

Section 13.3. ERISA INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Sections 4.2 or 5.9.

Section 13.4. ENVIRONMENTAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses and costs of Remediation (whether or not performed voluntarily), engineers' fees, environmental consultants' fees, and costs of investigation (including but not limited to sampling, testing, and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas) imposed upon or incurred by or asserted against any Indemnified Parties, and directly or indirectly arising out of or in any way relating to any one or more of the following (except to the extent that (i) any such claims, losses or costs arise from the gross negligence or willful misconduct of any Indemnified Parties or (ii) the same relate solely to Hazardous Substances first introduced to the Property by anyone other than Borrower, its agents or employees following the foreclosure of this Security Instrument (or the delivery and acceptance of a deed in lieu of such foreclosure), the expiration of any right of redemption with respect thereto and the obtaining by the purchaser at such foreclosure sale or grantee under such deed of possession of the Property): (a) any presence of any Hazardous Substances in, on, above, or under the Property; (b) any past, present or threatened Release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property in connection with any actual or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (e) any past,

present or threatened non compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including but not limited to any failure by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property to comply with any order of any governmental authority in connection with any Environmental Laws; (f) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in Article 12 and this Section 13.4; (h) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including but not limited to costs to investigate and assess such injury, destruction or loss; (i) any acts of Borrower or other users of the Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Substances owned or possessed by such Borrower or other users, at any facility or incineration vessel owned or operated by another person or entity and containing such or similar Hazardous Materials; (j) any acts of Borrower or other users of the Property, in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites selected by Borrower or such other users, from which there is a Release, or a threatened Release of any Hazardous Substance which causes the incurrence of costs for Remediation; (k) any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property, and arising out of a Release of any Hazardous Substance on, under or about the Property; and (l) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to Article 12.

Section 13.5. DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party to whom indemnification is owed pursuant to the preceding provisions of this Article 13, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, if they reasonably believe that their interests are not properly being represented by the counsel selected by Borrower, engage their own attorneys and other professionals to defend them. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties to whom indemnification is owed pursuant to the preceding provisions of this Article 13, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Article 14. WAIVERS

Section 14.1. WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any of the other Loan Documents, or the Obligations. The foregoing shall not be deemed a waiver of Borrower's right to assert in a separate proceeding any claim against Lender which otherwise would constitute a defense, setoff, counterclaim or cross-claim of any nature arising from and after the date hereof.

Section 14.2. MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Applicable Law.

Section 14.3. WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument, the Note, or the other Loan Documents provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by Applicable Law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower or as required by law.

Section 14.4. DETERMINATIONS BY LENDER. Except as otherwise specifically set forth in the Note, this Security Instrument, or the other Loan Documents, wherever pursuant to this Security Instrument (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be based upon a standard of reasonability. All approvals of or waivers by Lender in respect of any of the terms, conditions or requirements of this Security Instrument must be in writing. No waiver with respect to any condition, breach or other matter shall extend to or be taken in any manner whatsoever to affect any other condition, breach or matter or affect Lender's rights resulting therefrom.

Section 14.5. SURVIVAL. The indemnifications made pursuant to Sections 13.3 and 13.4 and the representations and warranties, covenants, and other obligations arising under Article 12, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto. Notwithstanding the foregoing, upon a transfer of Borrower's fee interest in the Property pursuant to Article 8, the transferring Borrower shall be released from any liability thereafter accruing under any such indemnification provision (other than as to matters which have already occurred).

Section 14.6. WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Article 15. EXCULPATION

Section 15.1. EXCULPATION. All rights and remedies of Lender under this Security Instrument and the other Loan Documents are expressly made subject to the limitations and exculpations set forth in Article 14 of the Note, the provisions of which are incorporated herein by this reference.

Article 16. NOTICES

Section 16.1. NOTICES. (a) All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (l) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower:	ABW Holdings LLC 2375 Kuhio Avenue Honolulu, Hawaii 96815 Attention: W. David P. Carey III Facsimile No.: (808) 921-6655
and:	American Assets, Inc. 11455 El Camino Real, Suite 200 San Diego, California 92130 Attention: John W. Chamberlain and Robert Barton Facsimile No.: (858) 350.2620
and a copy by e-mail to:	gis@smclawoffices.com

If to Lender: Column Financial, Inc.
11 Madison Avenue
New York, New York 10010
Attention: Edmund Taylor
Facsimile No.: (212) 352-8106

with a copy to: Column Financial, Inc.
One Madison Avenue
New York, New York 10010
Legal and Compliance Department
Attention: Casey McCutcheon, Esq.
Facsimile No.: (917) 326-8433

or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Security Instrument, "**Business Day**" shall mean any day other than Saturday, Sunday or any other day on which banks are authorized or required to close in New York, New York or Honolulu, Hawaii.

Article 17. SERVICE OF PROCESS

Section 17.1. CONSENT TO SERVICE. (a) Borrower will maintain a place of business or an agent for service of process in Honolulu, Hawaii and give prompt notice to Lender of the address of such place of business and of the name and address of any new agent appointed by it, as appropriate. Borrower further agrees that the failure of its agent for service of process to give it notice of any service of process will not impair or affect the validity of such service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of Borrower available to be served, and if it at that time has no place of business in Honolulu, Hawaii, then Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to Section 16.1 above.

(b) Borrower initially designates W. David P. Carey III with offices on the date hereof at 2375 Kuhio Avenue, Honolulu, Hawaii 96815, to receive for and on behalf of Borrower service of process with respect to this Security Instrument and the other Loan Documents; provided, that, no notice shall be effective unless, contemporaneously therewith, a copy thereof is sent by nationally recognized overnight courier (such as FedEx or UPS) to American Assets, Inc., Attention: John W. Chamberlain and Robert Barton, with offices on the date hereof at 11455 El Camino Real, Suite 200, San Diego, California 92130. With respect to the aforesaid "copy" agent and address, (i) Borrower shall give Lender prior written notice of any change in such agent and/or address, (ii) the failure of any such agent to give Borrower notice of the same will not impair or affect the validity of such service or of any judgment based thereon and (iii) if, despite the foregoing, there is for any reason no such agent available to receive said copy, then Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to Section 16.1 above.

Article 18. APPLICABLE LAW

Section 18.1. CHOICE OF LAW. THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF CALIFORNIA AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AND APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF CALIFORNIA SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING THEREUNDER.

Section 18.2. USURY LAWS. This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by Applicable Law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

Section 18.3. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

Article 19. SECONDARY MARKET

Section 19.1. TRANSFER OF LOAN. Lender may, at any time following the initial funding of the Loan, sell, transfer or assign the Note, this Security Instrument and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or

issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "**Securities**"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such Securities or any Rating Agency rating such Securities (collectively, the "**Investor**") and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt, Sponsor, Indemnitor, Borrower, and the Property, whether furnished by Borrower, or otherwise, as Lender determines necessary or desirable. Borrower agrees to reasonably cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Security Instrument, including, without limitation, the delivery of an estoppel certificate in accordance therewith, and such other documents as may be reasonably requested by Lender. Borrower shall also furnish and Borrower consents to Lender furnishing to such Investors or such prospective Investors or Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower, Indemnitor or Sponsor as may be requested by Lender, any Investor or any prospective Investor or Rating Agency in connection with any sale, transfer or participation interest. Lender may, from time to time, retain or assign responsibility for servicing the Note, this Security Instrument, and the other Loan Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer, special servicer or master servicer; provided, however, that (I) Borrower shall only be required to deal with one servicer designated from time to time with respect to any consents, approvals, notices, required from, or to, Lender pursuant to the Loan Documents (it being understood that such servicer may need to consult with other persons that hold a portion of Lender's rights and obligations under the Loan or with the Rating Agencies in connection with any such consent, approval or notice), (II) the time periods for Lender approvals under the Loan Documents (to the extent applicable) shall not be increased and Borrower shall not be required to pay multiple fees and expenses (or higher fees and expenses) if more than one servicer is consulted by the such servicer and (III) other than Borrower's right to refuse to deal with multiple servicers and/or to pay the fees of multiple servicers, the failure of Lender or any servicer to comply with the provisions of this sentence shall not otherwise waive, abrogate or otherwise affect Borrower's other obligations hereunder or any of the other Loan Documents. Lender may make such assignment or delegation on behalf of the Investors if the Note is sold or this Security Instrument or the other Loan Documents are assigned. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

Section 19.2. CONVERSION TO REGISTERED FORM. At the request and the expense of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the "**Registrar**") reasonably acceptable to Lender which shall maintain, subject to such reasonable regulations as it shall provide, such books and records as are necessary for the registration and transfer of the Note in a manner that shall cause the Note to be considered to be in registered form for purposes of Section 163(f) of the Code. The option to convert the Note into registered form once exercised may not be revoked. Any agreement setting out the rights and obligation of the Registrar shall be subject to the reasonable approval of Lender. Borrower may revoke the appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Borrower or Lender or any other lender in respect of transfers of the Note and Security Instrument (other than Taxes and governmental charges and fees).

Section 19.3. COOPERATION. Borrower acknowledges that Lender and its successors and assigns may (a) sell this Security Instrument, the Note and other Loan Documents to one or more third parties as a whole loan, (b) participate the Loan secured by this Security Instrument to one or more third parties, (c) deposit, through one or a series of transactions, this Security Instrument, the Note and other Loan Documents with one or more trusts, which trusts may sell certificates to third parties evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to third parties (The transaction referred to in clauses (a), (b), (c) and (d) shall hereinafter be referred to collectively as "**Secondary Market Transactions**" and the transactions referred to in clause (c) shall hereinafter be referred to as a "**Securitization**". Any certificates, notes or other securities issued in connection with a Securitization are hereinafter referred to as "**Securities**". Borrower shall cooperate in good faith (provided such cooperation will not result in expense or additional potential liability to Borrower) with Lender in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by any Rating Agency issuing any statistical rating in any Secondary Market Transaction or the requirements of potential investors in any Secondary Market Transaction. Notwithstanding the foregoing, if required in connection with any Secondary Market Transaction, Borrower agrees to obtain, upon Lender's written request, opinions of counsel, which may be relied upon by Lender, the Rating Agencies and their respective counsel, agents and representatives, as to matters of Delaware and federal bankruptcy law relating to limited liability companies and state law insolvency opinions relating to trusts, in a form and from counsel reasonably acceptable to Lender. Without limitation of the foregoing, Borrower agrees to make upon Lender's written request, and at no material cost to Borrower, all structural or other changes to the Loan (including delivery of one or more new component notes to replace the Note or modify the Note to reflect multiple components of the Loan and such new notes or modified note may have different interest rates and amortization schedules), modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to the Rating Agencies or potential investors and addressing such matters as the Rating Agencies or potential investors may require; provided, however, notwithstanding anything to the contrary in this Security Instrument, the Note, or the other Loan Documents, Borrower shall not be required to modify any documents evidencing or securing the Loan (or otherwise take any action) which would modify (i) the initial weighted average interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the aggregate amortization of principal of the Note, (iv) any other material economic term of the Loan, (v) decrease the time periods during which Borrower is permitted to perform its obligations under this Security Instrument or any of the other Loan Documents, or (vi) otherwise increase Borrower's or Indemnitor's obligations or decrease any of their rights or protections in any material respect under the Note, this Security Instrument or any of the other Loan Documents except as otherwise expressly permitted herein. Borrower shall provide such information, documents and agreements relating to Borrower, Indemnitor, Sponsor, the Property, the Property Documents and any tenants of the Improvements as Lender may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to prospective investors or Rating Agencies any information in its possession, including, without limitation, financial statements relating to Borrower, Sponsor, Indemnitor, the Property and any tenant of the Improvements. Borrower acknowledges that certain information regarding the Loan and the parties thereto, Sponsor and the Property may be included in disclosure documents in connection with the Securitization, including an offering circular, a prospectus, prospectus supplement,

private placement memorandum or other offering document (each, an "**Disclosure Document**") and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), and may be made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization.

Article 20. COSTS

Section 20.1. PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Lender may (subject to any limitations contained elsewhere in this Security Instrument) impose certain reasonable administrative, processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of the Loan, (b) the release or substitution of collateral therefor, (c) if an Event of Default occurs and the Loan is transferred to a special servicer, (d) obtaining certain consents, waivers and approvals required hereunder (including, without limitation, Rating Agency Confirmations), and/or (e) the review of any Major Lease, proposed Major Lease or any other Lease for which Lender's approval is required hereunder or the negotiation of any SNDA (as provided above). Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof required by law, regulation, any governmental or quasi governmental authority. Subject to the limitations on cost and expense in Section 19.3 above, Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event of Default. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all reasonable legal fees and disbursements of Lender, whether retained firms, the reimbursement for the expenses of in house staff or otherwise. Whenever it is provided herein or in any other Loan Document that a Rating Agency Confirmation (or similar approval) by any Rating Agency is required hereunder (or under any other Loan Document), Borrower shall be responsible for the reasonable fees and other charges imposed by any Rating Agency in connection therewith as well as Lender's reasonable costs and expenses incurred in connection therewith.

Section 20.2. ATTORNEYS' FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with the items set forth in Section 20.1 above, and (b) Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, reasonably incurred or paid by Lender in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

Article 21. DEFINITIONS

Section 21.1. GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower, each party comprising Borrower (if Borrower consists of more than one person or entity) and any subsequent owner or owners of the Property or any part thereof or any interest therein"; the word "Lender" shall mean "Lender and any subsequent holder of the Note"; the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument"; the word "person" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Article 22. MISCELLANEOUS PROVISIONS

Section 22.1. NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 22.2. LIABILITY. If there is more than one Borrower, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 22.3. INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

Section 22.4. HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 22.5. DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 22.6. NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 22.7. SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 22.8. ENTIRE AGREEMENT. The Note, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, this Security Instrument and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, this Security Instrument and the other Loan Documents.

Section 22.9. TAX DISCLOSURE. Notwithstanding anything herein or in any other Loan Document to the contrary, except as reasonably necessary to comply with applicable securities laws, each party (and each employee, representative or other agent of each party) hereto may disclose to any and all Persons, without limitation of any kind, any information with respect to the United States federal income "tax treatment" and "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such parties (or their representatives) relating to such tax treatment and tax structure; provided, that with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transaction as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to the United States federal income tax treatment or tax structure of the transactions contemplated hereby.

Section 22.10. SERVICER FEES. Lender and Borrower hereby each acknowledge and agree that the general schedule of servicing fees attached hereto as Schedule 2 shall be deemed to list the reasonable fees customarily charged by lenders or servicers of secondary market loans similar to the Loan for actions specified on the aforesaid Schedule (barring any atypical or extraordinary circumstances).

[PROVISIONS CONTINUE ON FOLLOWING PAGE]

Section 22.11. DUE ON SALE/ENCUMBRANCE. Borrower expressly agrees that upon a violation of Article 8 of this Security Instrument by Borrower and acceleration of the principal balance of the Note because of such violation, Borrower will pay all sums required to be paid in connection with a prepayment, if any, as described in the Note, herein imposed on prepayment after an Event of Default and acceleration of the principal balance. Borrower expressly acknowledges that Borrower has received adequate consideration for the foregoing agreement.

ABW HOLDINGS LLC,
a Delaware limited liability company

By: /s/ Melvyn M. Wilinsky
Name: Melvyn M. Wilinsky
Title: Executive Vice President

[NO FURTHER TEXT ON THIS PAGE]

Section 22.12 SPECIAL STATE OF HAWAII PROVISIONS.

(a) In the event of any conflict between the provisions of this Section 22.12 and any provision of this Security Instrument, then the provisions of this Section 22.12 shall control.

(b) Borrower, at its sole cost, for the mutual benefit of Lender and Borrower, shall obtain and maintain (or cause to be obtained and maintained) during the term of this Loan policies of insurance in accordance with Section 3.3 hereof.

NOTICE IS HEREBY GIVEN BY LENDER TO BORROWER THAT LENDER MAY NOT CONDITION THE GRANTING OF THE LOAN SECURED BY THIS SECURITY INSTRUMENT ON BORROWER PROCURING ANY INSURANCE WHICH BORROWER IS REQUIRED TO OBTAIN UNDER THIS SECURITY INSTRUMENT FROM ANY SPECIFIC INSURANCE COMPANY OR ASSOCIATION DESIGNATED BY LENDER. BORROWER MAY PURCHASE THE INSURANCE REQUIRED HEREUNDER FROM AN INSURER OR PRODUCER OF BORROWER'S CHOICE, SUBJECT ONLY TO LENDER'S RIGHT TO REJECT A GIVEN INSURER OR PRODUCER NOT MEETING THE REQUIREMENTS SET FORTH IN SECTION 3.3 HEREOF.

(c) This Security Instrument shall be deemed to be and shall be construed as a mortgage of real property as well as a security agreement, financing statement, fixture filing and assignment of rents and profits. Lender is, for the purposes of this Security Instrument, deemed to be the "debtor", and Borrower is deemed to be the "secured party", as those terms are used in the Uniform Commercial Code in effect in the State of Hawaii, as amended. The addresses of the secured party and debtor, from which information concerning the security agreement may be obtained, are set forth in the initial paragraph of this Security Instrument. Borrower hereby authorizes Lender to file any and all financing statements, amendments to financing statements and extensions of financing statements pertaining to the Property. If an Event of Defaults occurs and is continuing, Lender shall have all of the rights and powers of a mortgagee under Hawaii Revised Statutes, Chapter 667, as amended, including but not limited to the power of sale.

Article 23. CONDOMINIUM PROVISIONS

Section 23.1. REPRESENTATIONS, WARRANTIES AND COVENANTS WITH RESPECT TO THE CONDOMINIUM. With respect to the Condominium, Borrower hereby represents, warrants and covenants as follows:

(a) The Condominium has been legally and validly created pursuant to all Applicable Laws and the Condominium Documents. The Condominium Documents are valid and enforceable and there currently exists no default or event of default thereunder (I) by Borrower or (II) to Borrower's knowledge, by any other party thereto. All fees, dues, charges, and assessments, whether annual, monthly, regular, special or otherwise (collectively, the "**Assessments**") payable by Borrower under the Condominium Documents to date have been fully paid. Borrower is an "Owner" or "Apartment Owner" (as each of the foregoing are defined in the applicable Condominium Documents). Borrower's percentage interest in the common

elements (i) in the BW Condominium is 49.95%, (ii) in the 227 Condominium is 14.844% and (iii) in the 2181 Condominium is (A) a 2.4270% interest in the Land (as defined in the 2181 Condominium Documents), (B) a 2.4820% interest in the basement parking garage and (C) a 3.3069157% common interest in the remainder of the "common elements" (as defined in the 2181 Condominium Documents). There are currently no special or otherwise extraordinary Assessments pending (other than regular, annual Assessments).

(b) Borrower shall promptly pay all Assessments imposed pursuant to the Condominium Documents when the same become due and payable with respect to each unit in the Condominium for which title is held by Borrower (collectively, the **"Borrower Unit"**). Borrower will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Assessments have been so paid or are not then delinquent with respect to the Borrower Unit. Borrower shall immediately notify Lender of (y) any adjustments made to the amount of Assessments due under the Condominium Documents, or (z) the imposition of any additional Assessments under the Condominium Documents. Borrower shall comply with all of the terms and conditions of the Condominium Documents.

(c) Borrower acknowledges and agrees that the Borrower Unit of the Condominium and the Common Elements of the Condominium appurtenant thereto are within the definition of "Property" hereunder and, as such, Borrower shall cause the same to be insured in accordance with applicable provisions hereof. Any Net Proceeds of such insurance or otherwise obtained with respect to any condemnation of the Property shall be held and applied in accordance with the applicable terms and conditions of the Condominium Documents.

(d) Borrower shall observe and perform (and shall, to the extent of its ability under the Condominium Documents, cause each board of directors or similar body established under the Condominium Documents (collectively, the "**Board**"), each condominium association or similar entity established under the Condominium Documents (collectively, the **"Association"**) and the officers thereof to observe and perform) each and every term to be observed or performed by Borrower, such officers, the Association and/or the Board pursuant to the Condominium Documents. To the extent of its ability under the Condominium Documents, Borrower shall (i) restrict the Board, the Association and such offices from taking any action with respect to the Condominium and/or the Property that would be contrary to or inconsistent with any applicable covenant contained herein or in any other Loan Document, (ii) cause the Board, the Association and such officers to comply with any applicable covenant of Borrower contained herein or in the other Loan Documents relating to the Condominium and/or the Property and (iii) obtain Lender's prior written consent prior to permitting the Board, the Association or such officers to establish any significant working capital or similar reserves or undertaking any significant capital expenditures.

(e) Borrower shall, and shall, to the extent of its ability under the Condominium Documents, cause the Board, the Association and the officers to, (i) maintain the Condominium in good condition and repair, (ii) promptly comply with all Applicable Laws, (iii) to promptly repair, replace or rebuild any part of the Condominium which may be damaged or destroyed by any casualty or which may be affected by any condemnation proceeding and (iv) to complete and pay for, within a reasonable time subject to force majeure, any structure at any time in the process of construction or repair on the Condominium, in each case, to the extent that the failure to do the same would have a Material Adverse Effect.

(f) It shall be, at Lender's option, an immediate Event of Default hereunder if any provision of the Condominium Property Act, Chapter 514A, et seq., Hawaii Revised Statutes, as amended, restated or replaced from time to time, or any section, sentence, clause, phrase or word, or the application thereof in any circumstance is held invalid and such invalidity shall have a Material Adverse Effect.

(g) Without the prior written consent of Lender, Borrower shall not, to the extent of its ability under the Condominium Documents, permit any of the terms or provisions of the Condominium Documents to be modified or amended in any material manner or permit the Condominium to be terminated, withdrawn from a condominium regime, partitioned, subdivided, expanded or otherwise modified.

(h) To the extent of its ability under the Condominium Documents, Borrower shall cause the Board and/or the Association to allow Lender to examine the books, records and receipts of the Condominium upon ten (10) days prior notice thereof.

(i) Borrower shall promptly deliver to Lender a true and full copy of all notices of default or other material notices received by Borrower with respect to any obligation or duty of Borrower under the Condominium Documents. Borrower shall deliver to Lender each annual budget of the Condominium promptly upon the finalization thereof.

(j) Without the prior written consent of Lender, Borrower shall not, in the event of condemnation of, damage to or destruction of the Property, vote not to repair, restore or rebuild the Condominium.

(k) To the extent that any approval rights, consent rights or other rights or privileges are granted to a mortgagee in the Condominium Documents with respect to the Borrower Unit or any other similar mortgagee protection provisions are contained in the Condominium Documents with respect to the Borrower Unit, then such approval rights, consent rights or other rights, protections or privileges shall be deemed to be required by this Security Instrument or contained herein, as applicable.

(l) Upon the occurrence of an Event of Default which is continuing, Lender shall have the rights and privileges which Borrower has as though Lender were in fact the owner of the Borrower Unit, which rights and privileges shall include, without limitation, all voting rights and Developer Reserved Rights and/or Developer Rights accruing to Borrower under the terms of the Condominium Documents. Upon the occurrence and continuance of an Event of Default, Lender may vote in place of Borrower and may exercise any and all of said rights. Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest to vote as Borrower's proxy and to act with respect to all of said rights so long as such Event of Default continues hereunder. Borrower will execute any documents and/or instruments reasonably required by Lender in connection with the foregoing, including, without limitation, a written proxy in the form and substance required by the relevant provisions of the Condominium Documents. Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with

an interest to execute such documents and/or instruments in the event Borrower fails to do the same within five (5) days of written request therefore by Lender. Written notice from Lender to the Board shall be deemed conclusive as to the existence of such Event of Default and as to Lender's rights and privileges hereunder. Notwithstanding anything contained herein to the contrary, nothing contained herein or otherwise shall render Lender liable for any Assessments.

(m) Neither the Board nor the Association is a party to any loan, credit agreement or other arrangement for any extension of credit, whether funded or to be funded. To the extent of its ability under the Condominium Documents, Borrower shall not, without Lender's prior written consent, permit the Board or the Association to incur any indebtedness or to encumber the Condominium in connection therewith except (i) unsecured debt incurred in the ordinary course of business not exceeding $10,000 per annum and (ii) trade payables in the ordinary course of business, provided, that, in each case, the debt described in (i) and (ii) above is covered by the then current common charges assessed against the owners of units in the Condominium.

(n) In addition to Lender's consent rights as specified in this Section, during the continuance of an Event of Default, Borrower shall not exercise any other material approval, consent or voting right to which it is entitled under the Condominium Documents without obtaining Lender's prior written consent (which consent shall not be unreasonably withheld or delayed).

(o) Borrower shall attend each duly called meeting or special meeting of the Association.

(p) Intentionally Omitted.

(q) The representations, warranties and covenants of Borrower made under the Condominium Estoppel are hereby incorporated by reference as if fully set forth in this Section and are hereby re-made by Borrower.

(r) Without limitation of the foregoing, Borrower's failure to comply with any provision of this Section shall, at Lender's option, constitute an immediate Event of Default hereunder and under the other Loan Documents.

Article 24. FHB LEASE AND FHB SUBLEASE PROVISIONS

Section 24.1. FHB LEASE AND FHB SUBLEASE REPRESENTATIONS.

(a) (i) that certain Lease dated as of August 16, 1991 between Catherine Evans Lloyd Moore, Trustee under the unrecorded Revocable Trust Agreement dated July 17, 1980, made by Catherine Evans Lloyd Moore, as Settlor (together with its successors and assigns, "**Prime Lessor**"), as landlord thereunder, and FHB SL, as tenant thereunder, which such Lease Agreement was (A) amended pursuant to that certain Amendment to Lease dated as of June 5, 2006 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-103819 and (B) memorialized pursuant to a short form of lease recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 91-113901 (such Lease, together with the amendments and other agreements set forth above and any other amendments, modifications, supplements, restatements or replacements of such Lease Agreement, collectively, the "**FHB**

Lease") is in full force and effect and has not been modified or amended in any manner whatsoever (except in the documentation making up the defined term "FHB Lease"), (ii) to the best of Borrower's knowledge, there are no material defaults under the FHB Lease by FHB SL, Prime Lessor or any other party, and, to the best of Borrower's knowledge, no event has occurred which but for the passage of time, or notice, or both would constitute a material default under the FHB Lease, (iii) all rents, additional rents and other sums due and payable under the FHB Lease have been paid in full, and (iv) neither FHB SL nor Prime Lessor nor any other party has commenced any action or given or received any notice for the purpose of terminating the FHB Lease.

(b) (i) The FHB Sublease is in full force and effect and has not been modified or amended in any manner whatsoever (except in the documentation making up the defined term "FHB Sublease"), (ii) there are no material defaults under the FHB Sublease by Borrower, or, to the best of Borrower's knowledge, FHB SL or any other party, and, to the best of Borrower's knowledge, no event has occurred which but for the passage of time, or notice, or both would constitute a material default under the FHB Sublease, (iii) all rents, additional rents and other sums due and payable under the FHB Sublease have been paid in full, and (iv) neither Borrower nor FHB SL nor any other party has commenced any action or given or received any notice for the purpose of terminating the FHB Sublease.

Section 24.2. FHB LEASE AND FHB SUBLEASE COVENANTS.

(a) Borrower shall (i) use commercially reasonable efforts to cause FHB SL to pay (or cause to be paid) all rents, additional rents and other sums required to be paid by FHB SL pursuant to the provisions of the FHB Lease, (ii) use commercially reasonable efforts to cause FHB SL to diligently perform and observe (or cause to be performed and observed) all of the terms, covenants and conditions of the FHB Lease on the part of FHB SL, (iii) promptly notify Lender of the giving of any notice by Prime Lessor to FHB SL of any default by FHB SL and deliver to Lender a true copy of each such notice within five (5) Business Days of receipt and (iv) promptly notify Lender of any bankruptcy, reorganization or insolvency of Prime Lessor or of any notice thereof, and deliver to Lender a true copy of such notice within five (5) Business Days of Borrower's receipt. Except as expressly and specifically permitted hereunder, Borrower shall not, without the prior consent of Lender, itself (and shall use commercially reasonable efforts to not permit FHB SL to) surrender the leasehold estate created by the FHB Lease or terminate or cancel the FHB Lease or modify, change, supplement, alter or amend the FHB Lease, either orally or in writing, and if FHB SL and/or Borrower shall default in the performance or observance of any term, covenant or condition of the FHB Lease on the part of FHB SL and shall fail to cure the same prior to the expiration of any applicable cure period provided thereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the FHB Lease on the part of FHB SL and/or Borrower to be performed or observed on behalf of FHB SL and/or Borrower, to the end that the rights of FHB SL and/or Borrower in, to and under the FHB Lease shall be kept unimpaired and free from default. If Prime Lessor shall deliver to Lender a copy of any notice of default under the FHB Lease, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender, in good faith, in reliance thereon. Borrower shall (or shall commercially reasonable efforts to cause FHB SL to) exercise each individual option, if any, to extend or

renew the term of the FHB Lease upon demand by Lender made at any time within thirty (30) days prior to the last day upon which any such option may be exercised, and Borrower hereby expressly authorizes and appoints Lender its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest.

(b) Borrower shall (i) pay (or cause to be paid) all rents, additional rents and other sums required to be paid by Borrower, as tenant under and pursuant to the provisions of the FHB Sublease, (ii) diligently perform and observe (or cause to be performed and observed) all of the terms, covenants and conditions of the FHB Sublease on the part of Borrower, as tenant thereunder, (iii) promptly notify Lender of the giving of any notice by FHB SL to Borrower of any default by Borrower and deliver to Lender a true copy of each such notice within five (5) Business Days of receipt and (iv) promptly notify Lender of any bankruptcy, reorganization or insolvency of FHB SL or of any notice thereof, and deliver to Lender a true copy of such notice within five (5) Business Days of Borrower's receipt. Except as expressly and specifically permitted hereunder, Borrower shall not, without the prior consent of Lender, surrender the leasehold estate created by the FHB Sublease or terminate or cancel the FHB Sublease or fail to exercise any rights under the FHB Sublease which would prevent the same from being terminated or cancelled or modify, change, supplement, alter or amend the FHB Sublease, either orally or in writing, and if Borrower shall default in the performance or observance of any term, covenant or condition of the FHB Sublease on the part of Borrower and shall fail to cure the same prior to the expiration of any applicable cure period provided thereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the FHB Sublease on the part of Borrower to be performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under the FHB Sublease shall be kept unimpaired and free from default. If FHB SL shall deliver to Lender a copy of any notice of default under the FHB Sublease, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender, in good faith, in reliance thereon. Borrower shall exercise each individual option, if any, to extend or renew the term of the FHB Sublease upon demand by Lender made at any time within thirty (30) days prior to the last day upon which any such option may be exercised, and Borrower hereby expressly authorizes and appoints Lender its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest. Without Lender's prior written consent, Borrower shall not exercise any right of first refusal, first offer or any other similar right under either the FHB Lease or the FHB Sublease (other than any right to extend the term of either thereof).

(c) Notwithstanding anything contained in the FHB Sublease to the contrary, any sublease of any portion of the Leasehold Estate shall be treated as a Lease for the purposes hereof and shall be subject to the provisions hereof (including, without limitation, Section 3.7 above).

Section 24.3. NO MERGER OF FEE, LEASEHOLD AND SUBLEASEHOLD ESTATES; RELEASES. So long as any portion of the Debt shall remain unpaid, unless Lender shall otherwise consent, the fee title to the real property owned by Prime Lessor, FHB SL's interest in each of the FHB Lease and FHB Sublease and Borrower's interest in the FHB

Sublease and the Leasehold Estate shall each not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower or in any other Person by purchase, operation of law or otherwise. Lender reserves the right, at any time, to release portions of the Property, including, but not limited to, the Leasehold Estate, with or without consideration, at Lender's election, without waiving or affecting any of its rights hereunder or under the Note or the other Loan Documents and any such release shall not affect Lender's rights in connection with the portion of the Property not so released.

Section 24.4. BORROWER'S ACQUISITION OF PRIME LESSOR'S AND/OR FHB SL'S ESTATE. In the event that Borrower hereafter acquires Prime Lessor's fee interest in the real property subject to the FHB Lease and/or FHB SL's interest in the FHB Lease, Borrower agrees, at its sole cost and expense, including without limitation, Lender's reasonable attorney's fees, to (i) execute any and all documents or instruments necessary to subject each of the foregoing interest to the lien of this Security Instrument; and (ii) provide a title insurance policy which shall insure that the lien of this Security Instrument is a first lien on each such interest.

Section 24.5. REJECTION OF THE FHB SUBLEASE.

(a) If the FHB Sublease is terminated by FHB SL for any reason in the event of the rejection or disaffirmance of the FHB Sublease by FHB SL pursuant to the Bankruptcy Code or any other law affecting creditor's rights, (i) Borrower, immediately after obtaining notice thereof, shall give notice thereof to Lender, (ii) Borrower, without the prior written consent of Lender, shall not elect to treat the FHB Sublease as terminated pursuant to Section 365(h) of the Bankruptcy Code or any comparable federal or state statute or law, and any election by Borrower made without such consent shall be void and (iii) this Security Instrument and all the Liens, terms, covenants and conditions of this Security Instrument shall extend to and cover Borrower's possessory rights under Section 365(h) of the Bankruptcy Code and to any claim for damages due to the rejection of the FHB Sublease or other termination of the FHB Sublease. In addition, Borrower hereby assigns irrevocably to Lender, Borrower's rights to treat the FHB Sublease as terminated pursuant to Section 365(h) of the Bankruptcy Code and to offset rents under the FHB Sublease in the event any case, proceeding or other action is commenced by or against FHB SL under the Bankruptcy Code or any comparable federal or state statute or law, provided that Lender shall not exercise such rights and shall permit Borrower to exercise such rights with the prior written consent of Lender, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing.

(b) Borrower hereby assigns to Lender Borrower's right to reject the FHB Sublease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Borrower under the Bankruptcy Code or comparable federal or state statute or law, provided Lender shall not exercise such right, and shall permit Borrower to exercise such right with the prior written consent of Lender, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing. Further, if Borrower shall desire to so reject the FHB Sublease, at Lender's request, to the extent not prohibited by the terms of the FHB Sublease and applicable law, Borrower shall assign its interest in the FHB Sublease to Lender in lieu of rejecting the FHB Sublease as described above, upon receipt by Borrower of written notice from Lender of such request together with Lender's agreement to cure any existing defaults of Borrower under the FHB Sublease and to provide adequate assurance of future performance of Borrower's obligations thereunder.

(c) Borrower hereby assigns to Lender Borrower's right to seek an extension of the 60-day period within which Borrower must accept or reject the FHB Sublease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Borrower under the Bankruptcy Code or comparable federal or state statute or law, provided Lender shall not exercise such right, and shall permit Borrower to exercise such right with the prior written consent of Lender, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing. Further, if Borrower shall desire to so reject the FHB Sublease, at Lender's request, to the extent not prohibited by the terms of the FHB Sublease and applicable law, Borrower shall assign its interest in the FHB Sublease to Lender in lieu of rejecting such FHB Sublease as described above, upon receipt by Borrower of written notice from Lender of such request together with Lender's agreement to cure any existing defaults of Borrower under the FHB Sublease and to provide adequate assurance of future performance of the applicable Borrower's obligations thereunder.

(d) Borrower hereby agrees that if the FHB Sublease is terminated for any reason in the event of the rejection or disaffirmance of the FHB Sublease pursuant to the Bankruptcy Code or any other law affecting creditor's rights, any Personal Property of Borrower not removed by Borrower from the portion of the Property leased pursuant to the FHB Sublease as permitted or required by the FHB Sublease, shall at the option of Lender be deemed abandoned by Borrower, provided that Lender may remove any such Personal Property required to be removed by Borrower pursuant to the FHB Lease and all reasonable out-of-pocket costs and expenses associated with such removal shall be paid by Borrower within five (5) days of receipt by Borrower of an invoice for such removal costs and expenses.

Section 24.6. CONVERSION OF THE FHB SUBLEASE INTO A DIRECT LEASE WITH PRIME LESSOR. Without limiting any of the provisions hereof, in the event that Borrower shall hereafter convert the FHB Sublease into a direct lease with Prime Lessor or otherwise enter into a replacement lease with Prime Lessor (any of the foregoing, a "**Replacement FHB Lease**"), then the provisions herein referring to (a) the "**FHB Sublease**" shall thereafter be deemed to refer to the Replacement FHB Lease and (b) "FHB SL" shall thereafter be deemed to refer to the Prime Lessor. Borrower agrees, at its sole cost and expense, including without limitation, Lender's reasonable attorney's fees, to (i) execute any and all documents or instruments necessary to subject Borrower's interest in the Replacement FHB Lease the lien of this Security Instrument; and (ii) provide a title insurance policy which shall insure that the lien of this Security Instrument is a first lien on Borrower's interest in the Replacement FHB Lease.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

ABW HOLDINGS LLC,
a Delaware limited liability company

By: /s/ Melvyn M. Wilinsky
Name: Melvyn M. Wilinsky
Title: Executive Vice President

Schedule 1

"**Debt Service Coverage Ratio**" means the ratio of (a) Net Operating Income, to (b) Annual Debt Service, all as determined by Lender.

"**Annual Debt Service**" means an amount equal to twelve (12) times the then applicable Monthly Payment (as defined in the Note) payable under the Note.

"**Net Operating Income**" means for the 12-month period immediately preceding the date of calculation, (A) all sustainable Rents and other income received from the Property received from tenants during such 12-month period, less (B) all Operating Expenses for such 12-month period and any Extraordinary Expenses approved by Lender and applicable to such 12-month period.

"**Operating Expenses**" means the aggregate of the following items: (a) real estate taxes, general and special assessments or similar charges, other than Taxes; (b) sales, use and personal property taxes; (c) management fees of not less than 3.5% of the gross income derived from the operation of the Property and disbursements for management services whether such services are performed at the Property or off-site; (d) wages, salaries, pension costs and all fringe and other employee-related benefits and expenses, of all employees up to and including (but not above) the level of the on-site manager, engaged in the repair, operation and maintenance of the Property and service to tenants and on-site personnel engaged in audit and accounting functions performed by Borrower; (e) insurance premiums including, but not limited to, casualty, liability, rent and fidelity insurance premiums, other than Insurance Premiums; (f) cost of all electricity, oil, gas, water, steam, HVAC and any other energy, utility or similar item and overtime services, the cost of building and cleaning supplies, and all other administrative, management, ownership, operating, advertising, marketing and maintenance expenses incurred by Borrower (and not paid directly by any tenant) in connection with the operation of the Property; (g) costs of necessary cleaning, repair, replacement, maintenance, decoration or painting of existing improvements on the Property (including, without limitation, parking lots and roadways), of like kind or quality or such kind or quality which is necessary to maintain the Property to the same standards as competitive properties of similar size and location of the Property; (h) the cost of such other maintenance materials, HVAC repairs, parts and supplies, and all equipment to be used in the ordinary course of business, which is not capitalized in accordance with approved accounting method; (i) legal, accounting and other professional expenses incurred in connection with the Property; (j) casualty losses to the extent not reimbursed by a third party; and (k) to the extent not already included in any of (f)-(h) above, a reserve for structural repairs, normalized leasing commissions and tenant improvements equal to $250,000.00. The Operating Expenses shall be based on the above-described items actually incurred or payable on an accrual basis in accordance with the Approved Accounting Method by Borrower during the twelve (12) month period ending one month prior to the date on which the Net Operating Income is to be calculated, with customary adjustments for items such as taxes and insurance which accrue but are paid periodically, as adjusted by Lender to reflect projected adjustments for only those items which are definitively ascertainable and of a fixed amount (for example, real estate taxes) for the subsequent twelve (12) month period beginning on the date on which the Net Operating Income is to be calculated. Notwithstanding the foregoing, the term "Operating Expenses" shall not

include (i) depreciation or amortization or any other non-cash item of expense unless approved by Lender, (ii) interest or principal payable under the Note, fees, costs and expense reimbursements of Lender in administering the Loan or exercising remedies under the Note, this Security Instrument or the other Loan Documents or any other payments required to be made by Borrower to Lender under any Loan Documents; or (iii) any expenditure properly treated as a capital item under the Approved Accounting Method.

"**Extraordinary Expenses**" means expenses incurred in connection with necessary capital improvements or operating expenses of the Property which were not reasonably anticipated in the Annual Budget for the Property.

Schedule 2

SCHEDULE OF SERVICING FEES

Servicing Action	Estimated Servicing Fee
Disbursements from Reserve Accounts	$200 - $500
Lease / SNDA approvals	$500 - $4,000

Schedule 3

DESCRIPTION OF REA'S

1. Agreement for Joint Development and Restrictive Covenant Regarding Lanai Enclosures (Waikiki Beach Walk; Planned Development - Resort) made by and among Outrigger Hotels Hawaii, IRL, LLC, Ala Wai Gateway Limited Partnership, OWT, LLC, Outrigger-LAX Limited Partnership, ORF, LLC, and OMP, LLC as of January 19, 2005 and recorded January 19, 2005 as Regular System Document No. 2005-010991 and as Land Court Document No. 3219661;

2. Agreement for Joint Development and Restrictive Covenant Regarding Lanai Enclosures (Waikiki Beach Walk; Planned Development - Resort) made by Catherine Evans Lloyd Moore as of February 1, 2005 and recorded February 8, 2005 as Regular System Document No. 2005-026114;

3. Agreement for Joint Development and Restrictive Covenant Regarding Lanai Enclosures (Waikiki Beach Walk; Planned Development – Resort) made by and between OWT, LLC, RRK Hotel Association, LLC, and RRK Land Company, LLC as of March 28, 2005 and recorded March 31, 2005 as Regular System Document No. 2005-062997 and as Land Court Document No. 3248392;

4. Agreement for Joint Development and Restrictive Covenant Regarding Lanai Enclosures (Waikiki Beach Walk; Planned Development - Resort) made by Sutton Family Partners as of April 6, 2005 and recorded April 7, 2005 as Regular System Document No. 2005-068466;

5. Agreement for Joint Development and Restrictive Covenant Regarding Lanai Enclosures (Waikiki Beach Walk; Planned Development - Resort) made by Jabron Mango Company as of April 5, 2005 and recorded April 7, 2005 as Regular System Document No. 2005-068467;

6. Declaration of Covenants, Conditions and Restrictions for Waikiki Beach Walk made by Outrigger Hotels Hawaii as of January 19, 2005 and recorded January 19, 2005 as Regular System Document No. 2005-010992 and as Land Court Document No. 3219662;

7. Declaration of Covenants, Conditions and Restrictions for Waikiki Beach Walk made by Outrigger Hotels Hawaii, OWT, LLC, RRK Hotel Associates, LLC and RRK Land Company, LLC as of March 28, 2005 and recorded March 31, 2005 as Regular System Document No. 2005-062998 and as Land Court Document No. 3248393;

8. Declaration of Lewers Street Redevelopment Area Covenants made by Outrigger Hotels Hawaii, Outrigger Enterprises, Inc., Outrigger-LAX Limited Partnership, Ala Wai Gateway Limited Partnership, ORF, LLC, OWT, LLC and IRL, LLC as of January 19, 2005 and recorded January 19, 2005 as Regular System Document No. 2005-010993 and as Land Court Document No. 3219663;

9. Declaration of Lewers Street Redevelopment Area Covenants made by Outrigger Hotels Hawaii, Outrigger Enterprises, Inc., OWT, LLC, RRK Hotel Associations, LLC and RRK Land Company, LLC as of March 28, 2005 and recorded March 31, 2005 in Land Court Document No. 3248394

10. Reciprocal Easement Agreement (Retail Apartment Beach Walk/Apartment B 2181 Kalakaua) by and between ABW Lewers LLC and IRL, LLC as of June 5, 2006 and recorded June 5, 2006 as Regular System Document No. 2006-103818 and Land Court Document No. 3436497.

EXHIBIT A

LEGAL DESCRIPTION

See attached.

EXHIBIT B

FORM OF SNDA

(attached hereto)

(Lender)

- and -

[_____]
(Tenant)

- and –

[_____]
(Landlord)

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

Dated:

Location:

Section:
Block:
Lot:
City: Honolulu
County: Honolulu

PREPARED BY AND UPON
RECORDATION RETURN TO:

_____

_____

_____

Attention: _____

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made as of the _____ day of _____, 200[__] by and among _____, a _____, having an address at _____ (together with its successors and assigns, "**Lender**"), [_____] ("**Tenant**") and _____, a Delaware limited liability company, having an address at _____, _____ (**"Landlord"**).

RECITALS:

A. Lender is the present owner and holder of a certain Mortgage and Security Agreement (the "**Security Instrument**") given by Landlord to Lender which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "**Property**") and which secures the payment of certain indebtedness owed by Landlord to Lender evidenced by the Note (as defined in the Security Instrument);

B. Tenant is the holder of a leasehold estate in a portion of the Property under and pursuant to the provisions of a certain [Lease] dated [_____, 200[__] between Landlord, as landlord, and Tenant, as tenant (the "**Lease**"); and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

For good and valuable consideration, Tenant, Lender and Landlord agree as follows:

1. Subordination. The Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate to the lien and terms of the Security Instrument, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. Non-Disturbance. If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note or the Security Instrument shall be made subject to all rights of Tenant under the Lease, provided that at the time of the

commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the term of the Lease shall have commenced pursuant to the provisions thereof, (b) Tenant shall be in possession of the premises demised under the Lease, (c) the Lease shall be in full force and effect and (d) Tenant shall not be in default beyond any applicable notice and cure period under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed.

3. Attornment. If Lender or any other subsequent purchaser of the Property shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter referred as "**Purchaser**"), and the conditions set forth in Section 2 above have been met at the time Purchaser becomes owner of the Property, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Property shall be deemed to have agreed to accept such attornment, provided, however, that Purchaser shall not be (a) liable for the failure (other than with respect to a default of a continuing nature) of any prior landlord (any such prior landlord, including Landlord and any successor landlord, being hereinafter referred to as a "**Prior Landlord**") to perform any of its obligations under the Lease which have accrued prior to the date on which Purchaser shall become the owner of the Property, provided that the foregoing shall not limit Purchaser's obligations under the Lease to correct any conditions of a continuing nature that (i) existed as of the date Purchaser shall become the owner of the Property and (ii) violate Purchaser's obligations as landlord under the Lease; provided further, however, that Purchaser shall have received written notice of such omissions, conditions or violations and has had a reasonable opportunity to cure the same, all pursuant to the terms and conditions of the Lease, (b) subject to any offsets, defenses, abatements or counterclaims which shall have accrued in favor of Tenant against any Prior Landlord prior to the date upon which Purchaser shall become the owner of the Property, except for those that are specifically provided for in the Lease, (c) liable for the return of rental security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by Purchaser, (d) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser or (ii) such prepayment shall have been expressly approved of by Purchaser, (e) bound by any agreement terminating or amending or modifying the rent, term, commencement date or other material term of the Lease, or any voluntary surrender of the premises demised under the Lease, made without Lender's or Purchaser's prior written consent prior to the time Purchaser succeeded to Landlord's interest (provided, however, Purchaser's consent is not required for a termination of the Lease exercised pursuant to the original terms of the Lease) or (f) bound by any assignment of the Lease or sublease of the Property, or any portion thereof, made prior to the time Purchaser succeeded to Landlord's interest other than if pursuant to the provisions of the Lease. In the event that any liability of Purchaser does arise pursuant to this Agreement, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such interest. Alternatively, upon the written request of Lender or its successors or assigns, Tenant shall enter into a new lease of the Premises with Lender or such successor or assign for the then remaining term of the Lease, upon the same terms and conditions as contained in the Lease (including without limitation any renewal options), except as otherwise specifically provided in this Agreement.

4. Notice to Tenant. After notice is given to Tenant by Lender that the Landlord is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.

5. Intentionally Omitted.

6. Notice to Lender and Right to Cure. Tenant shall notify Lender of any default by Landlord under the Lease if the default is of such a nature as to give Tenant a right to terminate the Lease, reduce the rent or to credit or offset any amounts against future rents, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of an abatement shall be effective unless Lender shall have received notice of default giving rise to such cancellation or abatement and (i) in the case of any such default that can be cured by the payment of money, until thirty (30) days shall have elapsed following the giving of such notice or (ii) in the case of any other such default, until a reasonable period for remedying such default shall have elapsed following the giving of such notice, provided Lender, with reasonable diligence, shall have commenced and continued to remedy such default or cause the same to be remedied. Notwithstanding the foregoing, (i) Lender shall have no obligation to cure any such default and (ii) in the event that any aforesaid default cannot, by its nature, be cured by Lender prior to Lender’s gaining possession of Landlord’s interest in the Property, the aforesaid “reasonable period for remedying such default” shall be deemed to include such time as is required for Lender to gain possession of Tenant’s interest in the Property.

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for one (1) day overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: [_____]

If to Lender: _____
_____
_____
_____
_____
_____
Attention: _____
Facsimile No.: _____

With a copy to: _____
_____
_____
_____
_____
_____

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 7, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.

9. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

10. Miscellaneous. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

11. Joint and Several Liability. If there is more than one Tenant under the Lease, the obligations and liabilities of each hereunder shall be joint and several.

12. Definitions. The term “Lender” as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term “Landlord” as used herein shall mean and include the present landlord under the Lease and such landlord’s predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term “Property” as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Security Instrument.

13. Limitations on Purchaser’s Liability. In no event shall the Purchaser, nor any heir, legal representative, successor, or assignee of the Purchaser have any personal liability for the obligations of Landlord under the Lease and should the Purchaser succeed to the interests of the Landlord under the Lease, Tenant shall look only to the estate and property of any such Purchaser in the Property for the satisfaction of Tenant’s remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by any Purchaser as landlord under the Lease, and no other property or assets of any Purchaser shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant’s remedies under or with respect to the Lease; provided, however, that the Tenant may exercise any other right or remedy provided thereby or by law in the event of any failure by Landlord to perform any such material obligation. Notwithstanding the foregoing, Tenant may offset against rent due under the Lease the amount of any judgment obtained against any Purchaser.

14. Estoppel Certificate. Tenant, shall, from time to time, within [_____] Business Days after request by Lender, execute, acknowledge and deliver to Lender a statement by Tenant certifying (a) that the Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) the amounts of fixed rent, additional rent, or other sums, if any, which are payable in respect of the Lease and the commencement date and expiration date of the Lease, (c) the dates to which the fixed rent, additional rent, and other sums which are payable in respect to the Lease have been paid, (d) whether or not Tenant is entitled to any then presently accrued credits or offsets against rent, and, if so, the reasons therefor and the amount thereof, (e) that to Tenant’s actual knowledge (without investigation) it is not in default in the performance of any of its obligations under the Lease and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute such a default, (f) whether or not, to the actual knowledge (without investigation) of the person certifying on behalf of Tenant, Landlord is in default in the performance of any of its obligations under the Lease, and, if so, specifying the same, (g) whether or not, to the actual knowledge (without investigation) of such person, any event has occurred which with the giving of such notice or passage of time, or both would constitute such a default, and, if so, specifying each such event, and (h) whether or not, to the actual knowledge (without investigation) of such person, Tenant has any then presently accrued claims, defenses or counterclaims against Landlord under the Lease, and, if so, specifying the same, it being intended that any such statement delivered pursuant hereto shall be deemed a certification by Tenant to be relied upon by Lender and by others with whom Lender may be dealing. Tenant also shall include in any such statement such other information concerning the status of the Lease as Lender may reasonably request.

IN WITNESS WHEREOF, Lender, Tenant and Landlord have duly executed this Agreement as of the date first above written.

TENANT:

[_____]

By: _____
Name:
Title:

LANDLORD:

ABW HOLDINGS LLC,
a Delaware limited liability company

By: _____
Name:
Title:

LENDER:

_____

_____

By: _____
Name:
Title:

EXHIBIT A

[Attach Legal Description of Property]

Exhibit 10.33

LAND COURT SYSTEM | REGULAR SYSTEM

After Recordation, Return By Mail To:

Alston & Bird LLP
90 Park Avenue
New York, New York 10016
Attention: Gerard Keegan, Esq.

TITLE OF DOCUMENT:

FIRST AMENDMENT TO MORTGAGE AND OTHER LOAN DOCUMENTS

PARTIES TO DOCUMENT:

BORROWER: **ABW HOLDINGS LLC**
2375 Kuhio Avenue
Honolulu, Hawaii 96815

GUARANTORS: **AMERICAN ASSETS, INC.**
11455 El Camino Real, Suite 200
San Diego, California 92130

OUTRIGGER ENTERPRISES, INC.
2375 Kuhio Avenue
Honolulu, Hawaii 96815

LENDER: **COLUMN FINANCIAL, INC.**
11 Madison Avenue
New York, New York 10010

TAX MAP KEY(S): 1-2-6-002-027-0004, 1-2-6-002-027-0005, 1-2-6-002-027-0006, 1-2-6-002-027-0007, 1-2-6-002-027-0008, 1-2-6-002-027-0009, 1-2-6-002-027-0003 and 1-2-6-003-060-0001 (This document consists of ____ pages.)

TRANSFER CERTIFICATE OF TITLE NUMBER: 845,798

FIRST AMENDMENT TO MORTGAGE AND OTHER LOAN DOCUMENTS

THIS FIRST AMENDMENT TO MORTGAGE AND OTHER LOAN DOCUMENTS (this "**Agreement**") is made as of this 31 day of October, 2007, by and among **ABW HOLDINGS LLC,** a Delaware limited liability company (**"Borrower"**), having an address at 2375 Kuhio Avenue, Honolulu, Hawaii 96815 (and with a copy of all notices to: c/o American Assets, Inc., 11455 El Camino Real, Suite 200, San Diego, California 92130, Attention: John Chamberlain and Robert Barton), **AMERICAN ASSETS**, **INC.**, a California corporation ("**AA**"), having an address at 11455 El Camino Real, Suite 200, San Diego, California 92130, Attention: John Chamberlain and Robert Barton, **OUTRIGGER ENTERPRISES, INC.**, a Hawaii corporation ("**Outrigger**"; AA and Outrigger are individually or collectively (as the context requires) referred to herein as "**Guarantor**"), having an address at 2375 Kuhio Avenue, Honolulu, Hawaii 96815 and **COLUMN FINANCIAL, INC.**, a Delaware corporation (together with its successors and assigns, **"Lender**"), having an address at 11 Madison Avenue, New York, New York 10010.

RECITALS:

A. As of February 15, 2007, Lender made a first mortgage loan to Borrower in the original aggregate principal sum of $150,000,000.00 (the "**Loan**"), which such Loan is (i) secured by, among other things, that certain Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing given by Borrower to Lender dated as of February 15, 2007 and recorded on February 15, 2007 in (A) the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 3561426 noted on Transfer Certificate of Title No. 845,798 and (B) the Bureau of Conveyances of the State of Hawaii as Regular System Document No. 2007-029365 (together with any and all extensions, renewals, substitutions, replacements, amendments, modifications and/or restatements thereof, collectively, the "**Security Instrument**") encumbering the Property (as defined in the Security Instrument) and (ii) evidenced by the Note (as defined in the Security Instrument) (the Note, the Security Instrument, this Agreement and any and all documents or instruments now or hereafter executed in connection with the Loan and any amendments, restatement and/or modifications to any thereof are collectively herein referred to as the "**Loan Documents**").

B. As of the date hereof, Borrower and Guarantor (collectively, the **"Borrower Parties"**) and Lender desire to, in accordance with the terms hereof, amend certain provisions of the Security Instrument and the other Loan Documents as more particularly specified herein.

AGREEMENT:

For the mutual premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions. All capitalized terms not defined herein shall have the meaning set forth in the Security Instrument. The following capitalized terms have the following meanings (whether used in this Agreement or in the other Loan Documents):

(a) **"Bankruptcy Code"** shall mean Title 11 of the United States Code entitled "Bankruptcy", as amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors' rights.

(b) **"Coconut Willy's"** shall mean DKJ Development Corporation II, d/b/a Coconut Willy's Bar & Grill.

(c) **"Previously Owned Property"** shall mean those portions of the Property which were owned by Borrower immediately prior to giving effect to this Agreement which are no longer owned by Borrower as of the date of this Agreement and are more particularly described on Exhibit B hereof.

(d) **"Related Common Elements"** shall mean, with respect to any condominium unit and/or apartment, all limited common elements (or similar common elements) and all general common elements (or similar common elements) related to the use and/or operation of the applicable unit and/or apartment.

2. Prepayment of Loan; Termination of Post Closing Agreement; Return of Letter of Credit; Return of Prepayment Premium Holdback.

(a) As of the date hereof, Borrower has prepaid a portion of the Loan (the **"Prepaid Amount"**) in accordance with the terms of Section 6(a)(ii) of that certain Post Closing Agreement between Borrower and Lender dated as of February 15, 2007 (the **"Post Closing Agreement"**) such that, as of the date hereof, the outstanding principal amount of the Loan is $130,310,000 (the **"New Principal Amount"**). For all purposes under all of the Loan Documents, references to the "original principal amount" of the Loan, "original aggregate principal amount" of the Loan and similar references shall be deemed to refer to the New Principal Amount. The parties hereto acknowledge and agree that (i) the Post Closing Agreement is, as of the date hereof, null and void and of no further force or effect (other than the provisions therein relating to the Prepayment Premium Holdback (as defined in the Post Closing Agreement) (such provisions, the **"Surviving Provisions"**) which shall survive and be governed by subsection 2(b) below), (ii) Lender has returned the Required LC (as defined in the Post Closing Agreement) in full satisfaction of its obligations under the Post Closing Agreement, (iii) Borrower has satisfied the conditions set forth in Section 6(a)(ii) of the Post Closing Agreement regarding the 2181 Portion (other than with respect to the payment of the Prepayment Premium (as defined in the Post Closing Agreement) which shall be governed by subsection 2(b) below) and (iv) neither Borrower nor Lender has any further liabilities or obligations under the Post Closing Agreement (other than with respect to the Surviving Provisions and as set forth in subsection 2(b) below).

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the following provisions shall govern with respect to Borrower's payment of

the Prepayment Premium and Lender's holding and disbursement of the Prepayment Premium Holdback. Borrower hereby acknowledges and agrees that, as of the date hereof, Borrower has received a disbursement of a portion of the Prepayment Premium Holdback as more particularly set forth on a certain settlement statement between Borrower and Lender entered into in connection herewith. As used herein, references to the "Prepayment Premium Holdback" shall be deemed to refer to the balance of funds in the Prepayment Premium Holdback remaining after the aforesaid disbursement. Following Lender's application of the Prepaid Amount to the Debt, Lender shall notify Borrower as to the amount of the Prepayment Premium due Lender from Borrower in connection therewith. Provided no Event of Default has occurred and is continuing, Lender shall apply the Prepayment Premium Holdback to the payment of the Prepayment Premium. To the extent that the Prepayment Premium Holdback is insufficient to pay the Prepayment Premium in full, Borrower will deposit any shortfall with Lender within one (1) Business Day of demand by Lender. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the aforesaid obligation shall be a recourse obligation of the Borrower Parties to the extent Borrower fails to make the aforesaid payment within the aforesaid timeframe and such failure shall, at Lender's option, constitute an Event of Default. To the extent there exists any funds remaining in the Prepayment Premium Holdback after payment in full of the Prepayment Premium, Lender shall, within two (2) Business Days after such payment in full, disburse such excess to or as directed by Borrower in writing. After the payment in full of the Prepayment Premium and, to the extent applicable, disbursement to Borrower of the aforesaid excess, Borrower's and Lender's obligations with respect to the Prepayment Premium and the Prepayment Premium Holdback shall be deemed satisfied in full.

3. Amendment to Tax Map Keys. The Tax Map Keys listed on the cover pages of the Security Instrument and that certain Assignment of Leases and Rents given by Borrower to Lender in connection with the Loan dated as of February 15, 2007 and recorded on February 15, 2007 in the Bureau of Conveyances of the State of Hawaii as Regular System Document No. 2007-029366 (the **"ALR"**) are hereby deleted and replaced with the following: "1-2-6-002-027-0004, 1-2-6-002-027-0005, 1-2-6-002-027-0006, 1-2-6-002-027-0007, 1-2-6-002-027-0008, 1-2-6-002-027-0009, 1-2-6-002-027-0003 and 1-2-6-003-060-0001".

4. Amendment to Legal Description. The legal description of the Property as set forth in the Security Instrument, the ALR and certain of the other Loan Documents is hereby deleted and replaced with the legal description set forth on Exhibit A attached hereto.

5. Specific Loan Document Amendments.

(a) The Note is hereby amended as follows:

(i) The words "February, 2017" contained in Section 1(b) of the Note are hereby deleted and replaced with the words "June, 2017".

(ii) The words "March 1, 2017" contained in Section 1(c) of the Note are hereby deleted and replaced with the words "July 1, 2017".

(iii) Subsection (ii) of the definition of "REMIC Prohibition Period" contained in Section 5(b)(iv) of the Note is hereby deleted and replaced with the following: "(ii) the Monthly Payment Date occurring in December, 2010.".

(iv) Subsections 14(a)(6)(x), (xi) and (xii) of the Note are hereby deleted.

(v) The following is hereby added to the as a new Subsection 14(a)(6)(x) of the Note: "any violation of the covenants contained in Section 19(k) and/or (p) of the Pledge Agreement; and/or".

(vi) The following is hereby added as a new Subsection 14(a)(6)(xi) of the Note: "(ix) any violation of Section 3.12 of the Security Instrument to the extent the same relates to the initial construction and/or renovation of the Property conducted prior to the making of the Loan and/or in the one year period following the date hereof."

(b) The Security Instrument is hereby amended as follows:

(i) The phrase "(the **"227 Condominium"**)" contained in Section 1.1(d)(ii) of the Security Instrument is hereby deleted and replaced with the following: "(the **"227 Condominium"**; the BW Condominium and the 227 Condominium are collectively herein referred to as the **"Condominium"**)".

(ii) The phrase "(the **"227 Condominium Estoppel"**)" contained in Section 1.1(d)(ii) of the Security Instrument is hereby deleted and replaced with the following: "(the **"227 Condominium Estoppel"**; the BW Condominium Estoppel and the 227 Condominium Estoppel are collectively herein referred to as the **"Condominium Estoppel"**)".

(iii) The following is hereby added immediately following the phrase **"227 Condominium Documents"** contained in Section 1.1(d)(ii) of the Security Instrument: "; the BW Condominium Documents and the 227 Condominium Documents are collectively herein referred to as the **"Condominium Documents"**".

(iv) The following is hereby added immediately following the phrase **"227 Common Elements"** contained in Section 1.1(d)(ii) of the Security Instrument: "; the BW Common Elements and the 227 Common Elements are collectively herein referred to as the **"Common Elements"**".

(v) The text of Section 1.1(d)(iii) of the Security Instrument is hereby deleted and replaced with "Intentionally Omitted".

(vi) All references and provisions expressly related to the "Master Lease", "Master Lease Rents" and "Permitted ML Termination" contained in the Security Instrument are each hereby deleted.

(vii) The text of Sections 1.1(h), (i) and (j) of the Security Instrument are each hereby deleted and replaced with "Intentionally Omitted".

(viii) All references and provisions expressly related to the "FHB Lease", the "FHB Sublease", the "FHB Sublease Estoppel" and the "Leasehold Estate" contained in the Security Instrument are each hereby deleted.

(ix) Section 3.3 of the Security Instrument is hereby amended as follows:

(I) The following is hereby added to the end of Section 3.3(a)(i)(C): "(except with respect to each of the deductibles for flood, earthquake and windstorm insurance coverage, which such deductibles shall not exceed 5% of total insured value with respect to each such coverages)";

(II) The following is hereby added to the end of Section 3.3(a)(i)(D): "(or such lesser coverages as may be required by Lender in writing)";

(III) Section 3.3(a)(i)(y) is hereby amended by deleting the phrase "or such lesser amount as Lender shall require" therein. Section 3.3(a)(i)(y)(B) is hereby amended by adding the following to the end thereof: "(or, in each case, such lesser amounts as may be required by Lender in writing)"; and

(IV) Section 3.3(b)(vii)(II) is hereby amended by deleting the phrase "ten (10)" therein and replacing it with the phrase "thirty (30)".

(x) The last three sentences of Section 3.5 of the Security Instrument are hereby deleted.

(xi) The last three sentences of Section 3.7(d) of the Security Instrument are hereby deleted.

(xii) The following is hereby added as a separate paragraph at the end of Section 4.3(a) of the Security Instrument: "Notwithstanding the foregoing, Borrower shall not be deemed to be in violation of the foregoing representations solely by virtue of Borrower's ownership and operation of the Previously Owned Property prior to the date hereof. Borrower further represents and warrants that the Previously Owned Property has, as of the date hereof, been conveyed to a person or entity other than Borrower and Borrower has no further liabilities or obligations (contingent or otherwise) with respect to the Previously Owned Property."

(xiii) With respect to Section 5.8 of the Security Instrument, (I) the phrase "Other than with respect to that portion of the Property demised pursuant to the FHB Sublease (the **"FHB Space"**)," is hereby deleted, (II) the word "the" immediately prior to the word "Property" in the second line thereof is hereby deleted and replaced with the word "The" and (III) the last sentence thereof is hereby deleted.

(xiv) Section 5.23 of the Security Instrument is hereby deleted and replaced with the following: "Section 5.23 INTENTIONALLY OMITTED.".

(xv) Section 10.1(q) of the Security Instrument is hereby deleted and replaced with the following: “(q) Intentionally Omitted;”.

(xvi) References in Article 12 and Section 13.4 of the Security Instrument to “Property” shall be deemed to include, without limitation, the Previously Owned Property.

(xvii) Section 12.2 of the Security Instrument is hereby amended as follows: (I) the word “and” immediately prior to subsection (j) thereof is hereby deleted and (II) the following is hereby added immediately prior to the end of subsection (j): “; and (k) Borrower shall, at Borrower’s sole cost and expense, conduct tightness tests on the UST (hereafter defined) on a semi-annual basis (with the first such test to be conducted no later than the second anniversary of the installation date of the UST) and take prompt remedial action to the extent the same is required on the basis of any such tests. As used herein, the term **“UST”** shall mean that certain fiberglass 2,000 gallon diesel underground storage tank located on the west side of the loading dock at the Property”.

(xviii) With respect to Section 23.1(a) of the Security Instrument, (I) the word “and” is hereby inserted at the end of subsection (i) thereof, (II) the word “and” at then end of subsection (ii) thereof is hereby deleted and (III) subsection (iii) thereof is hereby deleted.

(xix) Article 24 of the Security Instrument is hereby deleted.

(xx) Any brackets contained in the body of the recorded versions of the Security Instrument are hereby deleted.

(xxi) The term “Applicable Law”, as used in the Security Instrument and the other Loan Documents, shall have the same meaning as the defined term “Applicable Laws”.

(c) The ALR is hereby amended such that any brackets contained in the body of the recorded versions thereof are hereby deleted.

(d) The Indemnity Agreement is hereby amended as follows:

(i) Subsections 1(viii), (ix) and (x) in the Indemnity Agreement are hereby deleted.

(ii) The following is added to the Indemnity Agreement immediately following Subsection 1(vii): “(viii) any violation of the covenants contained in Section 19(k) and/or (p) of the Pledge Agreement; and/or (ix) any violation of Section 3.12 of the Security Instrument to the extent the same relates to the initial construction and/or renovation of the Property conducted prior to the making of the Loan and/or in the one year period following the date hereof.”.

(iii) The following is hereby added at the end of the last sentence of Section 5 of the Indemnity Agreement: "(other than any matter relating to Subsection 1(viii) hereof)".

(iv) The following is hereby added after the parenthetical contained in the third line of Section 7(c) of the Indemnity Agreement: "and/or Subsection 1(viii) hereof".

(e) The Pledge Agreement is hereby amended as follows:

(i) References in the Pledge Agreement to "18.55%" are hereby deleted and replaced with the following: "16.98%".

(ii) The following is added to the end of the definition of "Project" contained in Section 1 of the Pledge Agreement: ", including, without limitation, the condominium units and/or apartments in which the foregoing are situated and their Related Common Elements".

(f) The Reserve Agreement is hereby amended as follows:

(i) (I) the text of Section 1.1 thereof is hereby deleted and replaced with "Intentionally Omitted" and (II) all references and provisions expressly relating to the "Interest Reserve", "Cash Flow Shortfall", "Shortfall Certification" and "Interest Reserve Funds" are each hereby deleted.

(ii) (I) the text of Section 1.2 thereof is hereby deleted and replaced with "Intentionally Omitted" and (II) all references and provisions expressly relating to the "Ground Rent Reserve", "Ground Rent", "Rent Payment Evidence", "Ground Rent Reserve Funds" are each hereby deleted.

(iii) As of the date hereof, Borrower has made an additional deposit to the Leasing Reserve in the amount of $202,273.00 (the **"Additional Deposit"**).

(iv) The Additional Deposit shall be deemed part of the Initial Leasing Reserve (as defined in the Reserve Agreement).

(v) The Leasing Reserve Schedule (as defined in the Reserve Agreement) is hereby deleted and replaced with the "New Leasing Reserve Schedule" as defined in and attached to the Borrower's Certification (defined below) and all references in the Reserve Agreement and/or in the other Loan Documents to the "Leasing Reserve Schedule" shall be deemed to refer to the New Leasing Reserve Schedule.

(vi) Notwithstanding anything to the contrary contained in the Reserve Agreement and/or any other Loan Documents, with respect to the portions of the Initial Leasing Reserve listed on the Leasing Reserve Schedule under the heading "Tenant Settlement Amounts" relating to Coconut Willy's, disbursement of said funds shall be subject to the following conditions (which are additional conditions to those set forth in the Reserve Agreement, which if

applicable, must continue to be satisfied): Borrower must additionally provide Lender with evidence reasonably acceptable to Lender that such amounts have been paid in full to the applicable tenant (which such evidence may include, at Lender's option, an estoppel certificate duly executed by the applicable tenant attesting to, among other things, the foregoing).

(g) That certain Assignment and Subordination of Management Agreement executed by and among Borrower, Lender and Manager in connection with the Loan and dated as of February 15, 2007 is hereby amended such that Exhibit A attached thereto is hereby deleted and replaced with the "New Management Agreement" as defined in and attached to that certain Borrower's Certification delivered by Borrower to Lender in connection herewith and dated on or about the date hereof (the **"Borrower's Certification"**).

(h) That certain Completion Reserve and Security Agreement by and among Borrower and Lender and dated as of February 15, 2007 is hereby terminated and is null and void and of no further force or effect.

6. Securitization Cooperation. To the extent requested by any Rating Agency, Investor or potential Investors, the Borrower Parties shall, at their sole cost and expense, promptly upon Lender's request (i) amend the organizational documents of WBW in a manner acceptable to Lender to incorporate the covenants made in the Pledge Agreement, (ii) deliver such updates to the opinion letters delivered at the closing of the Loan as may be requested by Lender and (iii) deliver a new Hawaii opinion letter acceptable to Lender from counsel acceptable to Lender.

7. Omnibus Amendment to Loan Documents. Notwithstanding anything to the contrary contained in any of the Loan Documents, all references in any Loan Document to any other Loan Document shall be deemed to refer to such Loan Document as amended hereby (to the extent applicable).

8. Representations, Warranties and Covenants. Other than as specifically disclosed to Lender in writing (including, without limitation, through email correspondence), the Borrower Parties hereby affirm and remake each of the representations, warranties and covenants contained in the Loan Documents (as amended hereby) as of the date hereof (including, without limitation, those related to ERISA). The Borrower Parties hereby make the following representations, warranties and covenants:

(a) No Event of Default or event which, with the passage of time, the giving of notice, or both, has occurred.

(b) Except as disclosed to Lender in writing, none of the Leases have been amended, cancelled, terminated or otherwise materially modified.

(c) The Property and the Project (as defined in the Pledge Agreement) comply in all material respects with Applicable Laws (including, without limitation, applicable zoning and building codes). The Borrower Parties shall cause the Property and the Project to comply with Applicable Laws (including, without limitation, by causing each tenant of the Property to obtain all permits and certificates of occupancy when and as required under Applicable Laws).

(d) Upon the release by Lender of the Required LC (as defined in the Post Closing Agreement) and that certain Cancellation of Letter of Credit related thereto, in each case, to First American Title Insurance Company (**"Escrow Agent"**) in accordance with Lender's escrow arrangement with Escrow Agent (the **"LC Release"**), Lender's obligations with respect to the Required LC shall be deemed completed and fulfilled and Lender shall have no further liability to the Borrower Parties or any other person with respect to the Required LC. Further, the Borrower Parties hereby acknowledge and agree that the Borrower Parties shall, at their sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to the Required LC following the occurrence of the LC Release.

(e) The Borrower Parties hereby represent and warrant that the construction and development of the Project have been completed and paid for in full in a lien free manner. Any breach of the foregoing representation shall be a recourse obligation of the Borrower Parties to the extent of any Losses incurred by Lender related to such breach. The Note and the Indemnity Agreement are hereby deemed amended hereby to incorporate such new recourse obligation.

9. Recordation. The Borrower Parties shall promptly cause this Agreement to be filed, registered, or recorded in such manner and in such places as may be required by law in order to publish notice of and fully to protect the lien of the Security Instrument and the other Loan Documents upon, and the interest of Lender in, the Property and the Borrower Parties hereby agree to pay all fees, charges, taxes, and costs associated with such recordation.

10. No Offsets, Counterclaims / Due Authority. The Borrower Parties represent, warrant, and covenant that there are no offsets, counterclaims or defenses against the Debt or the Loan Documents and the undersigned representatives of the Borrower Parties have full power, authority, and legal right to execute this Agreement and to keep and observe all of the terms of this Agreement on the Borrower Parties' part to be observed or performed.

11. Conflicts. Except as expressly modified pursuant to this Agreement, all of the terms, covenants, and provisions of the Security Instrument and the other Loan Documents shall continue in full force and effect. In the event of any conflict or ambiguity between the terms, covenants, and provisions of this Agreement and those of the other Loan Documents, the terms, covenants, and provisions of this Agreement shall control.

12. No Waiver or Modification. The parties hereto agree that, except as specifically set forth herein, this Agreement does not amend, waive, satisfy, terminate, diminish or otherwise modify any of the terms, conditions, provisions and/or agreements contained in the Loan Documents, and Borrower hereby acknowledges and agrees that said Loan Documents are in full force and effect as amended hereby.

13. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State of California and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the state of California and

applicable laws of the United States of America, except that at all times the provisions for the creation, perfection, and enforcement of the lien and security interest created pursuant hereto and pursuant to the other loan documents shall be governed by and construed according to the law of the State in which the Property is located, it being understood that, to the fullest extent permitted by the law of such state, the law of the State of California shall govern the construction, validity and enforceability of all loan documents and all of the obligations arising thereunder.

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

15. Liability; Successors and Assigns. If any party hereto consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns forever.

16. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

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

18. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

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

20. Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto and supercedes all prior agreements and understandings among the parties hereto relating to the subject matter hereof. Accordingly, this Agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties hereto. There are no unwritten or oral agreements between the parties hereto.

[NO FURTHER TEXT ON THIS PAGE]

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

BORROWER:

ABW HOLDINGS LLC, a Delaware limited liability company

By: /s/ Melvyn M. Wilinsky
Name: Melvyn M. Wilinsky
Title: Executive Vice President

LENDER:

COLUMN FINANCIAL, INC., a Delaware corporation

By: /s/ Heather C. Jones
Name: Heather C. Jones
Title: Vice President

GUARANTOR:

AMERICAN ASSETS, INC., a California corporation

By: /s/ Robert F. Barton
Name: Robert F. Barton
Title: CFO

OUTRIGGER ENTERPRISES, INC., a Hawaii corporation

By: /s/ Melvyn M. Wilinsky
Name: Melvyn M. Wilinsky
Title: Executive Vice President

EXHIBIT A

LEGAL DESCRIPTION

See attached.

EXHIBIT B

DESCRIPTION OF PREVIOUSLY OWNED PROPERTY

See attached.

Exhibit 10.34

PROMISSORY NOTE

$150,000,000.00 San Diego, California
February 15, 2007

FOR VALUE RECEIVED, ABW HOLDINGS LLC, a Delaware limited liability company (**"Borrower"**), as maker, having an address at 2375 Kuhio Avenue, Honolulu, Hawaii 96815 (and with a copy of all notices to: c/o American Assets, Inc., 11455 El Camino Real, Suite 200, San Diego, California 92130, Attention: Robert Barton and John Chamberlain) hereby unconditionally promises to pay to the order of **COLUMN FINANCIAL, INC.**, a Delaware corporation, having an address at 11 Madison Avenue, New York, New York 10010 (together with its successors and assigns, **"Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the aggregate principal sum of $**150,000,000.00**, in lawful money of the United States of America, with interest thereon to be computed from the date of this Note at the Applicable Interest Rate (defined below), and to be paid in installments as follows:

ARTICLE 1: PAYMENT TERMS

(a) A payment on the date hereof on account of all interest that will accrue on the principal amount of the Loan from and after the date hereof through and including the last day of February, 2007;

(b) A payment (the "**Monthly Payment**") equal to the amount of interest which has accrued during the preceding Interest Accrual Period (defined below) computed at the Applicable Interest Rate (defined below) on the first (1st) day of April, 2007 and on the first (1st) day of each calendar month thereafter (each such date to be hereinafter referred to as a "**Monthly Payment Date**") up to and including the first (1st) day of February, 2017, with each Monthly Payment to be applied to the payment of interest which has accrued during the preceding Interest Accrual Period;

(c) The principal sum of the Loan and all interest thereon shall be due and payable on March 1, 2017, (the "**Maturity Date**").

(d) Interest on the principal sum of this Note shall be calculated by multiplying the actual number of days elapsed in the period for which interest is being calculated by a daily rate based on a 360-day year.

(e) As used herein, the term **"Interest Accrual Period"** shall mean (i) for the first such period, the period beginning on the date hereof and ending on (but including) the last day of February, 2007 and (ii) with respect to each subsequent period beginning with the period immediately following the period described in subsection (i) above, the period beginning on the first day of each calendar month during the term hereof and ending on (but including) the last day of such calendar month.

ARTICLE 2: INTEREST

The term "**Applicable Interest Rate**" for the purposes hereof and each other Loan Document shall mean an interest rate equal to 5.387% per annum.

ARTICLE 3: DEFAULT AND ACCELERATION

(a) The whole of the principal sum of this Note, (b) interest, default interest, late charges and other sums, as provided in this Note, the Security Instrument or the other Loan Documents (defined below), (c) all other monies agreed or provided to be paid by Borrower in this Note, the Security Instrument or the other Loan Documents, (d) all sums advanced pursuant to the provisions of the Security Instrument to protect and preserve the Property (defined below) and the lien and the security interest created thereby, and (e) all reasonable sums advanced and costs and expenses incurred by Lender pursuant to the provisions of this Note, the Security Instrument or the other Loan Documents in connection with the Debt (defined below) or any part thereof, any renewal, extension or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender (all the sums referred to in (a) through (e) above shall collectively be referred to as the "**Debt**") shall without notice become immediately due and payable at the option of Lender if (i) any Monthly Payment is not paid within five (5) days of the date when due, (ii) any other portion of the Debt is not paid within five (5) days of the date when due, (iii) the entire Debt is not paid on or before the Maturity Date or (iv) Borrower commits any other default, and fails to cure same prior to the expiration of any applicable notice and grace periods, herein or under the terms of the Security Instrument or any of the other Loan Documents (collectively, an "**Event of Default**").

ARTICLE 4: DEFAULT INTEREST

Borrower does hereby agree that upon the occurrence of an Event of Default, Lender shall be entitled to receive and Borrower shall pay interest on the entire unpaid principal sum at a rate equal to the lesser of (a) four percent (4%) plus the Applicable Interest Rate and (b) the maximum interest rate which Borrower may by law pay (the "**Default Rate**"). The Default Rate shall be computed from the occurrence of the Event of Default until the earlier of the date upon which the Event of Default is cured or waived or the date upon which the Debt is paid in full. Interest calculated at the Default Rate shall be added to the Debt, and shall be deemed secured by the Security Instrument. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default. Notwithstanding the foregoing, in the event Borrower becomes liable for interest at the Default Rate under this Article 4 (such interest, the "**Default Interest**") due to the occurrence of a Qualifying Non-Monetary Default (defined below), Borrower shall only be liable for such Default Interest for a period not to exceed six (6) months unless (i) Lender actively pursues a foreclosure action (or non-judicial foreclosure) as a result of such Qualifying Non-Monetary Default (in which case, Borrower shall be liable for Default Interest for a period equal to (I) the duration of Lender's pursuit of the remedies described above plus (II) the first six (6) months following the occurrence of the applicable Qualifying Non-Monetary Default (less any portion of such six (6) month period occurring after Lender's commencement of its pursuit of the remedies

described above)) or (ii) a monetary Event of Default shall at any time exist (in which case, Borrower shall be liable for Default Interest from the date of the occurrence of the applicable Qualifying Non-Monetary Default). As used herein and in the other Loan Documents, a "**Qualifying Non-Monetary Default**" shall mean a non-monetary Event of Default which (a) cannot reasonably be cured by Borrower and (b) in Lender's good faith, reasonable determination, (i) was not committed intentionally and knowingly by Borrower with the intention of violating the terms and conditions of the Loan Documents and (ii) does not have a Material Adverse Effect (as defined in the Security Instrument).

ARTICLE 5: PREPAYMENT; DEFEASANCE

Except as otherwise expressly permitted by this Article 5 or in the Security Instrument, no voluntary prepayments, whether in whole or in part, of the Loan or any other amount at any time due and owing under this Note can be made by Borrower or any other Person without the express written consent of Lender.

(a) Lockout Period. Borrower has no right to make, and Lender shall have no obligation to accept, any voluntary prepayment, whether in whole or in part, of the Loan during the Lockout Period (defined below). Notwithstanding the foregoing, if (i) Lender, in its sole and absolute discretion, accepts a full or partial voluntary prepayment during the Lockout Period or (ii) there is an involuntary prepayment during the Lockout Period, then, in any such case, Borrower shall, in addition to any portion of the Loan prepaid (together with all interest accrued and unpaid thereon), pay to Lender a prepayment premium in an amount calculated in accordance with subsection (c) below. The term "**Lockout Period**" shall mean the period commencing on the date hereof and ending on the date occurring immediately prior to the date which is four (4) calendar months prior to the Maturity Date. The term **"Open Prepayment Date"** shall mean the first Monthly Payment Date occurring after the expiration of the Lockout Period.

(b) Defeasance.

(i) Notwithstanding any provisions of this Article 5 to the contrary, including, without limitation, subsection (a) of this Article 5, at any time other than during a REMIC Prohibition Period (defined below), Borrower may cause the release of the Property from the lien of the Security Instrument and the other Loan Documents and, subject to Borrower's satisfaction of clause (iii) under this subsection (b), a release of Borrower and Indemnitor (as defined in that certain Indemnity Agreement dated as of the date hereof among Borrower, Guarantor (as defined in the Security Instrument) and Lender (the **"Indemnity Agreement"**)) from any further liability or obligation under this Note, the Security Instrument or the other Loan Documents (other than a liability or obligation in connection with a provision of this Note, the Security Instrument or other Loan Document which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument), upon the satisfaction of the following conditions:

(A) no Event of Default shall exist under any of the Loan Documents;

(B) not less than sixty (60) (or such shorter period as may be agreed to by Lender in its reasonable discretion) but not more than ninety (90) days prior written notice shall be given to Lender specifying a date on which the Defeasance Collateral (as hereinafter defined) is to be delivered (the "**Release Date**"), such date being on a Monthly Payment Date; provided, however, that Borrower shall have the right (i) to cancel such notice by providing Lender with notice of cancellation ten (10) days prior to the scheduled Release Date, or (ii) to extend the scheduled Release Date until the next Monthly Payment Date; provided that in each case, Borrower shall pay all of Lender's costs and expenses incurred as a result of such cancellation or extension;

(C) all accrued and unpaid interest and all other sums due under this Note, the Security Instrument and under the other Loan Documents up to the Release Date, including, without limitation, all reasonable fees, costs and expenses incurred by Lender and its agents in connection with such release (including, without limitation, legal fees and expenses for the review and preparation of the Defeasance Security Agreement (as hereinafter defined) and of the other materials described in subsection (b)(i)(D) below and any related documentation, and any servicing fees, Rating Agency (as defined in the Security Instrument) fees or other reasonable costs related to such release), shall be paid in full on or prior to the Release Date;

(D) Borrower shall deliver to Lender on or prior to the Release Date:

(1) a pledge and security agreement, in form and substance satisfactory to a prudent lender, creating a first priority security interest in favor of Lender in the Defeasance Collateral (the "**Defeasance Security Agreement**"), which shall provide, among other things, that any excess amounts received by Lender from the Defeasance Collateral over the amounts payable by Borrower on a given Monthly Payment Date (or upon the Open Prepayment Date (assuming that the Debt is prepaid in whole on the Open Prepayment Date in accordance with the applicable terms and conditions hereof)), which excess amounts are not required to cover all or any portion of amounts payable on, as applicable, a future Monthly Payment Date or upon the Open Prepayment Date (assuming that the Debt is prepaid in whole on the Open Prepayment Date in accordance with the applicable terms and conditions hereof), shall be refunded to Borrower (or to the original Borrower hereunder provided Successor Borrower affirmatively assigns such receivable rights in writing to such original Borrower) promptly after each such Monthly Payment Date and following payment in full of the Debt, any remaining amounts shall be disbursed to Borrower (or the original Borrower, as provided and subject to the qualification listed above);

(2) direct non-callable obligations of the United States of America or other obligations which are "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940 (to

the extent the applicable Rating Agencies rating the Securities have confirmed in writing that the same will not cause a downgrade, withdrawal or qualification of the initial, or, if higher, then applicable ratings of the Securities) that provide for payments prior and as close as possible to (but in no event later than) all successive Monthly Payment Dates occurring after the Release Date, with each such payment being equal to or greater than the amount of the corresponding Monthly Payment required to be paid under this Note (including all amounts due on the Open Prepayment Date (assuming that the Debt is prepaid in whole on such date in accordance with the applicable terms and conditions hereof)) for the balance of the term hereof (the "**Defeasance Collateral**"), each of which shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance wholly satisfactory to Lender in its sole discretion (including, without limitation, such certificates, documents and instruments as may be required by the depository institution holding such securities or the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the Defeasance Security Agreement the first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing granting of such security interests;

(3) a certificate of Borrower certifying that all of the requirements set forth in this subsection (b)(i) have been satisfied;

(4) one or more opinions of counsel for Borrower in form and substance and delivered by counsel which would be satisfactory to a prudent lender stating, among other things, that (i) Lender has a perfected first priority security interest in the Defeasance Collateral and that the Defeasance Security Agreement is enforceable against Borrower in accordance with its terms, (ii) in the event of a bankruptcy proceeding or similar occurrence with respect to Borrower, none of the Defeasance Collateral nor any proceeds thereof will be property of Borrower's estate under Section 541 of the U.S. Bankruptcy Code or any similar statute and the grant of security interest therein to Lender should not constitute an avoidable preference under Section 547 of the U.S. Bankruptcy Code or applicable state law, (iii) the release of the lien of the Security Instrument and the pledge of Defeasance Collateral will not directly or indirectly result in or cause any "real estate mortgage investment conduit" within the meaning of Section 860D of the Internal Revenue Code that holds the Loan (or any portion thereof or interest therein) (a "**REMIC Trust**") to fail to maintain its status as a REMIC Trust and (iv) the defeasance will not cause any REMIC Trust to be an "investment company" under the Investment Company Act of 1940;

(5) a certificate in form and scope acceptable to Lender in its sole discretion from an Acceptable Accountant (defined below) certifying that the Defeasance Collateral will generate amounts sufficient to make all payments of principal and interest due under this Note (including the scheduled outstanding principal balance of the Loan due on the Open Prepayment Date (assuming that the Debt is prepaid in whole on such date in accordance with the applicable terms and conditions hereof)). The term "**Acceptable Accountant**" shall mean a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender; and

(6) such other certificates, documents and instruments as Lender may reasonably require; and

(E) in the event the Loan (or any portion thereof or interest therein) is held by a REMIC Trust, Lender has received written confirmation from each Rating Agency rating any Securities (as defined in the Security Instrument) that substitution of the Defeasance Collateral will not result in a downgrade, withdrawal, or qualification of the ratings then assigned to any of the Securities.

(ii) Upon compliance with the requirements of subsection (b)(i), the Property shall be released from the lien of the Security Instrument and the other Loan Documents, and the Defeasance Collateral shall constitute the sole collateral which shall secure this Note and all other obligations under the Loan Documents. Lender will, at Borrower's expense, execute and deliver any agreements reasonably requested by Borrower to release the lien of the Security Instrument and the other Loan Documents from the Property and will, subject to Borrower's satisfaction of clause (iii) under this subsection (b), cause a release of Borrower and Indemnitor from any further liability or obligation under this Note, the Security Instrument or the other Loan Documents other than a liability or obligation in connection with a provision of this Note, the Security Instrument or the other Loan Documents which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument.

(iii) Upon the release of the Property in accordance with this subsection (b), Borrower shall assign all its obligations and rights under this Note, together with the pledged Defeasance Collateral, to a successor entity designated and approved by Lender in its reasonable discretion ("**Successor Borrower**"). Successor Borrower shall execute an assignment and assumption agreement (the "**Defeasance Assumption Agreement**") consistent with the provisions of the Loan Documents and in form and substance satisfactory to Lender in its sole and absolute discretion pursuant to which it shall assume Borrower's obligations under this Note and the Defeasance Security Agreement. As conditions to such assignment and assumption, Borrower shall (A) deliver to Lender one or more opinions of counsel in form and substance and delivered by counsel which would be satisfactory to a prudent Lender stating, among other things, that such Defeasance Assumption Agreement is enforceable against Borrower and the Successor Borrower in accordance with its terms and that this Note, the Defeasance Security Agreement and the other Loan Documents, as so assigned and assumed, are enforceable against the

Successor Borrower in accordance with their respective terms, and opining to such other matters relating to Successor Borrower and its organizational structure as Lender may reasonably require, and (B) pay all fees, costs and expenses incurred by Lender or its agents in connection with such assignment and assumption (including, without limitation, legal fees and expenses and for the review of the proposed transferee and the preparation of the assignment and assumption agreement and related certificates, documents and instruments and any fees payable to any Rating Agencies and their counsel in connection with the issuance of the confirmation referred to in subsection (b)(i)(E) above). Upon such assignment and assumption, Borrower and Indemnitor shall be relieved of their obligations under this Note, under the other Loan Documents and under the Defeasance Security Agreement, except for any liability or obligation in connection with a provision of this Note, the Security Instrument or any other Loan Documents which expressly states that it is to survive termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument.

(iv) For purposes of this Article 5, "**REMIC Prohibition Period**" means the period commencing on the date hereof and ending on the earlier to occur of (i) the first Monthly Payment Date occurring after the second anniversary of the "startup day" within the meaning of Section 860G(a)(9) of the Code of the last REMIC Trust to hold any portion of or interest in the Loan such that all portions of and interests in the Loan are held by one or more REMIC Trusts and (ii) the first Monthly Payment date occurring after the third anniversary of the date hereof. In no event shall Lender have any obligation to notify Borrower that a REMIC Prohibition Period is in effect with respect to the Loan, except that Lender shall notify Borrower if any REMIC Prohibition Period is in effect with respect to the Loan after receiving any notice described in subsection (b)(i)(B); provided, however, that the failure of Lender to so notify Borrower shall not impose any liability on Lender or grant Borrower any right to defease the Loan during any such REMIC Prohibition Period.

(c) Involuntary Prepayment During the Lockout Period. During the Lockout Period, in the event of any involuntary prepayment of the Loan or any other amount under this Note, whether in whole or in part, in connection with or following Lender's acceleration of this Note, or otherwise, and whether the Security Instrument is satisfied or released by foreclosure (whether by power of sale or judicial proceeding), deed in lieu of foreclosure or by any other means, including, without limitation, repayment of the Loan by Borrower or any other Person pursuant to any statutory or common law right of redemption, Borrower shall, in addition to any portion of the principal balance of the Loan prepaid (together with all interest accrued and unpaid thereon and, in the event the prepayment is made on a date other than a Monthly Payment Date, a sum equal to the amount of interest which would have accrued under this Note on the amount of such prepayment if such prepayment had occurred on the next Monthly Payment Date), pay to Lender a prepayment premium in an amount equal to the Yield Maintenance Premium (hereafter defined). As used herein, the term **"Yield Maintenance Premium"** shall mean an amount equal to the greater of (i) 1% of the principal amount of the Loan being prepaid and (ii) an amount equal to the excess, if any, of (A) the sum of the present values of a series of payments payable at the times and in the amounts equal to the debt service payments (including, but not limited to the principal and interest payable on the Maturity Date) which would have been scheduled to be

payable relative to the principal amount of the Loan being prepaid after the date of such tender under the Loan had the Note not been prepaid, with each such payment discounted to its present value at the date of such tender at the rate which when compounded monthly is equivalent to the Prepayment Rate (as hereinafter defined) when compounded semi-annually, over (B) the principal amount of the Loan being prepaid. The term "**Prepayment Rate**" shall mean the bond equivalent yield (in the secondary market) on the United States Treasury Security that as of the Prepayment Rate Determination Date (hereinafter defined) has a remaining term to maturity closest to, but not exceeding, the remaining term to the Maturity Date, as most recently published in the "Treasury Bonds, Notes and Bills" section in The Wall Street Journal as of the date of the related tender of payment. If more than one issue of United States Treasury Securities has the remaining term to the Maturity Date referred to above, the "**Prepayment Rate**" shall be the yield on the United States Treasury Security most recently issued as of such date. The term "**Prepayment Rate Determination Date**" shall mean the date which is five (5) Business Days prior to the prepayment date. The rate so published shall control absent manifest error. If the publication of the Prepayment Rate in The Wall Street Journal is discontinued, Lender shall determine the Prepayment Rate on the basis of "Statistical Release H.15 (519), Selected Interest Rates," or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Lender may reasonably select.

(d) Insurance and Condemnation Proceeds; Excess Interest. Notwithstanding any other provision herein to the contrary, and provided no Event of Default exists, Borrower shall not be required to pay any prepayment premium in connection with any prepayment occurring solely as a result of (i) the application of insurance proceeds or condemnation proceeds pursuant to the terms of the Loan Documents, (ii) the application of any interest in excess of the maximum rate permitted by applicable law to the reduction of the Loan, or (iii) the exercise by Lender of any other right under the Loan Documents to apply an amount received by Lender to the principal balance of this Note, other than any exercise in connection with an Event of Default, which shall be controlled by the preceding paragraph (c).

(e) After the Lockout Period. Commencing on the day after the expiration of the Lockout Period, and upon giving Lender at least fifteen (15) days (but not more than one hundred and eighty (180) days) prior written notice, Borrower may voluntarily prepay (without premium) this Note in whole (but not in part) on a Monthly Payment Date. Lender shall accept a prepayment pursuant to this subsection (e) on a day other than a Monthly Payment Date provided that, in addition to payment of the full outstanding principal balance of this Note, Borrower pays to Lender a sum equal to the amount of interest which would have accrued on this Note if such prepayment occurred on the next Monthly Payment Date.

(f) Limitation on Partial Prepayments. In no event shall Lender have any obligation to accept a partial prepayment.

ARTICLE 6: SECURITY

This Note is secured by the Security Instrument and the other Loan Documents. The term "**Security Instrument**" as used in this Note shall mean the Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing dated as of the

date hereof given by Borrower (among others) to Lender covering the fee simple estate of Borrower in certain premises located in the City and County of Honolulu, State of Hawaii, and other property, as more particularly described therein (collectively, the "**Property**") and intended to be duly recorded in the Bureau of Conveyances of the State of Hawaii and in the Office of the Assistant Registrar of the Land Court of the State of Hawaii. The term "**Loan Documents**" as used in this Note shall mean all and any of the documents and/or instruments executed by Borrower and/or others and by or in favor of Lender in connection with the Loan. Whenever used, the singular number shall include the plural, the plural number shall include the singular, and the words "Lender" and "Borrower" shall include their respective successors, assigns, heirs, executors and administrators.

All of the terms, covenants and conditions contained in the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein.

ARTICLE 7: SAVINGS CLAUSE

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

ARTICLE 8: LATE CHARGE

If any monthly installment of principal or interest payable under this Note is not paid on the date on which it was due, Borrower shall pay to Lender upon demand an amount equal to the lesser of 2.5% of the unpaid sum or the maximum amount permitted by applicable law to defray the expenses incurred by Lender in handling and processing the delinquent payment and to compensate Lender for the loss of the use of the delinquent payment and the amount shall be secured by the Security Instrument and the other Loan Documents.

ARTICLE 9: NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 10: JOINT AND SEVERAL LIABILITY

If there is more than one Borrower, the obligations and liabilities of each such person or party shall be joint and several.

ARTICLE 11: WAIVERS

Except as otherwise provided herein, in the Security Instrument, or in the other Loan Documents, Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Security Instrument or the other Loan Documents made by agreement between Lender or any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other person or entity who may become liable for the payment of all or any part of the Debt, under this Note, the Security Instrument or the other Loan Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Security Instrument or the other Loan Documents. If Borrower is a partnership, the agreements herein contained shall remain in force and applicable, notwithstanding any changes in the individuals comprising the partnership. If Borrower is a corporation, the agreements contained herein shall remain in full force and applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation. If Borrower is a limited liability company, the agreements contained herein shall remain in full force and applicable notwithstanding any changes in the members comprising, or the managers, officers or agents relating to, the limited liability company. The term “Borrower”, as used herein, shall include any alternate or successor partnership, corporation, limited liability company or other entity or person to the Borrower named herein, but any predecessor partnership (and their partners), corporation, limited liability company, other entity or person shall not thereby be released from any liability except as otherwise provided in the Security Instrument or other Loan Documents. Nothing in this Article 11 shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership which may be set forth in the Security Instrument or any other Loan Document.

ARTICLE 12: DEFINITIONS

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Security Instrument and the other Loan Documents.

ARTICLE 13: WAIVER OF TRIAL BY JURY

BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THIS NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THIS NOTE, THIS NOTE, THE

SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

ARTICLE 14: EXCULPATION

(a) Notwithstanding any contrary provisions contained herein, the Security Instrument or the other Loan Documents (other than a provision herein or therein which expressly states that it is intended to override any exculpatory provisions of this Note), Lender shall not enforce the liability and obligation of Borrower, to perform and observe the obligations contained in this Note, the Security Instrument or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower or any partner or member of Borrower, except that Lender may bring a foreclosure action (where no deficiency judgment is sought against Borrower or any partner or member of Borrower), an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon this Note, the Security Instrument, the other Loan Documents, and the interests in the Property; and any other collateral given to Lender pursuant to the Security Instrument and the other Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall not be enforceable against Borrower (or any partner or member of Borrower) except to the extent of Borrower's interest in the Property and in any other collateral given to Lender as security, and Lender, by accepting this Note, the Security Instrument and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower (or any partner or member of Borrower) in any such action or proceeding, under or by reason of or in connection with this Note, the Security Instrument or the other Loan Documents. The provisions of this paragraph shall not, however, (1) constitute a waiver, release or impairment of any obligation evidenced or secured by this Note, the Security Instrument or the other Loan Documents; (2) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument, where Lender is required to do so in order to properly pursue such action (and subject to the above-described prohibition on suing for, seeking or demanding any deficiency judgment); (3) affect the validity or enforceability of any guaranty or indemnity made in connection with this Note, the Security Instrument or the other Loan Documents; (4) impair the right of Lender to obtain the appointment of a receiver; (5) impair the enforcement of any assignment; or (6) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any actual losses suffered by Lender arising out of the following:

(i) fraud or intentional misrepresentation by Borrower in connection with this Note, the Security Instrument or the other Loan Documents;

(ii) any material inaccuracy, error or omission in the rent roll of the Property certified to by Borrower in that certain Borrower's Certification executed in connection with the Loan;

(iii) the failure of Borrower or Sponsor to remedy (after thirty (30) days notice thereof from Lender referencing this provision) any failure to provide financial information when and as required by the Security Instrument;

(iv) Willful Misconduct (as defined below) of Borrower in connection with Borrower's operation of the Property. As used herein, the term "**Willful Misconduct**" shall mean, and refer to, any affirmative act by Borrower (1) during the existence of any event which, with the passage or time, the giving of notice, or both would constitute an Event of Default, or (2) that is the cause of such Event of Default which, in either case, is undertaken by Borrower with the express intention of causing waste or physical damage to the Property and that actually results in physical damage or waste to the Property;

(v) the breach of provisions in this Note, the Security Instrument or the other Loan Documents concerning Environmental Laws and Hazardous Substances and any indemnification of Lender with respect thereto in any document (including, without limitation, the indemnification provided in Section 13.4 of the Security Instrument);

(vi) the removal or disposal of any portion of the Property by Borrower after the occurrence and during the continuance of an Event of Default under this Note, the Security Instrument or the other Loan Documents (unless, with respect to the removal of Personal Property, such Personal Property is simultaneously replaced with Personal Property of equal or greater value and utility);

(vii) the misapplication or conversion by Borrower in violation of the terms of the Security Instrument of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Property, (B) any awards or other amounts received in connection with the condemnation of all or a portion of the Property, or (C) any Rents after the occurrence and during the continuance of an Event of Default under this Note, the Security Instrument or the other Loan Documents;

(viii) any security deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or deed in lieu thereof, except to the extent any such security deposits were applied or returned to the lessee in accordance with the terms and conditions of any of the Leases prior to such foreclosure or deed in lieu thereof;

(ix) the violation by Borrower of the representations or covenants contained in Section 4.3 of the Security Instrument;

(x) the non-payment of taxes with respect to the FHB Tax Parcel (as defined in the Security Instrument);

(xi) the failure of the portions of the QS Space (defined below) located in different condominium units and/or apartments to be physically separated (which such losses shall be deemed to be the cost to effect such physical separation in accordance with applicable law and the construction standards of the remaining portion of the Property). As used above, the term **"QS Space"** shall mean that portion of the Property currently leased to QS Retail, Inc. d/b/a Quiksilver; and/or

(xii) the failure of the Master Lease Space (as defined in the Security Instrument) to be leased pursuant to a Qualifying MLS Lease (as defined in the Security Instrument), provided, that, upon any portion of the Master Lease Space being leased pursuant to a Qualifying MLS Lease, this subsection shall be null and void and of no further force or effect with respect to the portion of the Master Lease Space so leased.

(b) Notwithstanding anything to the contrary in this Note, the Security Instrument or the other Loan Documents, the agreement of Lender not to pursue recourse liability as set forth in subsection (a) above SHALL BECOME NULL AND VOID and shall be of no further force and effect and the Debt shall be fully recourse to Borrower in the event that: (A) the first full Monthly Payment is not paid when due; (B) a Prohibited Transfer (as defined in the Security Instrument) occurs in violation of Article 8 of the Security Instrument; or (C) if (I) an involuntary petition (other than the collusive involuntary petitions described in the following clause (II)) is filed against Borrower under the U.S. Bankruptcy Code or any other federal or state bankruptcy or insolvency law (collectively, the **"Insolvency Laws**") and is not dismissed within ninety (90) days of the filing thereof, or (II) Borrower files or consents to the filing against Borrower of a petition, voluntary or involuntary, under applicable Insolvency Laws, or any partner, member or equivalent person of Borrower, or any person acting in concert with Borrower or any of the foregoing persons, files or joins in the filing against Borrower of an involuntary petition under applicable Insolvency Laws.

(c) Nothing herein shall be deemed to be a waiver of any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with this Note, the Security Instrument or the other Loan Documents.

ARTICLE 15: AUTHORITY

Borrower (and the undersigned representative of Borrower, if any) represents that Borrower has full power, authority and legal right to execute and deliver this Note, the Security Instrument and the other Loan Documents and that this Note, the Security Instrument and the other Loan Documents constitute valid and binding obligations of Borrower, except as may be limited by (i) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and (ii) general principles of equity.

ARTICLE 16: APPLICABLE LAW

This Note shall be deemed to be a contract entered into pursuant to the laws of the State of California and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of California and applicable laws of the United States of America.

ARTICLE 17: SERVICE OF PROCESS

Article 17 of the Security Instrument is hereby incorporated by reference as if full set forth herein.

ARTICLE 18: COUNSEL FEES

In the event that it should become necessary to employ counsel to collect the Debt or to protect or foreclose the security therefor, Borrower also agrees to pay all reasonable fees and expenses of Lender, including, without limitation, reasonable attorney's fees for the services of such counsel whether or not suit be brought.

ARTICLE 19: NOTICES

All notices or other written communications to Borrower or Lender hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day after having been deposited for overnight delivery with any nationally recognized overnight courier (such as FedEx or UPS), or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Borrower or Lender at their addresses set forth in the Security Instrument or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

ARTICLE 20: MISCELLANEOUS

Except as otherwise specifically set forth in this Note, the Security Instrument, or the other Loan Documents, wherever pursuant to this Note (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be based upon a standard of reasonability. All approvals of or waivers by Lender in respect of any of the terms, conditions or requirements of this Note must be in writing. No waiver with respect to any condition, breach or other matter shall extend to or be taken in any manner whatsoever to affect any other condition, breach or matter or affect Lender's rights resulting therefrom. Notwithstanding anything to the contrary contained herein or in any other Loan Document, whenever any payment to be made hereunder or under any other Loan Document shall be stated to be due on a day which is not a Business Day, the due date thereof shall be deemed to be the immediately succeeding Business Day, provided, however, with respect to (A) any Monthly Payment due hereunder or any grace period granted hereunder or under the other Loan Documents with respect thereto, to the extent that such succeeding Business Day convention would cause either the due date of any Monthly Payment and/or the grace period relating thereto to extend beyond the sixth (6th) day of any calendar month, the due date of such Monthly Payment or the term of such grace period (as applicable) shall be deemed to be due or shall terminate (as applicable) on such sixth (6th) day (or if such sixth (6th) day is not a Business Day, the immediately preceding Business Day) and (B) the balloon payment due hereunder on the Maturity Date, if the Maturity Date does not occur on a Business Day, the Maturity Date shall be deemed to occur on the immediately preceding Business Day.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

ABW HOLDINGS LLC,
a Delaware limited liability company

By: /s/ Melvyn M. Wilinsky
Name: Melvyn M. Wilinsky
Title: Executive Vice President, Treasurer and Chief Financial Officer

ADDENDUM TO NOTE

BY SIGNING BELOW, BORROWER EXPRESSLY ACKNOWLEDGES AND UNDERSTANDS THAT, PURSUANT TO THE TERMS OF THIS NOTE, BORROWER HAS AGREED THAT IT HAS NO RIGHT TO PREPAY THIS NOTE PRIOR TO THE MATURITY DATE (EXCEPT AS EXPRESSLY SET FORTH TO THE CONTRARY HEREIN) OR IN THE SECURITY INSTRUMENT, AND THAT IT SHALL BE LIABLE FOR THE PAYMENT OF THE PREPAYMENT PREMIUM FOR PREPAYMENT OF THIS NOTE UPON ACCELERATION OF THIS NOTE IN ACCORDANCE WITH ITS TERMS EXCEPT AS EXPRESSLY SET FORTH IN THE HEREIN OR IN THE SECURITY INSTRUMENT. FURTHER, BY SIGNING BELOW, BORROWER WAIVES ANY RIGHTS IT MAY HAVE UNDER SECTION 2954.10 OF THE CALIFORNIA CIVIL CODE, OR ANY SUCCESSOR STATUTE, AND EXPRESSLY ACKNOWLEDGES AND UNDERSTANDS THAT LENDER HAS MADE THE LOAN IN RELIANCE ON THE AGREEMENTS AND WAIVER OF BORROWER AND THAT LENDER WOULD NOT HAVE MADE THE LOAN WITHOUT SUCH AGREEMENTS AND WAIVER OF BORROWER.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Addendum to Note as of the day and year first above written.

ABW HOLDINGS LLC,
a Delaware limited liability company

By: /s/ Melvyn M. Wilinsky
Name: Melvyn M. Wilinsky
Title: Executive Vice President, Treasurer and Chief Financial Officer

Exhibit 10.35

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Michael P. Van Voorhis, Esquire
Troutman Sanders LLP
1660 International Drive
Suite 600, Tysons Corner
McLean, Virginia 22102-3805

MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
(CALIFORNIA – REVISION DATE 05-11-2004)

ATTENTION COUNTY RECORDER: THIS INSTRUMENT IS INTENDED TO BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 9502 OF THE CALIFORNIA COMMERCIAL CODE. PORTIONS OF THE GOODS COMPRISING A PART OF THE MORTGAGED PROPERTY ARE OR ARE TO BECOME FIXTURES RELATED TO THE LAND DESCRIBED IN EXHIBIT A HERETO. THIS INSTRUMENT IS TO BE FILED FOR RECORD IN THE RECORDS OF THE COUNTY WHERE DEEDS OF TRUST ON REAL PROPERTY ARE RECORDED AND SHOULD BE INDEXED AS BOTH A DEED OF TRUST AND AS A FINANCING STATEMENT COVERING FIXTURES. THE ADDRESSES OF BORROWER (DEBTOR) AND LENDER (SECURED PARTY) ARE SPECIFIED IN THE FIRST PARAGRAPH ON PAGE 1 OF THIS INSTRUMENT.

**MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND
FIXTURE FILING
(CALIFORNIA – REVISION DATE 05-11-2004)**

THIS MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "**Instrument**") is made to be effective as of this 30th day of June, 2008, by **LOMA PALISADES**, a general partnership organized and existing under the laws of California, whose address is 11455 El Camino Real, Suite 200, San Diego, California 92130, as trustor ("**Borrower**"), to **FIRST AMERICAN TITLE INSURANCE COMPANY**, as trustee ("**Trustee**"), for the benefit of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, whose address is 2010 Corporate Ridge, Suite 1000, McLean, Virginia 22102, as beneficiary ("**Lender**"). Borrower's organizational identification number, if applicable, is N/A.

Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in the County of San Diego, State of California and described in Exhibit A attached to this Instrument.

TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower's Multifamily Note payable to Lender, dated as of the date of this Instrument, and maturing on July 1, 2018 (the "**Maturity Date**"), in the principal amount of $73,744,000.00, and all renewals, extensions and modifications of the Indebtedness, the payment of all sums advanced by or on behalf of Lender to protect the security of this Instrument under Section 12, and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered, except as shown on the schedule of exceptions to coverage in the title policy issued to and accepted by Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender's interest in the Mortgaged Property (the "**Schedule of Title Exceptions**"). Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in the Schedule of Title Exceptions.

**UNIFORM COVENANTS
REVISION DATE 02-15-2008**

Covenants. In consideration of the mutual promises set forth in this Instrument, Borrower and Lender covenant and agree as follows:

1. DEFINITIONS. The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) "**Attorneys' Fees and Costs**" means (i) fees and out-of-pocket costs of Lender's and Loan Servicer's attorneys, as applicable, including costs of Lender's and Loan Servicer's in-house

counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses; (ii) costs and fees of expert witnesses, including appraisers; and (iii) investigatory fees.

(b) "**Borrower**" means all persons or entities identified as "Borrower" in the first paragraph of this Instrument, together with their successors and assigns.

(c) "**Business Day**" means any day other than a Saturday, a Sunday or any other day on which Lender or the national banking associations are not open for business.

(d) "**Collateral Agreement**" means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure the completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(e) "**Controlling Entity**" means an entity which owns, directly or indirectly through one or more intermediaries, (i) a general partnership interest or a Controlling Interest of the limited partnership interests in Borrower (if Borrower is a partnership or joint venture), (ii) a manager's interest in Borrower or a Controlling Interest of the ownership or membership interests in Borrower (if Borrower is a limited liability company), (iii) a Controlling Interest of any class of voting stock of Borrower (if Borrower is a corporation), (iv) a trustee's interest or a Controlling Interest of the beneficial interests in Borrower (if Borrower is a trust), or (v) a managing partner's interest or a Controlling Interest of the partnership interests in Borrower (if Borrower is a limited liability partnership).

(f) "**Controlling Interest**" means (i) 51 percent or more of the ownership interests in an entity, or (ii) a percentage ownership interest in an entity of less than 51 percent, if the owner(s) of that interest actually direct(s) the business and affairs of the entity without the requirement of consent of any other party. The Controlling Interest shall be deemed to be 51 percent unless otherwise stated in Exhibit B.

(g) "**Environmental Permit**" means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(h) "**Event of Default**" means the occurrence of any event listed in Section 22.

(i) "**Fixtures**" means all property owned by Borrower which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(j) "**Governmental Authority**" means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property or over the Borrower.

(k) "**Hazard Insurance**" is defined in Section 19.

(l) "**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling and any other material or substance now or in the future that (i) is defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.

(m) "**Hazardous Materials Laws**" means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials or the protection of human health or the environment and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 *et seq.*, and their state analogs.

(n) "**Impositions**" and "**Imposition Deposits**" are defined in Section 7(a).

(o) "**Improvements**" means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(p) "**Indebtedness**" means the principal of, interest at the fixed or variable rate set forth in the Note on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 12 to protect the security of this Instrument.

(q) "**Initial Owners**" means, with respect to Borrower or any other entity, the persons or entities that (i) on the date of the Note, or (ii) on the date of a Transfer to which Lender has consented, own in the aggregate 100 percent of the ownership interests in Borrower or that entity.

(r) "**Land**" means the land described in Exhibit A.

(s) "**Leases**" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

(t) "**Lender**" means the entity identified as "Lender" in the first paragraph of this Instrument, or any subsequent holder of the Note.

(u) "**Loan Documents**" means the Note, this Instrument, all guaranties, all indemnity agreements, all Collateral Agreements, O&M Programs, the MMP and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

(v) "**Loan Servicer**" means the entity that from time to time is designated by Lender to collect payments and deposits and receive Notices under the Note, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Lender. Unless Borrower receives Notice to the contrary, the Loan Servicer is the entity identified as "Lender" in the first paragraph of this Instrument.

(w) "**MMP**" means a moisture management plan to control water intrusion and prevent the development of Mold or moisture at the Mortgaged Property throughout the term of this Instrument. At a minimum, the MMP must contain a provision for (i) staff training, (ii) information to be provided to tenants, (iii) documentation of the plan, (iv) the appropriate protocol for incident response and remediation and (v) routine, scheduled inspections of common space and unit interiors.

(x) "**Mold**" means mold, fungus, microbial contamination or pathogenic organisms.

(y) "**Mortgaged Property**" means all of Borrower's present and future right, title and interest in and to all of the following:

(i) the Land;

(ii) the Improvements;

(iii) the Fixtures;

(iv) the Personalty;

(v) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(vi) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;

(vii) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(viii) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(ix) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

(x) all Rents and Leases;

(xi) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument;

(xii) all Imposition Deposits;

(xiii) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);

(xiv) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits; and

(xv) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

(z) "**Note**" means the Multifamily Note described on page 1 of this Instrument, including all schedules, riders, allonges and addenda, as such Multifamily Note may be amended from time to time.

(aa) "**O&M Program**" is defined in Section 18(d).

(bb) "**Personalty**" means all:

(i) accounts (including deposit accounts) of Borrower related to the Mortgaged Property;

(ii) equipment and inventory owned by Borrower, which are used now or in the future in connection with the ownership, management or operation of

the Land or Improvements or are located on the Land or Improvements, including furniture, furnishings, machinery, building materials, goods, supplies, tools, books, records (whether in written or electronic form), and computer equipment (hardware and software);

(iii) other tangible personal property owned by Borrower which is used now or in the future in connection with the ownership, management or operation of the Land or Improvements or is located on the Land or in the Improvements, including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances (other than Fixtures);

(iv) any operating agreements relating to the Land or the Improvements;

(v) any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements;

(vi) all other intangible property, general intangibles and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a governmental authority; and

(vii) any rights of Borrower in or under letters of credit.

(cc) "**Property Jurisdiction**" is defined in Section 30(a).

(dd) "**Rents**" means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation or association, maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements, whether now due, past due, or to become due.

(ee) "**Taxes**" means all taxes, assessments, vault rentals and other charges, if any, whether general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien on the Land or the Improvements.

(ff) "**Transfer**" is defined in Section 21.

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

(a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, "**UCC Collateral**"), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to prepare and file financing statements,

continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements and/or amendments that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral.

(b) Unless Borrower gives Notice to Lender within 30 days after the occurrence of any of the following, and executes and delivers to Lender modifications or supplements of this Instrument (and any financing statement which may be filed in connection with this Instrument) as Lender may require, Borrower shall not (i) change its name, identity, structure or jurisdiction of organization; (ii) change the location of its place of business (or chief executive office if more than one place of business); or (iii) add to or change any location at which any of the Mortgaged Property is stored, held or located.

(c) If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies.

(d) This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property that is or may become a Fixture, if permitted by applicable law.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant

improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without Notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, (i) Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, (ii) no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and (iii) no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing any prior indebtedness that is being assigned to Lender, or paid off and discharged with the proceeds of the loan evidenced by the Note), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. If Borrower is a housing cooperative corporation or association, Borrower hereby agrees that if a receiver is appointed, the order appointing the receiver may contain a provision requiring the receiver to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, it being acknowledged and agreed that the Indebtedness is an obligation of the Borrower and must be paid out of maintenance charges payable by the Borrower's tenant shareholders under their proprietary leases or occupancy agreements. Lender or the receiver, as the case may be, shall be

entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Except to the extent of Lender's gross negligence or willful misconduct, Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under Section 3(d), and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Until Lender gives Notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Borrower

pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Except to the extent of Lender's gross negligence or willful misconduct, Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of Notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase.

(f) Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. However, Lender's consent shall not be required for the modification or extension of a non-residential Lease if such modification or extension is on terms at least as favorable to Borrower as those customary at that time in the applicable market and the income from the extended or modified Lease will not be less than the income received from the Lease as of the date of this Instrument. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (i) such Leases are subordinate to the lien of this Instrument; (ii) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (iii) the tenant agrees to

execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (iv) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (v) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (vi) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance.

(h) If Borrower is a cooperative housing corporation or association, notwithstanding anything to the contrary contained in this subsection or in Section 21, so long as Borrower remains a cooperative housing corporation or association and is not in breach of any covenant of this Instrument, Lender hereby consents to:

(i) the execution of leases of apartments for a term in excess of two years from Borrower to a tenant shareholder of Borrower, so long as such leases, including proprietary leases, are and will remain subordinate to the lien of this Instrument; and

(ii) the surrender or termination of such leases of apartments where the surrendered or terminated lease is immediately replaced or where the Borrower makes its best efforts to secure such immediate replacement by a newly executed lease of the same apartment to a tenant shareholder of the Borrower. However, no consent is hereby given by Lender to any execution, surrender, termination or assignment of a lease under terms that would waive or reduce the obligation of the resulting tenant shareholder under such lease to pay cooperative assessments in full when due or the obligation of the former tenant shareholder to pay any unpaid portion of such assessments.

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM. Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

6. EXCULPATION. Borrower's personal liability for payment of the Indebtedness and for performance of the other obligations to be performed by it under this Instrument is limited in the manner, and to the extent, provided in the Note.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Unless this requirement is waived in writing by Lender, which waiver may be contained in this Section 7(a), Borrower shall deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Lender the entire sum required to pay, when due, the items marked "Collect" below. Lender will not require the Borrower to make Imposition Deposits with respect to the items marked "Deferred" below.

[Deferred]	Hazard Insurance premiums or other insurance premiums required by Lender under Section 19,
[Collect]	Taxes,
[Deferred]	water and sewer charges (that could become a lien on the Mortgaged Property),
[N/A]	ground rents,
[Deferred]	assessments or other charges (that could become a lien on the Mortgaged Property)

The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the "**Imposition Deposits**." The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Instrument as "**Impositions.**" The amount of the Imposition Deposits shall be sufficient to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other Imposition.

(b) Imposition Deposits shall be held in an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. Lender shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Lender shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits. As additional security for all of Borrower's obligations under this Instrument and the other Loan Documents, Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits and all proceeds of, and all interest and dividends on, the Imposition Deposits. Any amounts deposited with Lender under this Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 7(e).

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender. Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary, Borrower shall pay to Lender the amount of the deficiency within 15 days after Notice from Lender.

(e) If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in any amounts and in any order as Lender determines, in Lender's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Lender shall refund to Borrower any Imposition Deposits held by Lender.

(f) If Lender does not collect an Imposition Deposit with respect to an Imposition either marked "Deferred" in Section 7(a) or pursuant to a separate written waiver by Lender, then on or before the date each such Imposition is due, or on the date this Instrument requires each such Imposition to be paid, Borrower must provide Lender with proof of payment of each such Imposition for which Lender does not require collection of Imposition Deposits. Lender may revoke its deferral or waiver and require Borrower to deposit with Lender any or all of the Imposition Deposits listed in Section 7(a), regardless of whether any such item is marked "Deferred" in such section, upon Notice to Borrower, (i) if Borrower does not timely pay any of the Impositions, (ii) if Borrower fails to provide timely proof to Lender of such payment, or (iii) at any time during the existence of an Event of Default.

(g) In the event of a Transfer prohibited by or requiring Lender's approval under Section 21, Lender's waiver of the collection of any Imposition Deposit in this Section 7 may be modified or rendered void by Lender at Lender's option by Notice to Borrower and the transferee(s) as a condition of Lender's approval of such Transfer.

8. COLLATERAL AGREEMENTS. Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement.

9. APPLICATION OF PAYMENTS. If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount that is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

10. COMPLIANCE WITH LAWS AND ORGANIZATIONAL DOCUMENTS.

(a) Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, disability accommodation, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits.

(b) Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10.

(c) Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

(d) Borrower shall at all times comply with all laws, regulations and requirements of any Governmental Authority relating to Borrower's formation, continued existence and good standing in the Property Jurisdiction. Borrower shall at all times comply with its organizational documents, including but not limited to its partnership agreement (if Borrower is a partnership), its by-laws (if Borrower is a corporation or housing cooperative corporation or association) or its operating agreement (if Borrower is an limited liability company, joint venture or tenancy-in-common). If Borrower is a housing cooperative corporation or association, Borrower shall at all times maintain its status as a "cooperative housing corporation" as such term is defined in Section 216(b) of the Internal revenue Code of 1986, as amended, or any successor statute thereto.

11. USE OF PROPERTY. Unless required by applicable law, Borrower shall not (a) allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, except for any change in use approved by Lender, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate a change in the zoning classification of the Mortgaged Property or acquiesce without Notice to and consent of Lender in a change in the zoning classification of the Mortgaged Property, (d) establish any condominium or cooperative regime with respect to the Mortgaged Property, (e) combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is not part of the Mortgaged Property, or (f) subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property without the prior consent of Lender. Notwithstanding anything contained in this Section to the contrary, if Borrower is a housing cooperative corporation or association, Lender acknowledges and consents to Borrower's use of the Mortgaged Property as a housing cooperative.

12. PROTECTION OF LENDER'S SECURITY; INSTRUMENT SECURES FUTURE ADVANCES.

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, file such documents, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (i) payment of Attorneys' Fees and Costs, (ii) payment of fees and out-of-pocket expenses of accountants, inspectors and consultants, (iii) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (iv) procurement of the insurance required by Section 19, (v) payment of amounts which Borrower has failed to pay under Sections 15 and 17, and (vi) advances made by Lender to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "**Prior Lien**").

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be secured by this Instrument, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "**Default Rate**," as defined in the Note.

(c) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

13. INSPECTION.

(a) Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time, upon reasonable notice to Borrower if the inspection is to include occupied residential units (which notice need not be in writing). Notice to Borrower shall not be required in the case of an emergency, as determined in Lender's discretion, or when an Event of Default has occurred and is continuing.

(b) If Lender determines that Mold has developed as a result of a water intrusion event or leak, Lender, at Lender's discretion, may require that a professional inspector inspect the Mortgaged Property as frequently as Lender determines is necessary until any issue with Mold and its cause(s) are resolved to Lender's satisfaction. Such inspection shall be limited to a visual and olfactory inspection of the area that has experienced the Mold, water intrusion event or leak. Borrower shall be responsible for the cost of such professional inspection and any remediation deemed to be necessary as a result of the professional inspection. After any issue with Mold, water intrusion or leaks is remedied to Lender's satisfaction, Lender shall not require a professional inspection any more frequently than once every three years unless Lender is otherwise aware of Mold as a result of a subsequent water intrusion event or leak.

(c) If Lender or Loan Servicer determines not to conduct an annual inspection of the Mortgaged Property, and in lieu thereof Lender requests a certification, Borrower shall be prepared to provide and must actually provide to Lender a factually correct certification each year that the annual inspection is waived to the following effect:

> Borrower has not received any written complaint, notice, letter or other written communication from tenants, management agent or governmental authorities regarding mold, fungus, microbial contamination or pathogenic organisms ("**Mold**") or any activity, condition, event or omission that causes or facilitates the growth of Mold on or in any part of the Mortgaged Property or if Borrower has received any such written complaint, notice, letter or other written communication that Borrower has investigated and determined that no Mold activity, condition or event exists or alternatively has fully and properly remediated such activity, condition, event or omission in compliance with the Moisture Management Plan for the Mortgaged Property.

If Borrower is unwilling or unable to provide such certification, Lender may require a professional inspection of the Mortgaged Property at Borrower's expense.

14. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's office, and upon Lender's request shall make available at the Mortgaged Property (or, at Borrower's option, at the management agent's office), complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection by Lender at any reasonable time.

(b) Within 120 days after the end of each fiscal year of Borrower, Borrower shall furnish to Lender a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year and, when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year. If Borrower's fiscal year is other than the calendar year, Borrower must also submit to Lender a year-end statement of income and expenses within 120 days after the end of the calendar year.

(c) Within 120 days after the end of each calendar year, and at any other time, upon Lender's request, Borrower shall furnish to Lender each of the following. However, Lender shall not require any of the following more frequently than quarterly except when there has been an Event of Default and such Event of Default is continuing, in which case Lender may, upon written request to Borrower, require Borrower to furnish any of the following more frequently:

(i) a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;

(ii) an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts; and

(iii) a statement that identifies all owners of any interest in Borrower and any Controlling Entity and the interest held by each (unless Borrower or any Controlling Entity is a publicly-traded entity in which case such statement of ownership shall not be required), if Borrower or a Controlling Entity is a corporation, all officers and directors of Borrower and the Controlling Entity, and if Borrower or a Controlling Entity is a limited liability company, all managers who are not members.

(d) At any time upon Lender's request, Borrower shall furnish to Lender each of the following. However, Lender shall not require any of the following more frequently than quarterly except when there has been an Event of Default and such Event of Default is continuing, in which case Lender may require Borrower to furnish any of the following more frequently:

(i) a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower's most recent fiscal year;

(ii) a quarterly or year-to-date income and expense statement for the Mortgaged Property; and

(iii) a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender.

(e) Upon Lender's request at any time when an Event of Default has occurred and is continuing, Borrower shall furnish to Lender monthly income and expense statements and rent schedules for the Mortgaged Property.

(f) An individual having authority to bind Borrower shall certify each of the statements, schedules and reports required by Sections 14(b) through 14(e) to be complete and accurate. Each of the statements, schedules and reports required by Sections 14(b) through 14(e) shall be in such form and contain such detail as Lender may reasonably require. Lender also may require that any of the statements, schedules or reports listed in Section 14(b) and 14(c)(i) and (ii) be audited at Borrower's expense by independent certified public accountants acceptable to Lender, at any time when an Event of Default has occurred and is continuing or at any time that Lender, in its reasonable judgment, determines that audited financial statements are required for an accurate assessment of the financial condition of Borrower or of the Mortgaged Property.

(g) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Sections 14(b) through (e), Lender shall give Borrower Notice specifying the statements, schedules and reports required by Section 14(b) through (e) that Borrower has failed to provide. If Borrower has not provided the required statements, schedules and reports within 10 Business Days following such Notice, then Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12. Notice to Borrower shall not be required in the case of an emergency, as determined in Lender's discretion, or when an Event of Default has occurred and is continuing.

(h) If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

(i) Borrower authorizes Lender to obtain a credit report on Borrower at any time.

15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(c) and Section 15(d), Borrower shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 15(c), Borrower shall (i) pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added, and (ii) pay insurance premiums at least 30 days prior to the expiration date of each policy of insurance, unless applicable law specifies some lesser period.

(c) If Lender is collecting Imposition Deposits, to the extent that Lender holds sufficient Imposition Deposits for the purpose of paying a specific Imposition, then Borrower shall not be obligated to pay such Imposition, so long as no Event of Default exists and Borrower has timely delivered to Lender any bills or premium notices that it has received. If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no

liability to Borrower for failing to pay any Impositions to the extent that (i) any Event of Default has occurred and is continuing, (ii) insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or (iii) Borrower has failed to provide Lender with bills and premium notices as provided above.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (i) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, (iii) if Borrower has not already paid the Imposition, Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (iv) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender.

(e) Borrower shall promptly deliver to Lender a copy of all notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall furnish to Lender on or before the date this Instrument requires such Impositions to be paid, receipts evidencing that such payments were made.

16. LIENS; ENCUMBRANCES. Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "**Lien**") on the Mortgaged Property (other than the lien of this Instrument) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a "**Transfer**" which constitutes an Event of Default and subjects Borrower to personal liability under the Note.

17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.

(a) Borrower shall not commit waste or permit impairment or deterioration of the Mortgaged Property.

(b) Borrower shall not abandon the Mortgaged Property.

(c) Borrower shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair; however, Borrower shall not be obligated to perform such restoration or repair if (i) no Event of Default has occurred and is continuing, and (ii) Lender has elected to apply any available insurance proceeds and/or condemnation awards to the payment of Indebtedness pursuant to Section 19(h)(ii), (iii), (iv) or (v), or pursuant to Section 20.

(d) Borrower shall keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality.

(e) Borrower shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender at all times under a contract approved by Lender in writing, which contract must be terminable upon not more than 30 days notice without the necessity of establishing cause and without payment of a penalty or termination fee by Borrower or its successors.

(f) Borrower shall give Notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property, including any removal, demolition or alteration occurring in connection with a rehabilitation of all or part of the Mortgaged Property, except (i) in connection with the replacement of tangible Personalty, (ii) if Borrower is a cooperative housing corporation or association, to the extent permitted with respect to individual dwelling units under the form of proprietary lease or occupancy agreement and (iii) repairs and replacements in connection with making an individual unit ready for a new occupant.

(g) Unless otherwise waived by Lender in writing, Borrower must have or must establish and must adhere to the MMP. If the Borrower is required to have an MMP, the Borrower must keep all MMP documentation at the Mortgaged Property or at the management agent's office and available for the Lender or the Loan Servicer to review during any annual assessment or other inspection of the Mortgaged Property that is required by Lender.

(h) If Borrower is a housing cooperative corporation or association, until the Indebtedness is paid in full Borrower shall not reduce the maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements below a level which is sufficient to pay all expenses of the Borrower, including, without limitation, all operating and other expenses for the Mortgaged Property and all payments due pursuant to the terms of the Note and any Loan Documents.

18. ENVIRONMENTAL HAZARDS.

(a) Except for matters described in Section 18(b), Borrower shall not cause or permit any of the following:

(i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;

(ii) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property;

(iii) any occurrence or condition on the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws;

(iv) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property; or

(v) any violation or noncompliance with the terms of any O&M Program as defined in subsection (d).

The matters described in clauses (i) through (v) above, except as otherwise provided in Section 18(b), are referred to collectively in this Section 18 as "**Prohibited Activities or Conditions**."

(b) Prohibited Activities or Conditions shall not include lawful conditions permitted by an O&M Program or the safe and lawful use and storage of quantities of (i) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties, (ii) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (iii) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(d) As required by Lender, Borrower shall also have established a written operations and maintenance program with respect to certain Hazardous Materials. Each such operations and maintenance program and any additional or revised operations and maintenance programs established for the Mortgaged Property pursuant to this Section 18 must be approved by Lender and shall be referred to herein as an "**O&M Program**." Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with each O&M Program. Borrower shall pay all costs of performance of Borrower's obligations under any O&M Program, and Lender's out-of-pocket costs incurred in connection with the monitoring and review of each O&M Program and Borrower's performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender that Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing (which written disclosure may be in certain environmental assessments and other written reports accepted by Lender in connection with the funding of the Indebtedness and dated prior to the date of this Instrument):

(i) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions on the Mortgaged Property;

(ii) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed on the Mortgaged Property;

(iii) the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Mortgaged Property that has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;

(iv) to the best of Borrower's knowledge after reasonable and diligent inquiry, Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;

(v) to the best of Borrower's knowledge after reasonable and diligent inquiry, no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit;

(vi) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and

(vii) Borrower has not received any written complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.

(f) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

(i) Borrower's discovery of any Prohibited Activity or Condition;

(ii) Borrower's receipt of or knowledge of any written complaint, order, notice of violation or other communication from any tenant, management agent, Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property; or

(iii) Borrower's breach of any of its obligations under this Section 18.

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

(g) Borrower shall pay promptly the costs of any environmental inspections, tests or audits, a purpose of which is to identify the extent or cause of or potential for a Prohibited Activity or Condition ("**Environmental Inspections**"), required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer under Section 21, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including Attorneys' Fees and Costs and the costs of technical consultants whether incurred in

connection with any judicial or administrative process or otherwise) that Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. As long as (i) no Event of Default has occurred and is continuing, (ii) Borrower has actually paid for or reimbursed Lender for all costs of any such Environmental Inspections performed or required by Lender, and (iii) Lender is not prohibited by law, contract or otherwise from doing so, Lender shall make available to Borrower, without representation of any kind, copies of Environmental Inspections prepared by third parties and delivered to Lender. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by or for Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any Environmental Inspections made by or for Lender. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount that a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results to any third party of any Environmental Inspections made by or for Lender, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Environmental Inspections made by or for Lender.

(h) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("**Remedial Work**") is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property, or is otherwise required by Lender as a consequence of any Prohibited Activity or Condition or to prevent the occurrence of a Prohibited Activity or Condition, Borrower shall, by the earlier of (i) the applicable deadline required by Hazardous Materials Law or (ii) 30 days after Notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(i) Borrower shall comply with all Hazardous Materials Laws applicable to the Mortgaged Property. Without limiting the generality of the previous sentence, Borrower shall (i) obtain and maintain all Environmental Permits required by Hazardous Materials Laws and comply with all conditions of such Environmental Permits; (ii) cooperate with any inquiry by any Governmental Authority; and (iii) comply with any governmental or judicial order that arises from any alleged Prohibited Activity or Condition.

(j) Borrower shall indemnify, hold harmless and defend (i) Lender, (ii) any prior owner or holder of the Note, (iii) the Loan Servicer, (iv) any prior Loan Servicer, (v) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the "**Indemnitees**") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including Attorneys' Fees and Costs and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following:

(i) any breach of any representation or warranty of Borrower in this Section 18;

(ii) any failure by Borrower to perform any of its obligations under this Section 18;

(iii) the existence or alleged existence of any Prohibited Activity or Condition;

(iv) the presence or alleged presence of Hazardous Materials on or under the Mortgaged Property or in any of the Improvements or on or under any property of Borrower that is adjacent to the Mortgaged Property; and

(v) the actual or alleged violation of any Hazardous Materials Law.

(k) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. In any circumstances in which the indemnity under this Section 18 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned) may settle or compromise any action or legal or administrative proceeding. However, unless an Event of Default has occurred and is continuing, or the interests of Borrower and Lender are in conflict, as determined by Lender in its discretion, Lender shall permit Borrower to undertake the actions referenced in this Section 18 in accordance with this Section 18(k) and Section 18(l) so long as Lender approves such action, which approval shall not be unreasonably withheld or delayed. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, consultants' fees and Attorneys' Fees and Costs.

(l) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "**Claim**"), settle or compromise the Claim if the settlement (i) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (ii) may materially and adversely affect Lender, as determined by Lender in its discretion.

(m) Borrower's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Borrower or any guarantor to receive notice of or consideration for any of the following:

(i) any amendment or modification of any Loan Document;

(ii) any extensions of time for performance required by any Loan Document;

(iii) any provision in any of the Loan Documents limiting Lender's recourse to property securing the Indebtedness, or limiting the personal liability of Borrower or any other party for payment of all or any part of the Indebtedness;

(iv) the accuracy or inaccuracy of any representations and warranties made by Borrower under this Instrument or any other Loan Document;

(v) the release of Borrower or any other person, by Lender or by operation of law, from performance of any obligation under any Loan Document;

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

(vii) Lender's failure to properly perfect any lien or security interest given as security for the Indebtedness.

(n) Borrower shall, at its own cost and expense, do all of the following:

(i) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 18;

(ii) reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 18; and

(iii) reimburse Indemnitees for any and all expenses, including Attorneys' Fees and Costs, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 18, or in monitoring and participating in any legal or administrative proceeding.

(o) The provisions of this Section 18 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 18 without regard to whether Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 18 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section 18 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument. Notwithstanding the foregoing, if Lender has never been a mortgagee-in-possession of, or held title to, the Mortgaged Property, Borrower shall have no obligation to indemnify the Indemnitees under this Section 18 after the date of the release of record of the lien of this Instrument by payment in full at the Maturity Date or by voluntary prepayment in full.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire, windstorm and allied perils, general boiler and machinery coverage, and business interruption including loss of rental value insurance for the Mortgaged Property with extra expense insurance. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. In the event any updated reports or other documentation are reasonably required by Lender in order to determine whether such additional insurance is necessary or prudent,

Borrower shall pay for all such documentation at its sole cost and expense. Borrower acknowledges and agrees that Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If any of the Improvements is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, Borrower shall insure such Improvements against loss by flood. All insurance required pursuant to this Section 19(a) shall be referred to as "**Hazard Insurance**." All policies of Hazard Insurance must include a non-contributing, non-reporting mortgagee clause in favor of, and in a form approved by, Lender.

(b) All premiums on insurance policies required under this Section 19 shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. Borrower shall deliver to Lender a legible copy of each insurance policy (or duplicate original) and Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 5 days prior to the expiration date of any insurance policy, Borrower shall deliver to Lender evidence acceptable to Lender that the policy has been renewed. If Borrower has not delivered a legible copy of each renewal policy (or a duplicate original) prior to the expiration date of any insurance policy, Borrower shall deliver a legible copy of each renewal policy (or a duplicate original) in a form satisfactory to Lender within 120 days after the expiration date of the original policy.

(c) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require. All policies for general liability insurance must contain a standard additional insured provision, in favor of, and in a form approved by, Lender.

(d) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender.

(e) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(f) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of Hazard Insurance, to appear in and prosecute any action arising from such Hazard Insurance policies, to collect and receive the proceeds of Hazard Insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (i) require a "repair or replacement" settlement, in which case the proceeds will be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "**Restoration**"), or (ii) require an "actual cash value" settlement in which case the proceeds may be applied to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to require a repair or replacement settlement and apply insurance proceeds to Restoration, Lender shall apply the proceeds in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily properties.

(g) Notwithstanding any provision to the contrary in this Section 19, as long as no Event of Default, or any event which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default, has occurred and is continuing,

(i) in the event of a casualty resulting in damage to the Mortgaged Property which will cost $10,000 or less to repair, the Borrower shall have the sole right to make proof of loss, adjust and compromise the claim and collect and receive any proceeds directly without the approval or prior consent of the Lender so long as the insurance proceeds are used solely for the Restoration of the Mortgaged Property; and

(ii) in the event of a casualty resulting in damage to the Mortgaged Property which will cost more than $10,000 but less than $50,000 to repair, the Borrower is authorized to make proof of loss and adjust and compromise the claim without the prior consent of Lender, and Lender shall hold the applicable insurance proceeds to be used to reimburse Borrower for the cost of Restoration of the Mortgaged Property and shall not apply such proceeds to the payment of sums due under this Instrument.

(h) Lender will have the right to exercise its option to apply insurance proceeds to the payment of the Indebtedness only if Lender determines that at least one of the following conditions is met:

(i) an Event of Default (or any event, which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing;

(ii) Lender determines, in its discretion, that there will not be sufficient funds from insurance proceeds, anticipated contributions of Borrower of its own funds or other sources acceptable to Lender to complete the Restoration;

(iii) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the Restoration will not be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property;

(iv) Lender determines, in its discretion, that the Restoration will not be completed at least one year before the Maturity Date (or six months before the Maturity Date if Lender determines in its discretion that re-leasing of the Mortgaged Property will be completed within such six-month period); or

(v) Lender determines that the Restoration will not be completed within one year after the date of the loss or casualty.

(i) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

(j) Unless Lender otherwise agrees in writing, any application of any insurance proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments.

(k) Borrower agrees to execute such further evidence of assignment of any insurance proceeds as Lender may require.

20. CONDEMNATION.

(a) Borrower shall promptly notify Lender in writing of any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "**Condemnation**"). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation, after consultation with Borrower and consistent with commercially reasonable standards of a prudent lender. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts (including Attorneys' Fees and Costs) at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [RIGHT TO UNLIMITED TRANSFERS — WITH LENDER APPROVAL].

(a) "**Transfer**" means

(i) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law);

(ii) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law);

(iii) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock;

(iv) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or

(v) the merger, dissolution, liquidation, or consolidation of a legal entity or the reconstitution of one type of legal entity into another type of legal entity.

For purposes of defining the term "Transfer," the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

(b) "Transfer" does not include

(i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument,

(ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code, or

(iii) a lien against the Mortgaged Property for local taxes and/or assessments not then due and payable.

(c) The occurrence of any of the following Transfers shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(e) to the contrary:

(i) a Transfer to which Lender has consented;

(ii) a Transfer that occurs in accordance with Section 21(d);

(iii) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;

(iv) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;

(v) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property, which is released of record or otherwise remedied to Lender's satisfaction within 60 days of the date of creation;

(vi) if Borrower is a housing cooperative corporation or association, the Transfer of more than 49 percent of the shares in the housing cooperative or the assignment of more than 49 percent of the occupancy agreements or leases relating thereto by tenant shareholders of the housing cooperative or association to other tenant shareholders; and

(vii) any Transfer of an interest in Borrower or any interest in a Controlling Entity (which, if such Controlling Entity were Borrower, would result in an Event of Default) listed in (A) through (F) below (a "**Preapproved Transfer**"), under the terms and conditions listed as items (1) through (7) below:

(A) a sale or transfer to one or more of the transferor's immediate family members; or

(B) a sale or transfer to any trust having as its sole beneficiaries the transferor and/or one or more of the transferor's immediate family members; or

(C) a sale or transfer from a trust to any one or more of its beneficiaries who are immediate family members of the transferor ; or

(D) the substitution or replacement of the trustee of any trust with a trustee who is an immediate family member of the transferor; or

(E) a sale or transfer to an entity owned and controlled by the transferor or the transferor's immediate family members; or

(F) a sale or transfer to an individual or entity that has an existing interest in the Borrower or in a Controlling Entity.

(1) Borrower shall provide Lender with prior written Notice of the proposed Preapproved Transfer, which Notice must be accompanied by a non-refundable review fee in the amount of $3,000.00.

(2) For the purposes of these Preapproved Transfers, a transferor's immediate family members will be deemed to include a spouse, parent, child or grandchild of such transferor.

(3) Either directly or indirectly, American Assets, Inc. and Foster Investment Corporation shall retain at all times a managing interest in the Borrower.

(4) At the time of the proposed Preapproved Transfer, no Event of Default shall have occurred and be continuing and no event or condition shall have occurred and be continuing that, with the giving of Notice or the passage of time, or both, would become an Event of Default.

(5) Lender shall be entitled to collect all costs, including the cost of all title searches, title insurance and recording costs, and all Attorneys' Fees and Costs.

(6) Lender shall not be entitled to collect a transfer fee as a result of these Preapproved Transfers.

(7) In the event of a Transfer prohibited by or requiring Lender's approval under this Section 21, this Section (c)(vii) may be modified or rendered void by Lender at Lender's option by Notice to Borrower and the transferee(s), as a condition of Lender's consent.

(d) The occurrence of any of the following Transfers shall not constitute an Event of Default under this Instrument, provided that Borrower has notified Lender in writing within 30 days following the occurrence of any of the following, and such Transfer does not constitute an Event of Default under any other Section of this Instrument:

(i) a change of the Borrower's name, provided that UCC financing statements and/or amendments sufficient to continue the perfection of Lender's security interest have been properly filed and copies have been delivered to Lender;

(ii) a change of the form of the Borrower not involving a transfer of the Borrower's assets and not resulting in any change in liability of any Initial Owner, provided that UCC financing statements and/or amendments sufficient to continue the perfection of Lender's security interest have been properly filed and copies have been delivered to Lender;

(iii) the merger of the Borrower with another entity when the Borrower is the surviving entity;

(iv) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person; and

(v) the grant of an easement, if before the grant Lender determines that the easement will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses, including Attorneys' Fees and Costs, incurred by Lender in connection with reviewing Borrower's request.

(e) The occurrence of any of the following Transfers shall constitute an Event of Default under this Instrument:

(i) a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;

(ii) if Borrower is a limited partnership, a Transfer of (A) any general partnership interest, or (B) limited partnership interests in Borrower that would cause the Initial Owners of Borrower to own less than a Controlling Interest of all limited partnership interests in Borrower;

(iii) if Borrower is a general partnership or a joint venture, a Transfer of any general partnership or joint venture interest in Borrower;

(iv) if Borrower is a limited liability company, (A) a Transfer of any membership interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all the membership interests in Borrower, (B) a Transfer of any membership or other interest of a manager in Borrower that results in a change of manager or (C) a change in a nonmember manager;

(v) if Borrower is a corporation (A) the Transfer of any voting stock in Borrower which would cause the Initial Owners to own less than a

Controlling Interest of any class of voting stock in Borrower or (B) if the outstanding voting stock in Borrower is held by 100 or more shareholders, one or more Transfers by a single transferor within a 12-month period affecting an aggregate of 5 percent or more of that stock;

(vi) if Borrower is a trust, (A) a Transfer of any beneficial interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all the beneficial interests in Borrower, (B) the termination or revocation of the trust, or (C) the removal, appointment or substitution of a trustee of Borrower;

(vii) if Borrower is a limited liability partnership, (A) a Transfer of any partnership interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all partnership interests in Borrower, or (B) a transfer of any partnership or other interest of a managing partner in Borrower that results in a change of manager; and

(viii) a Transfer of any interest in a Controlling Entity which, if such Controlling Entity were Borrower, would result in an Event of Default under any of Sections 21(e)(i) through (vii) above.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(f) Lender shall consent, without any adjustment to the rate at which the Indebtedness secured by this Instrument bears interest or to any other economic terms of the Indebtedness set forth in the Note, to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

(i) the submission to Lender of all information required by Lender to make the determination required by this Section 21(f);

(ii) the absence of any Event of Default;

(iii) the transferee meets all of the eligibility, credit, management and other standards (including but not limited to any standards with respect to previous relationships between Lender and the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgages on multifamily properties;

(iv) the transferee's organization, credit and experience in the management of similar properties are deemed by the Lender, in its discretion, to be appropriate to the overall structure and documentation of the existing financing;

(v) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition, occupancy, net operating income and the collection of reserves that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily properties;

(vi) in the case of a Transfer of all or any part of the Mortgaged Property, (A) the execution by the transferee of Lender's then-standard assumption agreement that, among other things, requires the transferee to perform all obligations of Borrower set forth in the Note, this Instrument and any other Loan Documents, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived or modified by Lender, (B) if Lender requires, the transferee causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender, and (C) the transferee executes such additional Collateral Agreements as Lender may require;

(vii) in the case of a Transfer of any interest in a Controlling Entity, if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender; and

(viii) Lender's receipt of all of the following:

(A) a review fee in the amount of $3,000.00;

(B) a transfer fee in an amount equal to one (1) percent of the unpaid principal balance of the Indebtedness immediately before the applicable Transfer; and

(C) the amount of Lender's out-of-pocket costs (including reasonable Attorneys' Fees and Costs) incurred in reviewing the Transfer request.

22. EVENTS OF DEFAULT. The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

(a) any failure by Borrower to pay or deposit when due any amount required by the Note, this Instrument or any other Loan Document;

(b) any failure by Borrower to maintain the insurance coverage required by Section 19;

(c) any failure by Borrower to comply with the provisions of Section 33;

(d) fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners or managers or any guarantor in connection with (i) the application for or creation of the Indebtedness, (ii) any financial statement, rent schedule, or other report or information provided to Lender during the term of the Indebtedness, or (iii) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

(e) any failure by Borrower to comply with the provisions of Section 20;

(f) any Event of Default under Section 21;

(g) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property;

(h) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (g)), as and when required, which continues for a period of 30 days after Notice of such failure by Lender to Borrower. However, if Borrower's failure to perform its obligations as described in this Section 22(h) is of the nature that it cannot be cured within the 30 day grace period but reasonably could be cured within 90 days, then Borrower shall have additional time as determined by Lender in its discretion, not to exceed an additional 60 days, in which to cure such default, provided that Borrower has diligently commenced to cure such default during the 30-day grace period and diligently pursues the cure of such default. However, no such Notice or grace periods shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(i) any failure by Borrower to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document;

(j) any exercise by the holder of any other debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable;

(k) any voluntary filing by Borrower for bankruptcy protection under the United States Bankruptcy Code or any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights to which Borrower voluntarily becomes subject, or the commencement of any involuntary case against Borrower by any creditor (other than Lender) of Borrower pursuant to the United States Bankruptcy Code or other federal or state law affecting debtor and creditor rights which case is not dismissed or discharged within 90 days after filing; and

(l) any representations and warranties by Borrower in this Instrument which is false or misleading in any material respect.

23. REMEDIES CUMULATIVE. Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

24. FORBEARANCE.

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a

renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy, or the subsequent exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

25. LOAN CHARGES. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

26. WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document.

27. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

28. FURTHER ASSURANCES. Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents.

29. ESTOPPEL CERTIFICATE. Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if the Borrower is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and (vi) any additional facts requested by Lender.

30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "**Property Jurisdiction**").

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 30 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.

31. NOTICE.

(a) All Notices, demands and other communications ("**Notice**") under or concerning this Instrument shall be in writing. Each Notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (i) the date when the Notice is received by the addressee; (ii) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (iii) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

(b) Any party to this Instrument may change the address to which Notices intended for it are to be directed by means of Notice given to the other party in accordance with this Section 31. Each party agrees that it will not refuse or reject delivery of any Notice given in accordance with this Section 31, that it will acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it shall be deemed for purposes of this Section 31 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any Notice under the Note and any other Loan Document that does not specify how Notices are to be given shall be given in accordance with this Section 31.

32. SALE OF NOTE; CHANGE IN SERVICER; LOAN SERVICING. The Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior Notice to Borrower. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given Notice of the change. All actions regarding the servicing of the loan evidenced by the Note, including the collection of payments, the giving and receipt of Notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives Notice to the contrary. If Borrower receives conflicting Notices regarding the identity of the Loan Servicer or any other subject, any such Notice from Lender shall govern.

33. SINGLE ASSET BORROWER. Until the Indebtedness is paid in full, Borrower (a) shall not own any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

34. SUCCESSORS AND ASSIGNS BOUND. This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Borrower. However, a Transfer not permitted by Section 21 shall be an Event of Default.

35. JOINT AND SEVERAL LIABILITY. If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

36. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (i) any arrangement (a "**Servicing Arrangement**") between the Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (ii) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (iii) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

37. SEVERABILITY; AMENDMENTS. The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought; provided, however, that in the event of a Transfer prohibited by or requiring Lender's approval under Section 21, any or some or all of the Modifications to Instrument set forth in Exhibit B (if any) may be modified or rendered void by Lender at Lender's option by Notice to Borrower and the transferee(s).

38. CONSTRUCTION. The captions and headings of the Sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

39. DISCLOSURE OF INFORMATION. Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans, as well as governmental regulatory agencies having regulatory authority over Lender. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

40. NO CHANGE IN FACTS OR CIRCUMSTANCES. Borrower warrants that (a) all information in the application for the loan submitted to Lender (the "**Loan Application**") and in all financial statements, rent schedules, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects; and (b) there has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

41. SUBROGATION. If, and to the extent that, the proceeds of the loan evidenced by the Note, or subsequent advances under Section 12, are used to pay, satisfy or discharge a Prior Lien, such loan proceeds or advances shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

42. ADJUSTABLE RATE MORTGAGE - THIRD PARTY CAP AGREEMENT "CAP COLLATERAL."

(a) If the Note provides for interest to accrue at an adjustable or variable interest rate (other than during the "Extension Period," as defined in the Note, if applicable), then the definition of "Mortgaged Property" shall include the "**Cap Collateral**." The "Cap Collateral" shall mean

(i) any interest rate cap agreement, interest rate swap agreement, or other interest rate-hedging contract or agreement obtained by Borrower as a requirement of any Loan Document or as a condition of Lender's making the Loan (a "**Cap Agreement**");

(ii) any and all moneys (collectively, "**Cap Payments**") payable pursuant to any Cap Agreement by the interest rate cap provider or other counterparty to a Cap Agreement or any guarantor of the obligations of any such cap provider or counterparty (a "**Cap Provider**");

(iii) all rights of Borrower under any Cap Agreement and all rights of Borrower to all Cap Payments, including contract rights and general intangibles, whether existing now or arising after the date of this Instrument;

(iv) all rights, liens and security interests or guaranties granted by a Cap Provider or any other person to secure or guaranty payment of any Cap Payment whether existing now or granted after the date of this Instrument;

(v) all documents, writings, books, files, records and other documents arising from or relating to any of the foregoing, whether existing now or created after the date of this Instrument; and

(vi) all cash and non-cash proceeds and products of (ii) – (v) above.

(b) As additional security for Borrower's obligation under the Loan Documents, Borrower hereby assigns and pledges to Lender all of Borrower's right, title and interest in and to the Cap Collateral. Borrower has instructed and will instruct each Cap Provider and any guarantor of a Cap Provider's obligations to make Cap Payments directly to Lender or to Loan Servicer on behalf of Lender.

(c) So long as there is no Event of Default, Lender or Loan Servicer will remit to Borrower each Cap Payment received by Lender or Loan Servicer with respect to any month for which Borrower has paid in full the monthly installment of principal and interest or interest only, as applicable, due under the Note. Alternatively, at Lender's option so long as there is no Event of Default, Lender may apply a Cap Payment received by Lender or Loan Servicer with respect to any month to the applicable monthly payment of accrued interest due under the Note if Borrower has paid in full the remaining portion of such monthly payment of principal and interest or interest only, as applicable.

(d) Following an Event of Default, in addition to any other rights and remedies Lender may have, Lender may retain any Cap Payments and apply them to the Indebtedness in such order and amounts as Lender determines. Neither the existence of a Cap Agreement nor anything in this Instrument shall relieve Borrower of its primary obligation to timely pay in full all amounts due under the Note and otherwise due on account of the Indebtedness.

(e) If the Note does not provide for interest to accrue at an adjustable or variable interest rate (other than during the Extension Period) then this Section 42 shall be of no force or effect.

43. ACCELERATION; REMEDIES. If an Event of Default has occurred and is continuing, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by California law or provided in this Instrument or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports.

If the power of sale is invoked, Lender shall execute a written notice of the occurrence of an Event of Default and of Lender's election to cause the Mortgaged Property to be sold and shall cause the notice to be recorded in each county in which the Mortgaged Property or some part of the Mortgaged Property is located. Trustee shall give notice of default and notice of sale and shall sell the Mortgaged Property according to California law. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone the sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Mortgaged Property at any sale.

Trustee shall deliver to the purchaser at the sale, within a reasonable time after the sale, a deed conveying the Mortgaged Property so sold without any express or implied covenant or warranty. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made in those recitals. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including Trustee's fees not to exceed 5% of the gross sales price, attorneys' fees and costs of title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to the excess.

44. RECONVEYANCE. Upon payment of the Indebtedness, Lender shall request Trustee to reconvey the Mortgaged Property and shall surrender this Instrument and the Note to Trustee. Trustee shall reconvey the Mortgaged Property without warranty to the person or persons legally entitled to the Mortgaged Property. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Mortgaged Property.

45. SUBSTITUTE TRUSTEE. Lender, at Lender's option, may from time to time, by a written instrument, appoint a successor trustee, which instrument, when executed and acknowledged by Lender and recorded in the office of the Recorder of the county or counties where the Mortgaged Property is situated, shall be conclusive proof of proper substitution of the successor trustee. The successor trustee shall, without conveyance of the Mortgaged Property, succeed to all the title, power and duties conferred upon the Trustee in this Instrument and by California law. The instrument of substitution shall contain the name of the original Lender, Trustee and Borrower under this Instrument, the book and page where this Instrument is recorded, and the name and address of the successor trustee. If notice of default has been recorded, this power of substitution cannot be exercised until after the costs, fees and expenses of the then acting Trustee have been paid to such Trustee, who shall endorse receipt of those costs, fees and expenses upon the instrument of substitution. The procedure provided for substitution of trustee in this Instrument shall govern to the exclusion of all other provisions for substitution, statutory or otherwise.

46. STATEMENT OF OBLIGATION. Lender may collect a fee not to exceed the maximum allowed by applicable law for furnishing the statement of obligation as provided in Section 2943 of the Civil Code of California.

47. SPOUSE'S SEPARATE PROPERTY. Each Borrower who is a married person expressly agrees that recourse may be had against his or her separate property.

48. FIXTURE FILING. This Instrument is also a fixture filing under the Uniform Commercial Code of California.

49. ADDITIONAL PROVISION REGARDING APPLICATION OF PAYMENTS. In addition to the provisions of Section 9, Borrower further agrees that, if Lender accepts a guaranty of only a portion of the Indebtedness, Borrower waives its right under California Civil Code Section 2822(a), to designate the portion of the Indebtedness which shall be satisfied by a guarantor's partial payment.

50. WAIVER OF MARSHALLING; OTHER WAIVERS. To the extent permitted by law, Borrower waives (i) the benefit of all present or future laws providing for any appraisement before sale of any portion of the Mortgaged Property, (ii) all rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the Indebtedness and marshalling in the event of foreclosure of the lien created by this Instrument, (iii) all rights and remedies which Borrower may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties, (iv) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument, and (v) any rights, legal or equitable, to require marshalling of assets or to require upon foreclosure sales in a particular order, including any rights under California Civil Code Sections 2899 and 3433. Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided by this Instrument. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of the remedies provided by this Instrument. By signing this Instrument, Borrower does not waive its rights under Section 2924c of the California Civil Code.

51. ADDITIONAL PROVISIONS CONCERNING ENVIRONMENTAL HAZARDS. In addition to the provisions of Section 18:

(a) Except for matters covered by an O&M Program or matters described in Section 18(b), Borrower shall not cause or permit any lien (whether or not such lien has priority over the lien created by this Instrument) upon the Mortgaged Property imposed pursuant to any Hazardous Materials Laws. Any such lien shall be considered a Prohibited Activity or Condition.

(b) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing:

(1) at the time of acquiring the Mortgaged Property, Borrower undertook all appropriate inquiry into the previous ownership and uses of the Mortgaged Property consistent with good commercial or customary practice and no evidence or indication came to light which would suggest that the Mortgaged Property has been or is now being used for any Prohibited Activities or Conditions; and

(2) the Mortgaged Property has not been designated as "hazardous waste property" or "border zone property" pursuant to Section 25220, *et seq.*, of the California Health and Safety Code.

The representations and warranties in this Section 51(b) shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the loan evidenced by the Note, until the Indebtedness has been paid in full.

(c) Without limiting any of the remedies provided in this Instrument, Borrower acknowledges and agrees that each of the provisions in Section 18 and in this Section 51 is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Borrower relating to the real property security (the "**Environmental Provisions**"), and that Borrower's failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Lender to pursue the remedies provided by Section 736 of the California Code of Civil Procedure ("**Section 736**") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Lender's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

(d) Any reference in this Instrument or in any other Loan Document to Section 18 of this Instrument shall be construed as referring together to Section 18 and this Section 51.

52. <u>WAIVER OF TRIAL BY JURY</u>. BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

ATTACHED EXHIBITS. The following Exhibits are attached to this Instrument:

☒ Exhibit A Description of the Land (required).

☒ Exhibit B Modifications to Instrument

IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.

LOMA PALISADES, a California general partnership

By: San Diego Loma Palisades, L.P., a California limited partnership, its general partner

By: American Assets, Inc., a California corporation, its general partner

By: /s/ Ernest Rady
Ernest Rady
President

By: /s/ Robert F. Barton
Robert F. Barton
Chief Financial Officer

By: Foster Palisades, LLC, a California limited liability company, its general partner

By: Foster Investment Corporation, a California corporation, its sole member

By: /s/ John C. Harris
John C. Harris
Chief Financial Officer

EXHIBIT A

[DESCRIPTION OF THE LAND]

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL A:

LOT 1 OF LOMA PALISADES UNIT NO, 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 3724, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 1, 1957.

EXCEPTING THEREFROM, THAT PORTION OF BOB STREET, BARNARD STREET AND WORDEN STREET, DEDICATED TO PUBLIC USE ON MAP NO. 3724, BEING DEPICTED AS “RESERVED FOR FUTURE STREETS”, AND ACCEPTED AND DEDICATED TO PUBLIC USE BY RESOLUTION NO. 162562; A CERTIFIED COPY OF SAID RESOLUTION WAS RECORDED OCTOBER 10, 1960 AS INSTRUMENT NO. 201986 OF OFFICIAL RECORDS.

PARCEL B:

LOTS 2 AND 3 OF LOMA PALISADES UNIT NO. 2, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 3768 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 18, 1957.

EXCEPTING THEREFROM, THAT PORTION OF BOB STREET, WORDEN STREET, POLACK STREET, ADRIAN STREET AND ALLEY, DEDICATED TO PUBLIC USE ON MAP NO. 3768, BEING DEPICTED AS “RESERVED FOR FUTURE STREET” AND “RESERVED FOR FUTURE ALLEY”, AND ACCEPTED AND DEDICATED TO PUBLIC USE BY RESOLUTION NO, 162563; A CERTIFIED COPY OF SAID RESOLUTION WAS RECORDED OCTOBER 10, 1960 AS INSTRUMENT NO. 201987 OF OFFICIAL RECORDS.

PARCEL C:

LOTS 4 AND 5 OF LOMA PALISADES UNIT NO. 3, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 3798 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 5, 1958.

EXCEPTING THEREFROM, THAT PORTION OF BOB STREET AND ADRIAN STREET, DEDICATED TO PUBLIC USE ON MAP NO. 3798, BEING DEPICTED AS “RESERVED FOR FUTURE STREETS”, AND ACCEPTED AND DEDICATED TO PUBLIC USE BY RESOLUTION NO. 162564; A CERTIFIED COPY OF SAID RESOLUTION WAS RECORDED OCTOBER 10, 1960 AS INSTRUMENT NO. 201988 OF OFFICIAL RECORDS.

PARCEL D:

LOTS 8 AND 9 OF LOMA PALISADES UNIT NO. 4, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 3837 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MARCH 14, 1958.

EXCEPTING THEREFROM, THAT PORTION OF WORDEN STREET, LELAND STREET, NIPOMA PLACE AND ALLEY, DEDICATED TO PUBLIC USE ON MAP NO. 3837, BEING DEPICTED AS “RESERVED FOR FUTURE STREETS” AND “RESERVED FOR FUTURE ALLEY”, AND ACCEPTED AND DEDICATED TO PUBLIC USE BY RESOLUTION NO. 162565; A CERTIFIED COPY OF SAID RESOLUTION WAS RECORDED OCTOBER 10, 1960 AS INSTRUMENT NO. 201989 OF OFFICIAL RECORDS.

PARCEL E:

LOT 10 OF LOMA PALISADES UNIT NO. 5, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 3851 FILED MARCH 31, 1958 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

EXCEPTING THEREFROM, THAT PORTION OF WORDEN STREET, DEDICATED TO PUBLIC USE ON MAP NO. 3851, BEING DEPICTED AS “RESERVED FOR FUTURE STREETS”, AND ACCEPTED AND DEDICATED TO PUBLIC USE BY RESOLUTION NO. 162566; A CERTIFIED COPY OF SAID RESOLUTION WAS RECORDED OCTOBER 10, 1960 AS INSTRUMENT NO. 201990 OF OFFICIAL RECORDS.

ALSO EXCEPTING THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 37 OF PACIFIC WESTERN HILLS, ACCORDING TO MAP THEREOF NO. 5058 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY; THENCE ALONG THE NORTHEASTERLY LINE THEREOF SOUTH 53 DEG. 54’17” EAST (RECORD SOUTH 53 DEG. 56’ EAST) 1.00 FOOT TO AN ANGLE POINT IN THE BOUNDARY OF SAID LOT 10; THENCE ALONG SAID BOUNDARY NORTH 36 DEG. 10’13” EAST (RECORD NORTH 36 DEG. 08’30” EAST) 166.18 FEET TO AN ANGLE POINT THEREIN; THENCE ALONG THE PROLONGATION OF SAID BOUNDARY NORTH 53 DEG. 55’17” WEST (RECORD NORTH 53 DEG. 57’ WEST) 35.80 FEET; THENCE NORTH 77 DEG. 10’13” WEST 37.12 FEET TO THE BOUNDARY OF WORDEN STREET, AS RESERVED ON SAID MAP NO. 3851 AND DEDICATED ON RESOLUTION NO, 162566, RECORDED OCTOBER 10, 1960 AS INSTRUMENT NO. 201990 OF OFFICIAL RECORDS; THENCE ALONG SAID BOUNDARY SOUTH 12 DEG. 49’47” EAST (RECORD SOUTH 12 DEG. 51’30” EAST) 14.33 FEET TO A TANGENT 140 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE SOUTHERLY ALONG SAID CURVE, 119.55 FEET THROUGH AN ANGLE OF 48 DEG. 55’30”, AND TANGENT TO SAID CURVE, SOUTH 36 DEG. 05’43” WEST (RECORD SOUTH 36 DEG. 04’ WEST) 22.95 FEET TO THE POINT OF BEGINNING.

PARCEL F:

PARCEL 3 OF RECORD OF SURVEY MAP NO. 5874, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JUNE 15, 1961 AS INSTRUMENT NO. 103076 OF OFFICIAL RECORDS.

INCLUDING THAT PORTION OF PARCEL 2 OF SAID RECORD OF SURVEY MAP NO. 5874, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL 2, SAID POINT ALSO BEING A COMMON CORNER WITH PARCEL 3 OF SAID MAP; THENCE ALONG THE COMMON LINE OF SAID PARCEL 2 AND PARCEL 3 SOUTH 76 DEG. 15’09” WEST, A DISTANCE OF 53.38 FEET; THENCE CONTINUING ALONG SAID LINE THENCE SOUTH 36 DEG. 09’50” WEST, A DISTANCE OF 353.25 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 53 DEG. 50’10” EAST, A DISTANCE OF 61.50 FEET; THENCE SOUTH 36 DEG. 09’50” WEST, A DISTANCE OF 97.00 FEET; THENCE NORTH 53 DEG. 50’10” WEST, A DISTANCE OF 61.50 FEET; THENCE NORTH 36 DEG. 09’50” EAST, A DISTANCE OF 97.00 FEET TO THE TRUE POINT OF BEGINNING.

NOTE: A CERTIFICATE OF COMPLIANCE AFFECTING THIS PARCEL WAS ISSUED AND RECORDED BY THE CITY OF SAN DIEGO ON NOVEMBER 17, 2000 AS INSTRUMENT NO. 2000-0628734 OF OFFICIAL RECORDS.

EXHIBIT B

MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. Section 3(b) is modified by:

   inserting the words “and prior to the date such Event of Default is cured to Lender’s satisfaction” after the words “Event of Default” in the first sentence

   and

   inserting the words “and prior to the date such Event of Default is cured to Lender’s satisfaction” after the words “Event of Default” in the fourth sentence.

2. Section 3(c) is modified by inserting “(except for the collection of normal security deposits and first and last month’s rents)” before the period at the end of the last sentence.

3. Section 4(b) is modified by:

   inserting “after the occurrence of an Event of Default” after “Section 4” in the first sentence;

   and

   inserting “and only for so long as such Event of Default is continuing” after “Event of Default” in the second sentence.

4. Section 4(d) is modified by inserting the words “and prior to the date such Event of Default is cured to Lender’s satisfaction” after the words “after the occurrence of an Event of Default” in the first sentence.

5. Section 4(g) is modified by inserting “(except for the collection of normal security deposits and first and last month’s rents)” before the period at the end of the Section.

6. Section 7(f) is modified by deleting the last sentence of the Section and replacing it with the following:

   “Lender may revoke its deferral or waiver and require Borrower to deposit with Lender any or all of the Imposition Deposits listed in Section 7(a), regardless of whether any such item is marked “Deferred” in such section, upon Notice to Borrower, at any time during the existence of an Event of Default.”

7. Section 18(o) is modified by inserting the following at the end of the Section:

   “The foregoing obligation of Borrower to indemnify the Indemnitees shall specifically not include any costs relating to Hazardous Materials which are initially placed on, in or under the Mortgaged Property by Lender after foreclosure or other taking of title to the Mortgaged Property by Lender or its successors or assigns.”

8. Section 19(g)(i) is modified by replacing “$10,000” with “$100,000”.

9. Section 19(g)(ii) is modified by replacing “$10,000” with “$100,000”, and by replacing “$50,000” with “$250,000”.

10. Section 19(h)(iv) is modified by replacing “one year” with “six months”.

11. Section 20 of the Security Instrument is modified by adding the following as subsection (c);

“(c) Lender shall not exercise its option to apply Condemnation proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its discretion, that the Condemnation does not materially adversely affect the use of the Mortgaged Property; (3) Lender determines, in its discretion, that there will be sufficient funds to complete the repair or restoration of the Mortgaged Property; (4) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the repair and restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; and (5) Lender determines, in its discretion, that the repair and restoration of the Mortgaged Property will be completed and the restored units are leased and occupied before the earlier of (A) one year before the maturity date of the Note or (B) six months after the date of the taking. If Lender applies awards or proceeds to the restoration and repair of the Mortgaged Property, any excess sums remaining after completion of the restoration and repair, at Lender’s discretion, may be applied to the Indebtedness.”

12. Section 21(c)(vii)is revised to read as follows:

“(vii) A Transfer of direct or indirect interests in Borrower or a Controlling Entity so long as following any such Transfer either Ernest Rady or members of his immediate family, or Pauline Foster or members of her immediate family, directly or indirectly retain the managing interest in Borrower. Immediate family members will be deemed to include a spouse, parent, child or grandchild and trusts for any such persons.”

13. Section 21(f)(ii) is revised by inserting “uncured” before the words “Event of Default”.

14. Section 21(f)(viii)(A) is revised to replace “$3,000.00” with “$1,500.00, the entire portion of which, as between Lender and Loan Servicer, shall be retained by Lender”.

15. Section 22(a) is revised to insert the following before the semicolon “and, unless the failure is with respect to the payment of a monthly installment of interest due under the Note, such failure continues for a period of five (5) days following Notice of the failure from Lender to Borrower”.

16. Clause (c) of Section 33 is revised to read as follows “(c) shall not maintain its assets in a way difficult to segregate from the assets owned by any other person or entity, or in such a way as to make it difficult to identify assets as owned by Borrower”.

Exhibit 10.36

FHLMC Loan No. 487794745
Loma Palisades Apartments

MULTIFAMILY NOTE
MULTISTATE – FIXED RATE
(REVISION DATE 2-15-2008)

US $73,744,000.00 Effective Date: As of June 30, 2008

FOR VALUE RECEIVED, the undersigned (together with such party's or parties' successors and assigns, "**Borrower**") jointly and severally (if more than one) promises to pay to the order of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, the principal sum of Seventy-Three Million Seven Hundred Forty-Four Thousand and 00/100 Dollars (US $73,744,000.00), with interest on the unpaid principal balance, as hereinafter provided.

1. Defined Terms.

(a) As used in this Note:

"**Base Recourse**" means a portion of the Indebtedness equal to zero percent (0%) of the original principal balance of this Note.

"**Business Day**" means any day other than a Saturday, a Sunday or any other day on which Lender or the national banking associations are not open for business.

"**Default Rate**" means an annual interest rate equal to four (4) percentage points above the Fixed Interest Rate. However, at no time will the Default Rate exceed the Maximum Interest Rate.

"**Fixed Interest Rate**" means the annual interest rate of six and nine hundredths percent (6.09%).

"**Installment Due Date**" means, for any monthly installment of interest only or principal and interest, the date on which such monthly installment is due and payable pursuant to Section 3 of this Note. The "**First Installment Due Date**" under this Note is August 1, 2008.

"**Lender**" means the holder from time to time of this Note.

"**Loan**" means the loan evidenced by this Note.

"**Maturity Date**" means the earlier of (i) July 1, 2018 (the "**Scheduled Maturity Date**"), and (ii) the date on which the unpaid principal balance of this Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document.

"**Maximum Interest Rate**" means the rate of interest that results in the maximum amount of interest allowed by applicable law.

"**Prepayment Premium Period**" means the period during which, if a prepayment of principal occurs, a prepayment premium will be payable by Borrower to Lender. The Prepayment Premium Period is the period from and including the date of this Note until but not including the first day of the Window Period.

"**Security Instrument**" means the multifamily mortgage, deed to secure debt or deed of trust effective as of the effective date of this Note, from Borrower to or for the benefit of Lender and securing this Note.

"**Treasury Security**" means the 3.860% U.S. Treasury Security due May 15, 2018.

"**Window Period**" means the three (3) consecutive calendar month period prior to the Scheduled Maturity Date.

"**Yield Maintenance Period**" means the period from and including the date of this Note until but not including January 1, 2018.

(b) Other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Security Instrument.

2. Address for Payment. All payments due under this Note shall be payable at 2010 Corporate Ridge, Suite 1000, McLean, Virginia 22102, or such other place as may be designated by Notice to Borrower from or on behalf of Lender.

3. Payments.

(a) Interest will accrue on the outstanding principal balance of this Note at the Fixed Interest Rate, subject to the provisions of Section 8 of this Note.

(b) Interest under this Note shall be computed, payable and allocated on the basis of an actual/360 interest calculation schedule (interest is payable for the actual number of days in each month, and each month's interest is calculated by multiplying the unpaid principal amount of this Note as of the first day of the month for which interest is being calculated by the Fixed Interest Rate, dividing the product by 360, and multiplying the quotient by the number of days in the month for which interest is being calculated). The portion of the monthly installment of principal and interest under this Note attributable to principal and the portion attributable to interest will vary based upon the number of days in the month for which such installment is paid. Each monthly payment of principal and interest will first be applied to pay in full interest due, and the balance of the monthly installment payment paid by Borrower will be credited to principal.

(c) Unless disbursement of principal is made by Lender to Borrower on the first day of a calendar month, interest for the period beginning on the date of disbursement and ending on and including the last day of such calendar month shall be payable by Borrower simultaneously with the execution of this Note. If disbursement of principal is made by Lender to Borrower on the first day of a calendar month, then no payment will be due from Borrower at the time of the execution of this Note. The Installment Due Date for the first monthly installment payment under Section 3(d) of interest only or principal and interest, as applicable, will be the First Installment Due Date set forth in Section 1(a) of this Note. Except as provided in this Section 3(c) and in Section 10, accrued interest will be payable in arrears.

(d) Beginning on the First Installment Due Date, and continuing until and including the monthly installment due on the Maturity Date, accrued interest only shall be payable by Borrower in consecutive monthly installments due and payable on the first day of each calendar month. The amount of each monthly installment of interest only payable pursuant to this Section 3(d) on an Installment Due Date shall vary, and shall equal $12,475.02667 multiplied by the number of days in the month prior to the Installment Due Date.

(e) All remaining Indebtedness, including all principal and interest, shall be due and payable by Borrower on the Maturity Date.

(f) All payments under this Note shall be made in immediately available U.S. funds.

(g) Any regularly scheduled monthly installment of interest only or principal and interest payable pursuant to this Section 3 that is received by Lender before the date it is due shall be deemed to have been received on the due date for the purpose of calculating interest due.

(h) Any accrued interest remaining past due for 30 days or more, at Lender's discretion, may be added to and become part of the unpaid principal balance of this Note and any reference to "accrued interest" shall refer to accrued interest which has not become part of the unpaid principal balance. Any amount added to principal pursuant to the Loan Documents shall bear interest at the applicable rate or rates specified in this Note and shall be payable with such interest upon demand by Lender and absent such demand, as provided in this Note for the payment of principal and interest.

4. Application of Payments. If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender may apply the amount received to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Borrower agrees that neither Lender's acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. Security. The Indebtedness is secured by, among other things, the Security Instrument, and reference is made to the Security Instrument for other rights of Lender as to collateral for the Indebtedness.

6. Acceleration. If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, any prepayment premium payable under Section 10, and all other amounts payable under this Note and any other Loan Document, shall at once become due and payable, at the option of Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Lender may exercise this option to accelerate regardless of any prior forbearance. For purposes of exercising such option, Lender shall calculate the prepayment premium as if prepayment occurred on the date of acceleration. If prepayment occurs thereafter, Lender shall recalculate the prepayment premium as of the actual prepayment date.

7. Late Charge.

(a) If any monthly installment of interest or principal and interest or other amount payable under this Note or under the Security Instrument or any other Loan Document is not received in full by Lender within ten (10) days after the installment or other amount is due, counting from and including the date such installment or other amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to five percent (5%) of such installment or other amount due (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted).

(b) Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional expenses Lender will incur by reason of such late payment. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 8.

8. Default Rate.

(a) So long as (i) any monthly installment under this Note remains past due for thirty (30) days or more or (ii) any other Event of Default has occurred and is continuing, then notwithstanding anything in Section 3 of this Note to the contrary, interest under this Note shall accrue on the unpaid principal balance from the Installment Due Date of the first such unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the Default Rate.

(b) From and after the Maturity Date, the unpaid principal balance shall continue to bear interest at the Default Rate until and including the date on which the entire principal balance is paid in full.

(c) Borrower acknowledges that (i) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan, (ii) during the time that any monthly installment under this Note is delinquent for thirty (30) days or more, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender's ability to meet its other obligations and to take advantage of other investment opportunities; and (iii) it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent for thirty (30) days or more or any other Event of Default has occurred and is continuing, Lender's risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional costs and expenses Lender will incur by reason of the Borrower's delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. Limits on Personal Liability.

(a) Except as otherwise provided in this Section 9, Borrower shall have no personal liability under this Note, the Security Instrument or any other Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents and Lender's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and to any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any other obligations of Borrower.

(b) Borrower shall be personally liable to Lender for the amount of the Base Recourse, plus any other amounts for which Borrower has personal liability under this Section 9.

(c) In addition to the Base Recourse, Borrower shall be personally liable to Lender for the repayment of a further portion of the Indebtedness equal to any loss or damage suffered by Lender as a result of the occurrence of any of the following events:

(i) Borrower fails to pay to Lender upon demand after an Event of Default all Rents to which Lender is entitled under Section 3(a) of the Security Instrument and the amount of all security deposits collected by Borrower from tenants then in residence. However, Borrower will not be personally liable for any failure described in this subsection (i) if Borrower is unable to pay to Lender all Rents and security deposits as required by the Security Instrument because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding.

(ii) Borrower fails to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument. However, Borrower will not be personally liable for any failure described in this subsection (ii) if Borrower is unable to apply insurance or condemnation proceeds as required by the Security Instrument because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding.

(iii) Borrower fails to comply with Section 14(g) or (h) of the Security Instrument relating to the delivery of books and records, statements, schedules and reports.

(iv) Borrower fails to pay when due in accordance with the terms of the Security Instrument the amount of any item below marked "Deferred"; provided however, that if no item is marked "Deferred", this Section 9(c)(iv) shall be of no force or effect.

[Deferred]	Hazard Insurance premiums or other insurance premiums,
[Collect]	Taxes,
[Deferred]	water and sewer charges (that could become a lien on the Mortgaged Property),
[N/A]	ground rents,
[Deferred]	assessments or other charges (that could become a lien on the Mortgaged Property)

(d) In addition to the Base Recourse, Borrower shall be personally liable to Lender for:

(i) the performance of all of Borrower's obligations under Section 18 of the Security Instrument (relating to environmental matters);

(ii) the costs of any audit under Section 14(g) of the Security Instrument; and

(iii) any costs and expenses incurred by Lender in connection with the collection of any amount for which Borrower is personally liable under this Section 9, including Attorneys' Fees and Costs and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability.

(e) All payments made by Borrower with respect to the Indebtedness and all amounts received by Lender from the enforcement of its rights under the Security Instrument and the other Loan Documents shall be applied first to the portion of the Indebtedness for which Borrower has no personal liability.

(f) Notwithstanding the Base Recourse, Borrower shall become personally liable to Lender for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default:

(i) Borrower's ownership of any property or operation of any business not permitted by Section 33 of the Security Instrument;

(ii) a Transfer (including, but not limited to, a lien or encumbrance) that is an Event of Default under Section 21 of the Security Instrument, other than a Transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a manager in a limited liability company; or

(iii) fraud or written material misrepresentation by Borrower or any officer, director, partner, member or employee of Borrower in connection with the application for or creation of the Indebtedness or any request for any action or consent by Lender.

(g) To the extent that Borrower has personal liability under this Section 9, Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Security Instrument, any other Loan Document or applicable law. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Section 9, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

10. Voluntary and Involuntary Prepayments.

(a) Any receipt by Lender of principal due under this Note prior to the Maturity Date, other than principal required to be paid in monthly installments pursuant to Section 3, constitutes a prepayment of principal under this Note. Without limiting the foregoing, any application by Lender, prior to the Maturity Date, of any proceeds of collateral or other security to the repayment of any portion of the unpaid principal balance of this Note constitutes a prepayment under this Note.

(b) Borrower may voluntarily prepay all of the unpaid principal balance of this Note on an Installment Due Date so long as Borrower designates the date for such prepayment in a Notice from Borrower to Lender given at least 30 days prior to the date of such prepayment. If an Installment Due Date (as defined in Section 1(a)) falls on a day which is not a Business Day, then with respect to payments made under this Section 10 only, the term "Installment Due Date" shall mean the Business Day immediately preceding the scheduled Installment Due Date.

(c) Notwithstanding subsection (b) above, Borrower may voluntarily prepay all of the unpaid principal balance of this Note on a Business Day other than an Installment Due Date if Borrower provides Lender with the Notice set forth in subsection (b) and meets the other requirements set forth in this subsection. Borrower acknowledges that Lender has agreed that Borrower may prepay principal on a Business Day other than an Installment Due Date only because Lender shall deem any prepayment received by Lender on any day other than an Installment Due Date to have been received on the Installment Due Date immediately following such prepayment and Borrower shall be responsible for all interest that would have been due if the prepayment had actually been made on the Installment Due Date immediately following such prepayment.

(d) Unless otherwise expressly provided in the Loan Documents, Borrower may not voluntarily prepay less than all of the unpaid principal balance of this Note. In order to voluntarily prepay all or any part of the principal of this Note, Borrower must also pay to Lender, together with the amount of principal being prepaid, (i) all accrued and unpaid interest due under this Note, plus (ii) all other sums due to Lender at the time of such prepayment, plus (iii) any prepayment premium calculated pursuant to Section 10(e).

(e) Except as provided in Section 10(f), a prepayment premium shall be due and payable by Borrower in connection with any prepayment of principal under this Note during the Prepayment Premium Period. The prepayment premium shall be computed as follows:

(i) For any prepayment made during the Yield Maintenance Period, the prepayment premium shall be whichever is the greater of subsections (A) and (B) below:

(A) 1.0% of the amount of principal being prepaid; or

(B) the product obtained by multiplying:

(1) the amount of principal being prepaid or accelerated,

by

(2) the excess (if any) of the Monthly Note Rate over the Assumed Reinvestment Rate,

by

(3) the Present Value Factor.

For purposes of subsection (B), the following definitions shall apply:

Monthly Note Rate: one-twelfth (1/12) of the Fixed Interest Rate, expressed as a decimal calculated to five digits.

Prepayment Date: in the case of a voluntary prepayment, the date on which the prepayment is made; in the case of the application by Lender of collateral or security to a portion of the principal balance, the date of such application.

Assumed Reinvestment Rate: one-twelfth (1/12) of the yield rate, as of the close of the trading session which is 5 Business Days before the Prepayment Date, on the Treasury Security, as reported in *The Wall Street Journal*, expressed as a decimal calculated to five digits. In the event that no yield is published on the applicable date for the Treasury Security, Lender, in its discretion, shall select the non-callable Treasury Security maturing in the same year as the Treasury Security with the lowest yield published in *The Wall Street Journal* as of the applicable date. If the publication of such yield rates in *The Wall Street Journal* is discontinued for any reason, Lender shall select a security with a comparable rate and term to the Treasury Security. The selection of an alternate security pursuant to this Section shall be made in Lender’s discretion.

Present Value Factor: the factor that discounts to present value the costs resulting to Lender from the difference in interest rates during the months remaining in the Yield Maintenance Period, using the Assumed Reinvestment Rate as the discount rate, with monthly compounding, expressed numerically as follows:

$$\frac{1 - \left(\frac{1}{1+ARR} \right)^{n}}{ARR}$$

n = the number of months remaining in Yield Maintenance Period; provided, however, if a prepayment occurs on an Installment Due Date, then the number of months remaining in the Yield Maintenance Period shall be calculated beginning with the month in which such prepayment occurs and if such prepayment occurs on a Business Day other than an Installment Due Date, then the number of months remaining in the Yield Maintenance Period shall be calculated beginning with the month immediately following the date of such prepayment.

ARR = Assumed Reinvestment Rate

(ii) For any prepayment made after the expiration of the Yield Maintenance Period but during the remainder of the Prepayment Premium Period, the prepayment premium shall be 1.0% of the amount of principal being prepaid.

(f) Notwithstanding any other provision of this Section 10, no prepayment premium shall be payable with respect to (i) any prepayment made during the Window Period, or (ii) any prepayment occurring as a result of the application of any insurance proceeds or condemnation award under the Security Instrument.

(g) Unless Lender agrees otherwise in writing, a permitted or required prepayment of less than the unpaid principal balance of this Note shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments.

(h) Borrower recognizes that any prepayment of any of the unpaid principal balance of this Note, whether voluntary or involuntary or resulting from an Event of Default by Borrower, will result in Lender's incurring loss, including reinvestment loss, additional expense and frustration or impairment of Lender's ability to meet its commitments to third parties. Borrower agrees to pay to Lender upon demand damages for the detriment caused by any prepayment, and agrees that it is extremely difficult and impractical to ascertain the extent of such damages. Borrower therefore acknowledges and agrees that the formula for calculating prepayment premiums set forth in this Note represents a reasonable estimate of the damages Lender will incur because of a prepayment. Borrower further acknowledges that the prepayment premium provisions of this Note are a material part of the consideration for the Loan, and that the terms of this Note are in other respects more favorable to Borrower as a result of the Borrower's voluntary agreement to the prepayment premium provisions.

11. Costs and Expenses. To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including Attorneys' Fees and Costs incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due

under this Note, or to enforce the provisions of any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding.

12. Forbearance. Any forbearance by Lender in exercising any right or remedy under this Note, the Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any security for Borrower's obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

13. Waivers. Borrower and all endorsers and guarantors of this Note and all other third party obligors waive presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness.

14. Loan Charges. Neither this Note nor any of the other Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the Maximum Interest Rate. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in any Loan Document, whether considered separately or together with other charges provided for in any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

15. Commercial Purpose. Borrower represents that Borrower is incurring the Indebtedness solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household, or agricultural purposes.

16. Counting of Days. Except where otherwise specifically provided, any reference in this Note to a period of "days" means calendar days, not Business Days.

17. Governing Law. This Note shall be governed by the law of the Property Jurisdiction.

18. **Captions.** The captions of the Sections of this Note are for convenience only and shall be disregarded in construing this Note.

19. Notices; Written Modifications.

(a) All Notices, demands and other communications required or permitted to be given pursuant to this Note shall be given in accordance with Section 31 of the Security Instrument.

(b) Any modification or amendment to this Note shall be ineffective unless in writing signed by the party sought to be charged with such modification or amendment; provided, however, in the event of a Transfer under the terms of the Security Instrument that requires Lender's consent, any or some or all of the Modifications to Multifamily Note set forth in Exhibit A to this Note may be modified or rendered void by Lender at Lender's option, by Notice to Borrower and the transferee, as a condition of Lender's consent.

20. Consent to Jurisdiction and Venue. Borrower agrees that any controversy arising under or in relation to this Note may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to this Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Note is intended to limit any right that Lender may have to bring any suit, action or proceeding relating to matters arising under this Note in any court of any other jurisdiction.

21. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (A) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

22. State-Specific Provisions. If a guarantor is liable for only a portion of the Indebtedness, Borrower hereby waives its rights under California Civil Code Section 2822(a) to designate the portion of the Indebtedness that shall be satisfied by Borrower's partial payment.

ATTACHED EXHIBIT. The Exhibit noted below, if marked with an "X" in the space provided, is attached to this Note:

☒ Exhibit A Modifications to Multifamily Note

IN WITNESS WHEREOF, and in consideration of the Lender's agreement to lend Borrower the principal amount set forth above, Borrower has signed and delivered this Note under seal or has caused this Note to be signed and delivered under seal by its duly authorized representative.

LOMA PALISADES, a California general partnership

By: San Diego Loma Palisades, L.P., a California limited partnership, its general partner

By: American Assets, Inc., a California corporation, its general partner

By: /s/ Ernest Rady
Ernest Rady
President

By: /s/ Robert F. Barton
Robert F. Barton
Chief Financial Officer

By: Foster Palisades, LLC, a California limited liability company, its general partner

By: Foster Investment Corporation, a California corporation, its sole member

By: /s/ John C. Harris
John C. Harris
Chief Financial Officer

33-0726921
Borrower's Social Security/Employer ID Number

PAY TO THE ORDER OF FEDERAL HOME LOAN MORTGAGE CORPORATION, WITHOUT RECOURSE.

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association

By: /s/ T. Scott Kyriakakis
T. Scott Kyriakakis
Vice President

FHLMC Loan No. 487794745

EXHIBIT A

MODIFICATIONS TO MULTIFAMILY NOTE

The following modifications are made to the text of the Note that precedes this Exhibit.

1. Section 8 is modified by inserting the following at the end of the Section:

"Notwithstanding anything to the contrary contained herein, in the case of an inadvertent default (as reasonably determined by Lender) which is not curable, interest under this Note shall only accrue at the Default Rate for a maximum of six months unless Lender is actively pursuing its rights to foreclose under the Security Instrument."

Exhibit 10.37

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

NOVATO FF VENTURE, LLC

Dated as of May 15, 2007

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AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
NOVATO FF VENTURE, LLC

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "**Agreement**") of NOVATO FF VENTURE, LLC, a Delaware limited liability company (the "**Company**"), is executed and entered into as of May 15, 2007, by and between Novato FF PT Investor, LLC ("**GEPT SPE**"), a Delaware limited liability company, and Pacific Novato Holdings, LP ("**AA SPE**"), a California limited partnership (each a "**Member**" and collectively, "**Members**").

RECITALS

A. **Purchase and Sale Agreement**. Pursuant to that certain Agreement of Purchase and Sale, dated February 16, 2007, between First States Investors 239, LLC ("**Seller**"), a Delaware limited liability company, and American Assets, Inc. ("**AAI**"), a California corporation, as amended by that certain Reinstatement Agreement, dated February 28, 2007 (collectively, the "**Purchase and Sale Agreement**"), Seller has agreed to sell to AAI, and AAI has agreed to purchase from Seller, those certain tracts of land located in the City of Novato, Marin County, California more particularly described in Exhibit A (the "**Real Property**"), together with: (a) all improvements thereon (comprising three office buildings totaling approximately 710,000 square feet and other improvements thereon, collectively known as Fireman's Fund Headquarters, 775-779 San Marin Drive, Novato, California); (b) all rights as "landlord" under the following (collectively, the "**Fireman's Fund Lease**"): (i) a lease pertaining to "San Marin I" dated November 4, 1992, between Seller, as "landlord," and Fireman's Fund Insurance Company ("**Fireman's Fund**"), as "tenant," as amended by a First Amendment, dated August 5, 2005; and (ii) a lease pertaining to "San Marin II" and "San Marin III", dated November 4, 1992, as amended by a First Amendment, dated August 5, 2005; and (c) certain other property and rights incidental to the Real Property, as more particularly described in the Purchase and Sale Agreement (collectively, the "**Property**").

B. **Purchase Consideration**. The Purchase and Sale Agreement calls for Seller to receive a "Purchase Price" equal to $312,000,000 in consideration for the sale of the Property, and for Novato FF Property, LLC (the "**Property Company LLC**"), a Delaware limited liability company wholly owned by the Company, to provide such Purchase Price in connection with the closing under the Purchase and Sale Agreement, by (i) assuming the obligation to repay the principal and interest under that certain Loan Agreement, dated August 5, 2005, between Seller, as borrower, and Bank of America, N.A., a national banking association (together with its successors and assigns, "**Lender**"), pertaining to a loan made by Lender to Seller in the original principal amount of $190,458,087 (the "**Assumed Loan**"), and (ii) providing cash equal to the balance of the Purchase Price, subject to certain closing pro ration adjustments, all as more fully described in the Purchase and Sale Agreement.

C. **Formation**. The Company was formed on March 6, 2007 pursuant to a Certificate of Formation (the "**Company Certificate**") filed in the office of the Secretary of State of the State of Delaware as document No. 4311662. The Property Company LLC was formed on March 6, 2007 pursuant to a Certificate of Formation (the "**Property Company Certificate**") filed in the office of the Secretary of State of the State of Delaware as document No. 4311653. AAI and GEPT SPE, as the sole members of the Company, entered into that certain Limited Liability Company Agreement of Novato FF Venture, LLC (the "**Existing LLC Agreement**"), dated March 7, 2007, to govern the operation of the Company. In connection with the execution and delivery of the Existing LLC Agreement, (i) AAI assigned all of the rights of the "Buyer" under the Purchase and Sale Agreement to the Property Company LLC, and (ii) GEPT SPE made a capital contribution of $15,000,000. AAI and GEPT SPE further agreed

in the Existing LLC Agreement that, as a consequence of said capital contribution, the respective Capital Accounts of the Members in the Company as of March 7, 2007 were as listed in the third column in Schedule A attached hereto.

D. **Transfer to AA SPE**. Immediately prior to the execution and delivery of this Agreement, AAI assigned all of its Membership Interests in the Company to AA SPE.

E. **Purpose**. AA SPE and GE SPE now desire to enter into this Agreement in order to amend and restate the Existing LLC Agreement in its entirety.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, obligations and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby amend the Existing LLC Agreement in accordance with the terms of this Agreement. The Existing LLC Agreement is replaced in its entirety by the terms of this Agreement, and the Existing LLC Agreement shall be of no force or effect from and after the execution and delivery of this Agreement.

ARTICLE I
DEFINITIONS

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

"**AAI**": As defined in the Recitals.

"**AA SPE**": As defined in the Preamble.

"**Additional Capital Contributions**": As defined in Section 3.2(a).

"**Adjusted Capital Account**": shall mean, with respect to any Member, the balance, if any, in such Member's Capital Account as of the end of the relevant period, after crediting to such Capital Account any amounts which such Member is deemed to be obligated to restore pursuant to the penultimate sentence of Treasury Regulations Section 1.704-2(g)(1) or pursuant to the penultimate sentence of Treasury Regulations Section 1.704-2(i)(5).

"**Adjusted Capital Account Deficit**": shall mean, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant period, after giving effect to the following adjustments:

(i) credit to such Capital Account of any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentence of Treasury Regulations Section 1.704-2(g)(1) or pursuant to the penultimate sentence of Treasury Regulations Section 1.704-2(i)(5); and

(ii) debit to such Capital Account the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

This definition of Adjusted Capital Account Deficit and the limitations and allocations set forth in Sections 8.5(b)(ii) and 8.5(d)(iv) hereof are together intended to comply with Treasury Regulations Section 1.704-1(b)(2)(ii)(d), and shall be so interpreted.

"**Affiliate**": With respect to any Person (the "**Subject Person**"): (i) any other Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the Subject Person; (ii) any Person owning or controlling, directly or indirectly through one or more intermediaries, fifteen (15%) percent or more of the outstanding voting securities of or fifteen (15%) percent or more of any other ownership or economic interests in the Subject Person; (iii) any other Person in which the Subject Person (or any Affiliate of the Subject Person under the terms hereof), directly or indirectly through one or more intermediaries, is the manager or a managing member in a limited liability company or a general partner in a partnership or limited partnership or otherwise acts in a similar capacity; (iv) any officer, director or senior executive of the Subject Person; or (v) if the Subject Person is an officer, director or Member of the Company, any company for which the Subject Person acts in the same or similar capacity. In addition to the foregoing, if the Subject Person is a real estate investment trust, a "protective trust" established pursuant to a trust agreement, the terms of which have been approved by the Managing Member, in its reasonable discretion, shall be deemed an Affiliate of the Subject Person.

"**Affiliate Agreement**": Any contract, agreement or other arrangement, oral or written, entered into between (i) the Company or the Property Company LLC and (ii) any of the Managing Member, any Member or any Affiliate of the Managing Member or any Member with respect to the provision of goods or services of any kind or nature to or for either the Company or the Property, including, without limitation, the Management Agreement.

"**Agreement**": This Amended and Restated Limited Liability Company Agreement, as the same may be amended from time to time in accordance herewith.

"**Allocation Date**": (i) The last day of each Fiscal Year, (ii) the day before the date of any change in ownership of the Company, (iii) the day before the date a Member ceases to be a member of the Company, or (iv) any other date reasonably determined by the Managing Member as appropriate for a closing of the Company's books.

"**Annual Plan**": As defined in Section 4.3(a).

"**Annual Report**": As defined in Section 7.1(e).

"**Assumed Loan**": As defined in the Recitals.

"**Bankruptcy Event**": A Bankruptcy Event shall be deemed to have occurred with respect to a Member (or a managing member or general partner, if applicable, of any Member) if:

(i) such Member or such other Person as described in the parenthetical above shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under the present or any future Federal bankruptcy act or any other present or future applicable Federal, state or other statute or law relative to bankruptcy, insolvency, or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of said Member or such other Person of all, or substantially all of, its property or its Membership Interest;

(ii) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against such Member or such other Person seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy act, or any other present or future Federal, state or other statute or law relating to bankruptcy, insolvency, or other relief for debtors, and said Member or such other Person shall

acquiesce in the entry of such order, judgment or decree, or such order, judgment or decree shall remain unvacated and unstayed for a period of ninety (90) days from the date of entry thereof, or any trustee, receiver, conservator or liquidator of said Member or such other Person or of all or substantially all of its property or its Membership Interest shall be appointed without the consent or acquiescence of said Member or such other Person and such appointment shall remain unvacated and unstayed for a period of ninety (90) days;

(iii) such Member or such other Person shall admit to the other Member in writing its inability, or shall fail generally, to pay its debts as they mature;

(iv) such Member or such other Person shall make a general assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors; or

(v) any assets of such Member or such other Person are attached, seized or subjected to a garnishment or other action by a creditor of such Member or such other Person seeking to realize upon a judgment against such Member.

"**Business Day**": A day which is not a Saturday or Sunday or a legally recognized public holiday in the United States or the State of New York.

"**Buy/Sell Closing**": As defined in Section 10.4(c).

"**Buy/Sell Deposit**": As defined in Section 10.4(f).

"**Buy/Sell Notice**": As defined in Section 10.4(a).

"**Buy/Sell Price**": As defined in Section 10.4(a).

"**Buying Member**": As defined in Section 10.4(b).

"**Calculation Date**" means the day on which the Company Accountants compute the amount to be allocated pursuant to the provisions of Section 8.5(a) hereof for any Calculation Period.

"**Calculation Period"** means the period from the respective dates Capital Contributions are made to a Calculation Date.

"**Capital Account**" : As defined in Section 8.1.

"**Capital Budget**": As defined in Section 4.3(a).

"**Capital Contributions**": With respect to any Member, the sum of (i) the Initial Capital Contribution of the Member, (ii) all Additional Capital Contributions made by the Member, and (iii) except as provided herein, other contributions of money to the Company.

"**Cash Flow**": Cash Flow of the Company, for any period shall mean:

(i) the gross cash receipts of the Company for such period from all sources, including, but not limited to, all receipts from the ownership and operation of the Property, all Excess Loan Proceeds, the cash proceeds attributable to any Capital Contributions made to such Company during such period and the net proceeds from a Disposition after payment of all costs and expenses associated therewith (including, without limitation or duplication, the payment of commissions and the satisfaction of Loans required in connection therewith, closing costs, attorneys' fees and expenses and prorations of ad valorem taxes) and net reductions in funded reserves or sinking funds of such Company (other than any such reductions used to pay expenditures of such Company); less

(ii) the sum of:

(a) without duplication of any amounts deducted in determining (i) above, the gross cash expenditures of the Company for such period for all purposes including both operating and capital expenditures, determined in accordance with cash basis accounting principles consistently applied (excluding expenditures made from previously established reserves); and

(b) deposits or allocations into reserve accounts (and reserves which are provided for in any approved Annual Budget or which are otherwise approved by the Members or required pursuant to any Loans).

"**Code**": The Internal Revenue Code of 1986, as amended.

"**Company**": As defined in the Preamble.

"**Company Accountants**": any firm of independent certified public accountants which the Managing Member shall determine to cause the Company to use, subject to the approval of GEPT SPE. Scott & Cronin, LLP – Certified Public Accountants are hereby approved to act as Company Accountants.

"**Company Assets**": The direct and indirect assets of the Company. As of the date upon which all of the Initial Capital Contributions shall have been made, the direct assets of the Company shall include a 100% membership interest in the Property Company LLC and the indirect assets of the Company shall include the assets of the Property Company LLC. For all applicable income tax purposes, Property Company LLC shall be disregarded, and all of its assets shall be deemed to be assets of the Company.

"**Competing Assets**": As defined in Section 2.7.

"**Company Certificate**": As defined in the Recitals.

"**Contesting Member**": As defined in Section 4.5(b).

"**Contributing Member(s)**": Each Member that has funded its required share of any Capital Contribution.

"**Contribution Loan**": As defined in Section 11.3(a)(i).

"**Damages**": As defined in Section 13.15.

"**Default**": As defined in Section 11.1(a).

"**Defaulting Member**": As defined in Section 11.1(c).

"**Delaware Act**": The Delaware Limited Liability Company Act at 6 *Del. C.* §§ 18-101 et seq., as amended from time to time.

"**Depreciation**" shall mean, for each Period, an amount equal to the depreciation, amortization, and other cost recovery deductions allowable with respect to an asset for such period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization and other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis.

"**Designated Buy/Sell Value**": As defined in Section 10.4(a).

"**Designated Value**": As defined in Section 10.3(a).

"**Disposition**": The sale, exchange, transfer, condemnation or other disposition of all or any part of the Company Assets other than in the ordinary course of business.

"**Electing Member**": As defined in Section 11.3(a)(i).

"**Emergency Situation**": A situation impairing or imminently likely to impair structural support of the Property or causing or imminently likely to cause bodily injury to persons or physical damage to the Property in, on, under, within, upon, around or about the Property or causing or imminently likely to cause substantial economic loss to the Company or any Company Assets.

"**ERISA**": The Employee Retirement Income Security Act of 1974, as amended.

"**Excess Loan Proceeds**": With respect to any Loan, the net proceeds as and when such proceeds are distributed to the Company (including, without limitation, the distribution of sums that were held by the lender of any Loan from any escrow and/or reserve accounts as same are returned to the Company or to the applicable constituent interest holders, but specifically excluding any sums that continue to be held by the lender under a Loan (e.g., amounts held in any escrow account)): (i) after payment of all expenses in connection therewith; (ii) after repayment of any Loan being repaid or refinanced; and (iii) after payment of any additional expenditures for which such Loan was obtained.

"**Existing LLC Agreement**": As defined in the Recitals.

"**Fiscal Year**": As defined in Section 2.6.

"**Fireman's Fund Lease**": As defined in the Recitals.

"**GEPT**": As defined in Section 4.11.

"**GEPT SPE**": As defined in the Preamble.

"**Gross Asset Value**": shall mean, with respect to any of the Company's assets, such asset's adjusted basis for federal income tax purposes except that:

(i) the Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of such distribution as determined by an independent appraiser selected by the Company Accountant;

(ii) the Gross Asset Values of all of the Company's assets shall be adjusted to equal their respective fair market values, as determined by the Managing Member and approved by GEPT SPE, as of (x) the acquisition of any additional Company Interest (or increase in its Company Interest) by any new or existing Member in exchange for services or for more than a de minimis Capital Contribution, (y) the distribution of more than a de minimis amount of the Company's cash or property to a Member as consideration for all or a portion of an interest in the Company, or (z) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); and

(iii) to the extent that the Gross Asset Value is determined under clauses (i) or (ii) of this definition, the Gross Asset Value of such property shall be adjusted by the amount of Depreciation taken into account with respect to such asset for purposes of computing Net Profit or Net Loss.

"**Indemnitee**": As defined in Section 13.14.

"**Initial Annual Plan**": As defined in Section 4.3(a).

"**Initial Capital Contributions**": As defined in Section 3.1.

"**Initial Installment**": As defined in Section 10.4(a).

"**Internal Rate of Return**" shall mean, with respect to each Member, as of each date of a distribution of Cash Flow by the Company, the rate of return (calculated as provided below, taking into account the time value of money) which (i) the distributions of Cash Flow to the Member as of such date represents on (ii) the aggregate Capital Contributions made by such Member (other than Capital Contributions made pursuant to Section 3.2(e)).

In determining the Internal Rate of Return, the following shall apply:

1. all present value calculations are to be made as of the date such Capital Contributions were made or deemed made;

2. all distribution amounts shall be based on the amount of the distribution prior to the application of any federal, state or local income taxation (including any withholding or deduction requirements);

3. the rates of return shall be per annum rates and all amounts shall be calculated on a monthly basis and compounded on a quarterly basis on the basis of a twelve month year.

For purposes of clarification, attached hereto as Exhibit B is a hypothetical example of the calculation of the Internal Rate of Return.

"**Investment Company Act**": As defined in Section 6.1(g).

"**Key Man Event**": As defined in Section 4.2(b).

"**Lender**": As defined in the Recitals.

"**Loan**": Any indebtedness or obligation for money borrowed by the Company or the Property Company LLC and any notes payable and drafts accepted representing extensions of credit, approved by the Members in accordance with the terms of this Agreement (including, without limitation, the Assumed Loan).

"**Loan Documents**": Any agreement, instrument or documents evidencing and/or securing any Loan.

"**Losses**": As defined in Section 6.3(a).

"**Major Decisions**": Each decision with respect to the Company and/or the Property and/or or any portion thereof which involves any matter specifically stated in this Agreement to require the approval of both Members, including, without limitation, each decision identified in Schedule B hereto.

"**Management Agreement**": As defined in Section 4.12(a).

"**Manager**": As defined in Section 4.12(a).

"**Managing Member**": Initially, AA SPE, or such other Member as may be designated or become the Managing Member pursuant to the terms hereof.

"**Members**": Effective on the date hereof, each Member (each a "**Member**"), in their respective capacities as Members, and any of their successors and assigns in their respective capacities as Members admitted to the Company as Members hereunder, and any other person admitted as a Member under this Agreement, for so long as any such Person is a Member under the terms of this Agreement.

"**Membership Interest**" and "**Interest**": The entire interest of a Member in the Company.

"**Minimum Gain Attributable to Partner Nonrecourse Debt**": That amount determined in accordance with the principles of Treasury Regulations Sections 1.704-2(i)(3), (4) and (5).

"**Net Profit and Net Loss**": For any Period, the net income or net loss of the Company for such Period, determined in accordance with Section 703(a) of the Code, including any items that are separately stated for purposes of Section 702(a) of the Code, as determined in accordance with federal income tax accounting principles with the following adjustments:

(i) any income of the Company that is exempt from federal income tax shall be included as income;

(ii) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) shall be treated as current expenses;

(iii) in calculating gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes, the basis of such property shall be its Gross Asset Value rather than its basis for federal income tax purposes;

(iv) the depreciation, amortization or other cost recovery deductions shall be computed in accordance with the definition of "Depreciation" hereunder;

(v) in the event the Gross Asset Value of any Company asset is adjusted pursuant to this Agreement, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits or Net Losses; and

(vi) notwithstanding any other provisions of this definition, any gross items which are specially allocated pursuant to Sections 8.5(c) and (d) shall not be taken into account.

"**Non-Contributing Member**": As defined in Section 11.3(a).

"**Non-Defaulting Members**": As defined in Section 11.1(c).

"**Non-Managing Member**": Initially, GEPT SPE, or such other Member as may be designated or become the Non-Managing Member pursuant to the terms hereof.

"**Non-Purchasing Member**": As defined in Section 10.3(b).

"**Nonrecourse Deductions**": The meaning set forth in Treasury Regulations Section 1.704-2(b)(1).

"**Non-Transferring Members**": As defined in Section 10.2(a)(i).

"**Notified Party**": Each Member that receives an Offer Notice under Section 10.3(a).

"**Notifying Party**": Each Member electing to cause the sale of Membership Interests pursuant to Section 10.3(a).

"**Offer Notice**": As defined in Section 10.3(a).

"**Operating Budget**": As defined in Section 4.3(a).

"**Partner Nonrecourse Debt**": The meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.

"**Partnership Minimum Gain**": The meaning set forth in Sections 1.704-2(b)(2) and 1.704-2(d) of the Treasury Regulations.

"**Percentage Interest**": Initially shall mean, with respect to each Member, the percentage set forth next to its name on Schedule A hereto. The Percentage Interest of each Member may change as provided in this Agreement.

"**Period**": For the first Period, the period commencing on the date of this Agreement and ending on the next Allocation Date. All succeeding Periods shall commence on the day after an Allocation Date and end on the next Allocation Date.

"**Permitted Transfers**": As defined in Section 10.1(b).

"**Person**: An individual, partnership, joint venture, corporation, limited liability company, trust or other legal entity.

"**Plan Asset Regulations**": As defined in Section 2.8.

"**Property**": As defined in the Recitals.

"**Property Company Certificate**": As defined in the Recitals.

"**Property Company LLC**": As defined in the Recitals.

"**Purchase and Sale Agreement**": As defined in the Recitals.

"**Purchasing Member**": As defined in Section 10.3(b).

"**Purchase Price**": As defined in Section 10.3(a).

"**Put/Call Closing**": As defined in Section 10.3(c).

"**Put/Call Deposit**": As defined in Section 10.3(e).

"**Reallocation Right**": As defined in Section 11.3(a)(i).

"**Real Property**": As defined in the Recitals.

"**Regulation D**": As defined in Section 6.1(g).

"**Regulatory Action**": As defined in Section 8.5(d)(vi).

"**Reimbursement Agreement**": As defined in Section 10.12.

"**REOC**": As defined in Section 2.8.

"**Replacement Managing Member**": As defined in Section 4.5(a).

"**Residual Distribution Percentages**": At all times while AA SPE is the Managing Member, and at such times that AA SPE is not the Managing Member due to its removal as such pursuant to Section 4.5 if (i) it is subsequently reinstalled as the Managing Member by virtue of a court order, or (ii) AA SPE has exercised the buy/sell set forth in Section 10.4 (but only so long as AA SPE is not in default with respect to its obligations under said Section), the Members' Residual Distribution Percentages shall be 50% each. At all other times, the Members' Residual Distribution Percentages shall be their Percentage Interests. In the event that Member's Percentage Interest is adjusted pursuant to Section 11.4, a proportionate adjustment shall be made to such Member's applicable Residual Distribution Percentage (e.g., if a Member's Percentage Interest were reduced by 10% from 75%, its applicable Residual Distribution Percentage would also be reduced by 10%).

"**ROFO Deposit**": As defined in Section 10.2(a)(i).

"**ROFO Election**": As defined in Section 10.2(a)(i).

"**ROFO Notice**": As defined in Section 10.2(a)(i).

"**ROFO Termination Date**": As defined in Section 10.2(a)(i).

"**Securities Act**": The United States Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Seller**": As defined in the Recitals.

"**Selling Member**": As defined in Section 10.4(b).

"**Service Agreement(s)**": Any and all service, maintenance or other contract(s) for the provision or delivery of goods, supplies or services with respect to the Property to which the Company or Property Company LLC is a party or assignee.

"**Substitute Member**": As defined in Section 10.6.

"**Transfer**": As defined in Section 10.1(a).

"**Transferring Member**": As defined in Section 10.2(a)(i).

"**Trigger Event**": As defined in Section 10.3(a).

"**UBTI**": "Unrelated business taxable income" within the meaning of Section 511-514 of the Code.

"**Unanimous Decisions**": As defined in Section 13.28.

"**Unrecovered Capital**": With regard to each Member, an amount equal to the Capital Contributions made by such Member, less all distributions to such Member pursuant to Sections 8.3(i) or 8.3(ii) hereof.

ARTICLE II
LIMITED LIABILITY COMPANY

2.1 Certificates of Formation and Qualification.

(a) The Company Certificate shall be amended whenever, and within the time periods, required by the Delaware Act. The Managing Member shall file on behalf of the Company such other certificates or instruments, and amendments thereto, as shall be required in order to cause the Company to qualify to do business where required by law. Each Member shall execute, and the Managing Member shall promptly cause to be filed on behalf of the Company, such other and further certificates or instruments as may from time to time be required by law or deemed appropriate by the Managing Member (i) for the perfection and continued maintenance of the Company as a limited liability company under the Delaware Act and under the laws of any state in which the Company is then doing business, (ii) to cause such certificates and instruments to reflect accurately the composition of the Company and the Membership Interest of each Member, and (iii) to permit the Company to own the Company Assets and transact business lawfully.

(b) The Property Company Certificate shall be amended whenever, and within the time periods, required by the Delaware Act. The Managing Member shall cause the Company to file on behalf of the Property Company LLC such other certificates or instruments, and amendments thereto, as shall be required in order to cause the Property Company LLC to qualify to do business where required by law. Each Member shall execute, and the Managing Member shall promptly cause the Company to be filed on behalf of the Property Company LLC, such other and further certificates or instruments as may from time to time be required by law or deemed appropriate by the Managing Member (i) for the perfection and continued maintenance of the Property Company LLC as a limited liability company under the Delaware Act and under the laws of any state in which the Property Company LLC is then doing business, (ii) to cause such certificates and instruments to reflect accurately the composition of the Property Company LLC, and (c) to permit the Property Company LLC to transact business lawfully. In addition, the Managing Member represents and warrants that as of the date hereof the Company holds all of the membership interests in the Property Company LLC free and clear of any claims or interests of any other person or entity whatsoever.

2.2 Name. The name of the Company is "Novato FF Venture, LLC" in which name all the direct Company Assets shall be held and under which name all business and affairs of the Company shall be conducted except to the extent otherwise required by the laws of the State of Delaware or any other state in which the Company is doing business.

2.3 Principal Office, Resident Agent and Registered Office. The principal office of the Company shall be located at c/o American Assets, Inc., 11455 El Camino Real, Ste. 200, San Diego, CA 92130. The name and address of the registered agent of the Company in the State of Delaware upon whom process may be served, and the address of the registered office of the Company in the State of Delaware, is RL&F Service Corp., One Rodney Square, Wilmington, New Castle County, Delaware 19801.

2.4 Purpose. The purpose of the Company shall be: (a) to hold all of the membership interests in the Property Company LLC, and to handle, encumber, sell or otherwise dispose of part or all of the same, as may be determined to be appropriate in accordance with the terms of this Agreement; (b) to cause the Property Company LLC (i) to exercise such rights to acquire the Property

pursuant to the Purchase and Sale Agreement, (ii) to manage, operate, lease, alter, improve and maintain the Property, (iii) to construct and renovate the Property, or portions thereof as may be necessary, incidental or desireable to the operation of the Property, (iv) to finance and refinance the Loan or any other indebtedness now or hereafter encumbering the Property, including through the issuance of additional indebtedness, as may be determined to be appropriate in accordance with the terms of this Agreement, (v) to sell, lease, transfer, exchange, or otherwise dispose of part or all of the Property, as may be determined to be appropriate in accordance with the terms of this Agreement, and (vi) to take such further acts and conduct such further activities as may be necessary or incidental to the foregoing; and (c) to take such further acts and conduct such further activities as may be necessary or incidental to the foregoing.

2.5 Term. The term of the Company shall continue until the liquidation and dissolution of the Company pursuant to Article IX hereof.

2.6 Fiscal Year. The fiscal year of the Company (the "**Fiscal Year**") shall end on the 31st day of December in each year. The Company shall have the same Fiscal Year for income tax and accounting purposes.

2.7 Other Business. Neither any Member, nor an Affiliate of any Member, may develop, construct, acquire, own, operate, manage and/or lease one or more office properties within a 5-mile radius of any exterior boundary of the Property ("**Competing Assets**"). Except for the foregoing, nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or of any Affiliate of any Member, to conduct any other business or activity whatsoever, and no Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Neither the Company, nor the other Member, shall have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement. Nothing herein shall preclude a Member, or an Affiliate of a Member, from, among other things, developing, constructing, acquiring, owning, operating, managing and/or leasing one or more office properties outside of a 5-mile radius of all exterior boundaries of the Property. A Member, or an Affiliate of a Member, shall have the right, without liability to the Company or the other Member, to take actions that may have the effect of enhancing the value or competitive position of such assets relative to the Company Assets.

2.8 REOC Status.

(a) The Managing Member covenants to use its reasonable efforts to conduct the Company's business and affairs in such manner that the Company shall qualify as a "real estate operating company" (a "**REOC**") within the meaning of Department of Labor Regulations set forth at 29 C.F.R. Section 2510.3-101, or any successor to such regulations (the "**Plan Asset Regulations**"), and relevant authority interpreting the Plan Asset Regulations. GEPT SPE believes, at the date hereof, that the Company qualifies as a REOC, but the parties agree that GEPT SPE shall have no liability should this belief prove inaccurate. In the event that at any time a Member believes that the Company will not qualify as a REOC, it shall notify the other Member, and the Managing Member shall thereafter consult with legal counsel for the Company reasonably acceptable to the Members and recognized as experienced in ERISA matters. In the event that a Member shall determine that (i) there is reason to believe that the Company probably may not qualify as a REOC, and (ii) investment in the Company by "benefit plan investors" is "significant" (as such terms are defined under the Plan Asset Regulations), the Managing Member shall (A) make such changes to the operations of the Company as may be reasonably necessary to achieve REOC status, or (B) if they are unable to do so, conduct the Company's business and affairs in accordance with ERISA and, to the extent that any Person has discretionary authority or control with regard to the management or disposition of the assets of the Company, including the Managing Member

or any entity to which Managing Member shall delegate any authority hereunder in accordance with this Agreement, such Person shall be registered as an investment adviser under the Investment Advisers Act of 1940 and shall acknowledge in writing that it is a fiduciary (within the meaning of 3(21) of ERISA) with respect to each Member that is subject to ERISA.

(b) The Company hereby establishes the ninety (90) day period commencing on the first anniversary of its "initial valuation date" as the Company's "annual valuation period" (as each such term is defined under the Plan Asset Regulations).

2.9 Admission of Members. Simultaneously with the execution and delivery of this Agreement, GEPT SPE and AA SPE are being admitted to the Company as Members.

ARTICLE III
CAPITAL CONTRIBUTIONS AND LOANS BY MEMBERS

3.1 Initial Capital Contributions.

(a) On March 7, 2007, AA SPE and GEPT SPE each made a start-up capital contribution to the Company in the amount set forth opposite its respective name in the third column on Schedule A attached hereto.

(b) Substantially concurrently herewith and in connection with the closing of the purchase of the Property under the Purchase and Sale Agreement, AA SPE and GEPT SPE each have made a supplemental capital contribution to the Company in the amount set forth opposite its respective name in the fourth column on Schedule A attached hereto. Each of such capital contributions was (or shall be) in cash (or by wire transfer of immediately available funds).

(c) The capital contributions described above in Sections 3.1(a) and (b) are referred to herein as the "**Initial Capital Contributions**". Each Member's Initial Capital Contribution (or the value thereof as set forth in Schedule A) shall be credited to such Member's Capital Account.

(d) After giving effect to the Initial Capital Contributions the respective Unrecovered Capital balances and Capital Accounts of the Members in the Company as of the date hereof are equal to the amounts listed opposite their names in the fifth column on Schedule A attached hereto.

3.2 Additional Capital Contributions.

(a) After the Initial Capital Contributions have been funded, if the Company shall not have sufficient funds available to pay its expenses, (i) the Managing Member may call, in accordance with, and subject to, the terms of Section 3.2(c), for additional contributions to the capital of the Company for application in accordance with the terms and provisions of the Annual Plan, and (ii) either Member, acting alone, may call for additional contributions to the capital of the Company to pay for the following: (A) any expenses deemed necessary as a result of an Emergency Situation; (B) any expenses approved in writing by both Members (other than through their approval of an Annual Plan); and/or (C) all real estate taxes or other taxes imposed against the Company or the Property, insurance premiums, utility charges and debt service payments pursuant to any Loan. All additional capital contributions which may be called in accordance with this Section 3.2(a) are hereinafter collectively referred to herein as "**Additional Capital Contributions**".

(b) Any Additional Capital Contributions called pursuant to Section 3.2(a) shall be made by the Members in the same proportion as their Percentage Interests and will be credited to their respective Capital Accounts in accordance with the terms hereof.

(c) To the extent commercially practicable, prior to calling for an Additional Capital Contribution, the Managing Member will first try to obtain the necessary funds from Cash Flow, available Company insurance, if applicable, and/or third-party financing (if permitted by the Company's existing financing). If the Managing Member is unable to obtain the necessary funds from the sources described in the preceding sentence, in order to call for any Additional Capital Contributions in accordance with Section 3.2(a), the Managing Member shall deliver to all Members a notice calling for the Additional Capital Contributions, indicating (i) the respective amounts of the Members' required Additional Capital Contributions, (ii) the basis (including the costs and expenses) for which such Additional Capital Contribution is required, and (iii) the date (which date shall in no event be earlier than the tenth (10th) Business Day after receipt of such notice) by which the Members shall be required to make their Additional Capital Contributions. If GEPT SPE desires to make a call for Additional Capital Contributions in accordance with Section 3.2(a)(ii), GEPT SPE shall deliver a notice to the Managing Member, which notice shall indicate the amount of such Additional Capital Contribution and the basis (including the costs and expenses) for which such Additional Capital Contribution is required, and the Managing Member, promptly after receipt of such notice, shall deliver to all Members a notice calling for the Additional Capital Contribution indicating those matters set forth in clauses (i)-(iii) of the preceding sentence, provided, however, that the Managing Member shall, to the extent commercially reasonably practicable, first try to obtain the requested funds from Cash Flow, available Company insurance, if applicable, and/or third-party financing. Each Member shall be required to contribute its full Percentage Interest of the aggregate Additional Capital Contributions by the date specified.

(d) If a Member shall fail to contribute its full Percentage Interest of any Additional Capital Contributions, each Contributing Member shall have the rights set forth in Sections 11.3 and 11.4.

(e) Except as set forth in (i) below, in no event shall GEPT SPE be responsible, either directly or indirectly through a capital call, for any amounts owing with respect to a non-recourse carve out (including any guaranty or indemnity with respect to environmental matters) under any Loan or document.

(i) If a capital call is made to pay any obligation(s) of the Company or the Property Company LLC under or with respect to any such non-recourse carve out (including any guaranty or indemnity with respect to environmental matters), which obligation(s) arises directly as a result of the gross negligence or willful misconduct of GEPT SPE or GEPT SPE's Affiliates while GEPT SPE or GEPT SPE's Affiliate is the Replacement Managing Member, GEPT SPE shall contribute or cause to be contributed cash to or for the benefit of the Company, but only to the extent attributable to such gross negligence or willful misconduct of GEPT SPE (as agreed to in writing by GEPT SPE or determined by court order or judgment) and shall receive a corresponding credit to its Capital Account.

(ii) If a capital call is made to pay any obligation(s) of the Company or the Property Company LLC under or with respect to any such non-recourse carve out (including any guaranty or indemnity with respect to environmental matters), which obligation(s) arises directly as a result of the negligence of GEPT SPE or GEPT SPE's Affiliates, AA SPE (subject to clause (i) above of this Section 3.2(e)) shall contribute or cause to be contributed cash to or for the benefit of the Company or the Property Company LLC in the full amount necessary to discharge such obligation and shall receive a corresponding credit to its Capital Account, unless GEPT SPE delivers written notice to AA SPE of GEPT SPE's intent to contribute such funds, in which case GEPT SPE shall contribute or cause to be contributed cash to or for the benefit of the Company in the full amount necessary to discharge such obligation and shall receive a corresponding credit to its Capital Account. Any contributions made by AA SPE pursuant to this Section 3.2(e)(ii) shall be repaid pursuant to Section 8.3(i).

(iii) In all other circumstances, if a capital call is made to pay any obligation(s) of the Company or the Property Company LLC under or with respect to any such non-recourse carve out (including any guaranty or indemnity with respect to environmental matters), AA SPE shall contribute or cause to be contributed cash to or for the benefit of the Company in the full amount necessary to discharge such obligation and shall receive a corresponding credit to its Capital Account (provided, however, that the foregoing is not intended to waive or release any claims arising out of a failure of AA SPE, Manager or their respective Affiliates to comply with their respective obligations hereunder or under any Affiliate Agreement).

3.3 General.

(a) Except as specifically provided in this Agreement, no Member may contribute capital or property to, or withdraw capital or property from, the Company. To the extent any monies which any Member is entitled to receive pursuant to Article VIII would constitute a return of capital, each of the Members consents to the withdrawal of such capital.

(b) Interest earned on Company funds shall inure solely to the benefit of the Company. Unless otherwise specifically provided herein, no interest or similar return shall be paid on any Capital Contributions or advances to the capital of the Company, nor upon any undistributed or reinvested income or profits of the Company.

3.4 No Third Party Rights. The right of the Members to require any Capital Contributions under the terms of this Agreement shall not be construed as conferring any rights or benefits to or upon any Person not a party to this Agreement, the holder of any indebtedness of the Company, or the holder of any obligations secured by an encumbrance or lien upon or affecting the Company, any interest of a Member or the Property or any part thereof or any interest therein.

3.5 Return of Capital. Except as otherwise provided in Articles VIII or IX, no Member shall have the right to demand or to receive the return of all or any part of its contributions to the capital of the Company. In addition, no Member has the right to demand or to receive property other than cash in return for its contributions to the capital of the Company.

ARTICLE IV
MANAGEMENT

4.1 Meetings of the Members. The Managing Member shall conduct a management meeting as often as it determines that the management of the affairs of the Company shall require one, but shall hold such meetings not less frequently than quarter-annually, and shall conduct an annual meeting (which may be included as a part of one of the quarterly meetings) to review and approve the Annual Plan and any other Major Decisions that the Managing Member or Non-Managing Member desires to consider, whether or not prior notice of such proposal was distributed. The Non-Managing Member shall have the right to call management meetings on reasonable prior notice. Such management meetings shall be held at the principal place of business of the Company unless another location is otherwise designated by the Managing Member, including, but not limited to, meetings by telephone conference. Each Member shall be entitled to attend each meeting and such participation may be telephonic. The Managing Member, or Non-Managing Member, as the case may be, shall use reasonable efforts to distribute the proposed agenda for the meeting in question to the other Member within a reasonable period of time prior to such meeting. If a proposed agenda is delivered, the proposed agenda shall in no way limit the actual agenda for the meeting. The provisions of this Section 4.1 shall not be construed to impair the ability of the Managing Member to act pursuant to this Agreement (or to obtain approvals of the Non-Managing Member in connection with any Major Decision without a meeting).

4.2 Designation and Authority of the Managing Member.

(a) The Members have designated and do hereby designate AA SPE as the Managing Member of the Company. The day-to-day management of the Company shall be the obligation and responsibility of and rest exclusively with the Managing Member, who shall have all the rights and powers as are necessary or advisable for the management of the business and affairs of the Company in accordance with this Agreement; provided, however, that, subject to the provisions of Section 4.5 hereof, the prior written approval of the Non-Managing Member shall be required in connection with each Major Decision and as otherwise required by this Agreement. The Managing Member may, without the consent of the other Member, make appropriate expenditures for items to the extent specifically provided for or set forth in an approved Annual Plan, subject to the requirements of Section 4.6.

(b) In carrying out its functions, the Managing Member shall devote as much time and resources to the management of the Company Assets as are necessary to manage the Company Assets in accordance with prevailing standards applicable to office properties similar to the Property. Any such delegation of its duties and responsibilities hereunder shall not relieve Managing Member of any liability in respect of its duties and obligations hereunder; provided that the Managing Member's responsibility for selecting third-party providers (who are not Affiliates of the Managing Member) of service or materials to the Company shall be to use prudent business judgment in selecting such providers. So long as AA SPE is the Managing Member, it shall make available to the Company the full benefit of the judgment, experience and advice of its senior management team, including, without limitation, John Chamberlain and Ernest Rady, in performing the services called for hereunder by the Managing Member. If, while AA SPE is the Managing Member, neither of the foregoing individuals is active in the management of AA SPE or neither is charged with primary responsibility to carry out on AA SPE's behalf its responsibilities as the Managing Member (each a "**Key Man Event**"), and if, within sixty (60) days after such Key Man Event, AA SPE fails to engage replacement management charged with primary responsibility for carrying out AA SPE's responsibilities as the Managing Member pursuant to arrangements reasonably satisfactory to GEPT SPE, then GEPT SPE may elect via written notice to the Managing Member to require that the Company Assets (including the Property) be sold and the Company be liquidated pursuant to Article IX hereof, in which event the Managing Member shall cause the Company to sell the Company Assets; provided, however, that GEPT SPE shall not elect to have the Company Assets sold and the Company liquidated pursuant to this Section if AA SPE delivers an Offer Notice pursuant to Section 10.3 hereof prior to the expiration of said sixty (60) day period and AA SPE thereafter performs all of its obligations under said Section 10.3.

(c) The Managing Member shall not be paid a fee for its services to the Company. The Managing Member shall be reimbursed by the Company for out-of-pocket expenses reasonably incurred by the Managing Member in the performance of its obligations, provided that such expenses are incurred pursuant to the approved Annual Plan or otherwise approved by the Non-Managing Member in accordance with the requirements of this Agreement. Notwithstanding the foregoing, the Managing Member shall not be reimbursed for general administrative and overhead expenses of the Managing Member or its Affiliates (except as permitted by Section 4.4(b)). Except as herein stated in this Section 4.2(c), no Member shall receive any compensation for its services to the Company as a Member.

(d) No Member shall permit the registration or listing of interests in the Company on an "established securities market", as such term is used in Treasury Regulations Section 1.7704-1.

(e) No Member shall permit the Company to elect, and the Company shall not elect, to be treated as an association taxable as a corporation for United States federal, state or local income tax purposes under Treasury Regulations Section 301.7701-3(a) or under any corresponding provision of state or local law. Any action or other decision in connection with any such election relating to the Company shall be the subject of a Major Decision.

4.3 Annual Plan Decisions.

(a) The Managing Member shall prepare and submit, or cause any Manager to prepare and submit, to the Members for approval a proposal for the following items (collectively, to the extent approved by the Members, the "**Annual Plan**") for the Property and the Company on an annual basis: (i) an operating budget (the "**Operating Budget**") setting forth the estimated revenues and expenses (including permitted variances and contingencies) of the Company, the Property Company LLC and the Property for the ensuing Fiscal Year; (ii) a capital budget (the "**Capital Budget**"), which shall include the proposed capital expenditures (including permitted variances and contingencies) relating to the Property and sources of funds in connection therewith, including the projected time for, and amount of, any projected Additional Capital Contributions to be required by the Members during the period covered by such budget and the capital required by the Property Company LLC; (iii) a year-end internal valuation of the Property; (iv) a brief but reasonably complete written description of the anticipated plan for operating and handling the Company Assets during the ensuing Fiscal Year; and (v) an analysis of the market in which the Property is located and competing projects. Attached hereto as Exhibit E is the approved Annual Plan for the period from the date hereof (assuming for this purpose that the closing of the purchase of the Property under the Purchase and Sale Agreement occurs on the date hereof) through December 31, 2007 (the "**Initial Annual Plan**"). The proposed Annual Plan for each subsequent Fiscal Year of the Company after December 31, 2007 shall be submitted for the approval of the Members not later than October 31st of the year prior to the Fiscal Year covered thereby. If the Members do not approve an Annual Plan for the Company, then the preceding year's Annual Plan will apply until the earlier of (A) June 30 of the applicable Fiscal Year, or (B) a new Annual Plan is approved by the Members, with actual increases in non-discretionary expenses (e.g., real estate taxes, insurance, debt service, and Service Agreement fee escalations) and deletion of non-recurring items other than expenses for non-recurring items that have already been approved by the Members but have not yet been fully performed and/or funded. In addition to the foregoing, items approved by the Members, the cost of which the Members expected to be incurred over more than one year (and therefore to be included in more than one Annual Plan) shall also be deemed approved so as to continue to permit the Company to continue to undertake such item.

(b) The terms of each Annual Plan shall be subject to review and modification at the end of each calendar quarter upon the approval of both Members.

(c) Subject to the provisions of Section 4.5 hereof, Managing Member shall not, without the prior consent of the Non-Managing Member, rent or lease or commit the Company or the Property Company LLC to rent or lease, any space in the Property, except pursuant to leases which do not constitute a Major Decision.

(d) During each Fiscal Year in the performance of its duties provided for herein, the Managing Member and any Manager shall not expend any amounts not provided in the Operating Budget or Capital Budget set forth in the Annual Plan, except in an Emergency Situation (and notice of any emergency expenditures shall promptly be given to all Members); provided that the Managing Member or any Manager may exceed any line item in any Operating Budget or Capital Budget by not more than ten percent (10%) so long as the aggregate amount by which such Budget is exceeded (excluding any contingency provided for in such Budget) is not more than five percent (5%) of the total amount of such Budget. If the Managing Member becomes aware of the fact that there is not sufficient income to cover current operating expenses, each Member shall be promptly notified.

4.4 Affiliate Agreements; Employment and Termination.

(a) The terms of all Affiliate Agreements shall be subject to the prior written approval of both Members, which approvals shall not be unreasonably withheld, conditioned or delayed in the event that the terms of the services provided by such Affiliate under such Affiliate Agreement or pursuant to such transaction are comparable to the terms and level of service that would apply in a similar arrangement with an unaffiliated party and are on competitive market rates and terms. In any event, the Managing Member shall cause each Affiliate Agreement to provide that it may be terminated as contemplated by Section 4.4(c) below. Each Affiliate which is a party to an Affiliate Agreement shall be qualified to perform, and shall be capable of performing, its respective obligations under such Affiliate Agreement. Except as otherwise agreed in writing by both Members, the Managing Member shall enforce each Affiliate Agreement in accordance with its terms and the Managing Member shall not, nor shall it cause the Company or the Property Company LLC (y) to, amend or waive any rights under any Affiliate Agreement (including, without limitation, the Management Agreement), or (z) to amend or waive any rights of the Company or the Property Company LLC under any transaction with the Managing Member or an Affiliate of the Managing Member.

(b) For their respective services, each Affiliate that is a party to an Affiliate Agreement shall be compensated and shall be entitled to expense reimbursements as provided in any such Affiliate Agreement entered into in accordance with this Agreement. Other than as stated in this Section 4.4(b), no Affiliate shall be entitled to any compensation for its services to the Company or to the Property.

(c) Notwithstanding any other provision to the contrary in this Agreement, at any time that any Affiliate of any Member is a party to an Affiliate Agreement, the Member other than the Member whose Affiliate is a party to such Affiliate Agreement, shall have the right to cause the Company or the Property Company LLC, as applicable, to terminate the services of the Affiliate under the applicable Affiliate Agreement:

(i) upon the occurrence of any event entitling the Company or the Property Company LLC, as applicable, to terminate such Affiliate Agreement, if such event shall remain uncured after the delivery by the Company or the Property Company LLC, as applicable, to the Affiliate of any required notice of such event and the expiration of any applicable cure period thereunder (with such required notice to be delivered promptly upon the occurrence of any material breach or default); or

(ii) in the event that AA SPE is in Default and GEPT SPE has designated a Replacement Managing Member pursuant to Section 4.5(a) below.

(d) In the event that the Member, other than the Member whose Affiliate is a party to such Affiliate Agreement, shall have caused the termination of such Affiliate Agreement pursuant to this Section 4.4(c), then such Member shall be entitled to cause the Company or the Property Company LLC, as applicable, to enter into on behalf of the Company or the Property Company LLC, as applicable, a new agreement and to appoint the new other party thereunder, such appointment to be on commercially reasonable terms and conditions

4.5 Default of the Managing Member.

(a) Upon GEPT SPE's determination that a Default has occurred with respect to AA SPE, GEPT SPE or a Person designated by it ("**Replacement Managing Member**") shall automatically become the Managing Member and upon such replacement, but subject to Section 4.5(b), all management rights and obligations with respect to the Managing Member after such replacement of

AA SPE shall be exercised by the Replacement Managing Member (it being understood that in the event that the Replacement Managing Member shall not be GEPT SPE, such Replacement Manager shall have no Membership Interests in the Company), provided that in no event shall the Replacement Managing Member have any liability of any kind or nature whatsoever which in any way arises from, out of or related to acts or omissions which occurred, or facts, circumstances or conditions which existed, prior to such replacement.

(b) GEPT SPE shall have the right, effective upon its determination that a Default has occurred with respect to AA SPE and notwithstanding any other provision of this Agreement to the contrary: (i) to appoint a Replacement Managing Member until (if ever) AA SPE is reinstalled as the Managing Member by written agreement of the Members or by virtue of a court order; and (ii) regardless of whether GEPT SPE has appointed a Replacement Managing Member, to make unilaterally all decisions and approvals, other than Unanimous Decisions, which the Company or the Members are permitted to make (notwithstanding any provisions of this Agreement, including, without limitation, the provisions of this Article IV, to the contrary), such authority to continue until (if ever) AA SPE is reinstalled as the Managing Member as provided in clause (i) above; provided, however, that the foregoing is not intended to limit, and AA SPE shall retain, the right to deliver a Buy-Sell Notice under Section 10.4 hereof in accordance with the terms thereof and to enforce the provisions of this Agreement relating to such a buy/sell in accordance with Section 10.4 hereof. For a period of thirty (30) days after (x) GEPT SPE delivers a notice to AA SPE that GEPT SPE or its designee has become the Replacement Managing Member or (y) AA SPE otherwise becomes aware that GEPT SPE or its designee has become the Replacement Managing Member, GEPT SPE shall not cause the Company to cause the Property Company LLC to enter into an agreement to sell or to sell its undivided interest in the Property. If GEPT SPE has appointed a Replacement Managing Member, AA SPE shall be excused prospectively from performing its obligations under this Agreement as the Managing Member until (if ever) AA SPE is reinstalled as the Managing Member as provided in clause (i) above. If AA SPE is reinstalled as the Managing Member by virtue of a court order, then GEPT SPE shall be liable to the Company and AA SPE for any litigation costs (including reasonable attorneys' fees) which the Company or AA SPE, as the case may be, incurred on account of GEPT SPE's election. If a court order concludes that a Default had occurred with respect to AA SPE, then AA SPE shall be liable to the Company and GEPT SPE for any litigation costs (including reasonable attorneys' fees) which the Company or GEPT SPE, as the case may be, incurred on account of GEPT SPE's election.

4.6 Major Decisions.

(a) Except to the extent otherwise specifically provided for in this Agreement, no act shall be taken, sum expended, decision made, approval granted or obligation incurred by the Company or the Managing Member with respect to a Major Decision unless and until the same shall have been approved by both Members. Major Decisions may be proposed by the Managing Member or GEPT SPE at any time (provided that GEPT SPE may not propose a sale within two (2) years from the date of this Agreement unless (x) AA SPE is in Default, or (y) AA SPE has called for an Additional Capital Contribution). For so long as AA SPE is the Managing Member, if either Member shall decide to propose a Major Decision as provided aforesaid, such proposal shall be made to the other Member in writing (which writing shall include a statement to the effect that the proposed decision is a "Major Decision" under this Section 4.6), together with, to the extent then reasonably available to the proposing Member, any material information known to the proposing Member which is reasonably necessary for the other Member to make an informed decision (it being understood that following the removal of AA SPE as Managing Member and until AA SPE shall be reinstalled (if ever) as Managing Member, no such notice shall be required). Upon receipt of the proposed Major Decision and such information, the other Member shall have fifteen (15) days to either approve or disapprove, in its sole discretion, the proposed Major Decision. Failure to deliver a written approval within the applicable time limit shall be deemed a

denial of approval. Each Member who disapproves (or is deemed to have disapproved) a proposed Major Decision shall notify the other Member promptly, in writing, of its reasons for such disapproval if requested to do so by the other Member (it being understood, however, that the foregoing is not intended to limit the discretion of a Member in determining whether to approve or disapprove a Major Decision).

(b) Except as otherwise provided in this Agreement, the Managing Member shall (and shall have the right and obligation to), in good faith, take any and all action which the Managing Member deems necessary or appropriate, in accordance with the provisions hereof, with regard to the operations of the Company, to effectuate Major Decisions approved by both Members, and GEPT SPE shall be bound thereby as if it had joined in such action.

The provisions of this Section 4.6 are subject to the limitations set forth in Section 13.28.

4.7 Approvals and Consents. Except as otherwise specifically provided in this Agreement, where the granting or withholding of approval or consent of any Member (other than the Managing Member acting in its capacity as Managing Member to effectuate any Major Decision approved pursuant to Section 4.6 and/or otherwise carrying out the day-to-day management of the Company in a manner consistent with the terms of this Agreement) is required, requested or contemplated pursuant to any provision of this Agreement or otherwise in connection with the business of the Company, including the approval or consent with respect to any Major Decision:

(a) The granting of such approval or consent shall be in writing (unless deemed given as provided for elsewhere in this Agreement); and

(b) such approval or consent shall be granted or withheld in the sole and absolute discretion of such Member.

4.8 Copies of Notices Affecting the Property. In the event that either Member or an Affiliate of either Member receives any service of process or any notice of (or similar document relating to) any action, omission, violation or circumstance which could have an adverse effect on the operation or value of the Company and/or the Company Assets, then the Person receiving such service, notice or other document shall deliver a copy of same to the other Member, as soon as practicable; provided, however, that if the Person receiving such notice or other document is not a party to this Agreement, then the party to this Agreement whose Affiliate received such notice shall cause such Affiliate to deliver a copy of same to the Members.

4.9 Bank Accounts. On behalf and at the expense of the Company and the Property Company LLC, as applicable, the Managing Member shall maintain or cause any Manager to maintain accounts in banks or trust companies in the U.S., for the deposit and disbursement of all funds relating to the Company and the Property Company LLC, respectively (provided, however, that AA SPE shall provide prior written notice to GEPT SPE of the banks or trust companies in which any funds of the Company or the Property Company LLC shall be deposited). The funds of the Company and the Property Company LLC shall not be commingled with the funds of any other Person. The Managing Member shall not employ any funds in such bank accounts in any manner except for the benefit of the Company or the Property Company LLC, as applicable, and in accordance with this Agreement. Notwithstanding the foregoing, the Managing Member shall maintain all such accounts in accordance with the requirements of any applicable Loan Documents.

4.10 UBTI. Notwithstanding anything to the contrary contained in this Agreement, the Managing Member, the Company and the Property Company LLC shall use their best efforts, and the Managing Member shall cause any Manager to use its best efforts, to conduct the Company's and the Property Company LLC's business and manage the Company Assets in a manner necessary to avoid the realization of UBTI to any of the Members or their members or partners. In furtherance of the foregoing

sentence, without first obtaining the consent of the other Member, the Managing Member will not permit the Company or the Property Company LLC to undertake any types of revenue-generating activity which have not been previously approved either pursuant to its approval of the Annual Plan (if the income from such new service is clearly indicated on such Annual Plan) or otherwise, that would cause UBTI.

4.11 Tax Exempt Status. Each Member is aware of the material limitations on the actions of the Company, due to the tax exempt status of General Electric Pension Trust ("**GEPT**"). Each Member hereby agrees that the Managing Member shall cause the Company to participate solely in activities that further the tax exempt purpose of GEPT and shall forego to take any action which would be inconsistent with such tax exempt purpose of GEPT.

4.12 Property Management.

(a) The Property has certain unique development opportunities that require material active management, including, without limitation: (i) the development of approximately 600,000 square feet of unimproved land at the Property; and (ii) the re-deployment of material space within the presently leased buildings at the Property of greater than 136,000 rentable square feet of which the existing tenant at the Property is not occupying so as to transform one or more of the buildings at the Property from a single-tenant space into a multi-tenant space. The potential utilization of any development opportunities at the Property are material to the decision by the Company to invest in the Property and the Managing Member shall be responsible for actively managing the successful realization of such opportunities. The Asset Management Agreement sets forth the steps in which AAI, as the Manager, shall undertake in order to enhance the likelihood of successful realization of the development opportunity.

(b) The Managing Member shall cause the Company or the Property Company LLC to retain, as an independent contractor, a property manager and a leasing broker (who may or may not be one and the same) qualified to manage or broker, as the case may be, properties similar to the Property (said manager and broker, collectively, "**Manager**"). The Manager shall be retained to provide such services as the Managing Member deems advisable, including, without limitation, building management, leasing and development. Any agreement or contract (the "**Management Agreement**") between the Company or the Property Company LLC and Managing Member or an Affiliate of Managing Member shall be subject to the prior written approval of GEPT SPE (which approval shall not be unreasonably withheld, conditioned or delayed); provided that such Management Agreement shall include the terms set forth in clauses (i)-(ii) below) and shall provide that: (i) the fees payable to Manager shall be not greater than the fair market fees payable by owners of properties similar to the Property to managers or brokers similar to Manager in the market in which the Property is located; and (ii) any personnel required to perform the services contracted for under the Management Agreement shall be employees of a party other than the Company or the Property Company LLC. The Managing Member shall monitor the Manager in the performance of the active management of the development opportunities at the Property and the Managing Member shall enforce the provisions of the Asset Management Agreement setting forth such active management of the development opportunities at the Property. The Managing Member shall, directly and indirectly (by monitoring the performance of the Manager), work closely with the tenant at the Property in managing the Property, by establishing procedures for (A) the frequent inspection of the condition of the Property, and (B) the frequent review of the financial records pertaining to the management and maintenance of the Property. The Managing Member shall (1) plan for the re-deployment of the presently leased buildings at the Property upon the expiration of the Fireman's Fund Lease, and (2) monitor the condition of the Property so as to permit the Company to promptly respond to any adverse circumstances affecting the Property or the financial condition of the Fireman's Fund.

(c) The Managing Member shall monitor the Manager in the performance of the active management of the Property and the Managing Member shall enforce the provisions of the Asset Management Agreement setting forth such active management of the development opportunities at the Property.

(d) The Members hereby approve the Property Company LLC entering into that certain Asset Management Agreement with AAI, an Affiliate of AA SPE, the form of which is attached hereto as Exhibit D. Initially, (i) AAI shall be designated as the "Manager" under the terms of said Asset Management Agreement, and (ii) said Asset Management Agreement shall constitute the "Management Agreement" under the terms of this Agreement.

(e) The Managing Member agrees that it shall not deposit, and it shall not permit the Property Company LLC to deposit, any funds of the Company or the Property Company LLC into any bank, brokerage, or similar account unless the same first has been approved in writing by GEPT SPE.

4.13 Special Covenants of Managing Member.

(a) Managing Member shall, or shall cause the Manager to, comply, or cause tenant to comply pursuant to the Fireman's Fund Lease, with the insurance requirements set forth on Exhibit C hereto.

(b) Managing Member shall cause the Company or the Property Company LLC, at Company expense, to retain legal counsel to institute all necessary legal action or proceedings for the collection of rent or other income from the Property, or for the eviction or dispossessing of tenants or other persons therefrom; provided that, subject to the provisions of Section 4.5 hereof, (i) Managing Member shall not terminate, amend or waive any material provisions of, or permit the Property Company LLC to terminate, amend or waive any material provisions of, any lease (including the Fireman's Fund Lease) without the prior written approval of the Non-Managing Member, and (ii) Managing Member shall notify the Non-Managing Member of such counsel for its approval prior to retaining such counsel.

ARTICLE V
PARTITION

Each of the Members irrevocably waives, during the term of the Company and during any period of its liquidation following any dissolution, any right that it may have to maintain any action for partition in kind with respect to any Company Asset (including, without limitation, the Property).

ARTICLE VI
COVENANTS, WARRANTIES AND REPRESENTATIONS OF MEMBERS

6.1 Representations and Warranties of Members. In addition to the covenants, warranties and representations made elsewhere in this Agreement, each of AA SPE and GEPT SPE as to itself does hereby warrant and represent to the other and to the Company that, as of the date of this Agreement (and only as of the date of the Agreement):

(a) Such Member has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby;

(b) All acts and other proceedings required to be taken by such Member to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and properly taken;

(c) This Agreement has been duly executed and delivered by such Member and constitutes the valid and binding obligation of such Member, enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency and other similar laws and general legal and equitable principles;

(d) Such Member has obtained all approvals and consents required to be obtained by it in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby from all governmental authorities having any approval rights with respect thereto, and all Persons having consent rights, such that the failure to consent would have a material adverse affect on the Company or its assets;

(e) Such Member has not incurred any obligation to a broker or finder for payment of any commission or fee in connection with its admission as a Member;

(f) Such Member is able to bear the economic risk of an investment in the Company and can afford to sustain a total loss on such investment. Such Member further acknowledges that there are substantial risks in the investment (including loss of the entire amount of such investment), that such Member is capable of evaluating the merits and risks of the investment in the Company and such Member has evaluated such risks and determined that the Membership Interest is a suitable investment for such Member. Such Member has such knowledge and experience in business, financial and tax matters, including, experience in investing in non-listed and non-registered securities, and is a sophisticated investor capable of utilizing the information made available to it in connection with its investment in the Membership Interest to evaluate the merits and risks of its investment in the Company, to make an informed investment decision with respect thereto and to protect its interests in connection with such investment;

(g) Such Member, or each beneficial owner (within the meaning of Rule 501 of Regulation D promulgated under the Securities Act ("**Regulation D**")) of such Member, (i) is an "accredited investor" as such term is defined in Rule 501 of Regulation D, and (ii) is a partnership, corporation, limited liability company, trust or estate with total assets in excess of $5,000,000 and has not been formed for the specific purpose of acquiring the Membership Interest unless each beneficial owner of such entity is qualified as an accredited investor within the meaning of Rule 501 of Regulation D. Such Member, or each beneficial owner of such Member, is a "qualified purchaser" as such term is defined in Section 2(a)(51)(A) of the U.S. Investment Company Act of 1940, as amended from time to time, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder (collectively, the "**Investment Company Act**") and, to the extent requested by the Company, has submitted information substantiating such individual qualification;

(h) (1) the Membership Interest acquired or to be acquired by such Member are being acquired solely for its own account as principal, for investment purposes only, and (2) such Member has not offered or sold the Membership Interest or any portion thereof nor does it have any present intention of dividing such Membership Interest with others or of selling, distributing or otherwise disposing of any portion of such Membership Interest either currently or after the passage of a fixed or determinable period of time or upon the occurrence or non-occurrence of any predetermined event or circumstance in violation of the Securities Act;

(i) Such Member understands that it is the position of the Securities and Exchange Commission that the statutory basis for an exemption under the Securities Act may not be present in connection with the issuance of the Membership Interest if its present intention were to acquire the Membership Interest with an intent to resell or to hold such securities for a short period, for a deferred sale, for a market rise, or for any other fixed period;

(j) Such Member understands and agrees that none of the Membership Interests in the Company have been registered under the Securities Act or applicable state securities laws, and are being acquired from the Company in a transaction not involving a public offering, and that under such laws and applicable regulations such interests may not be resold unless such interests are subsequently registered under the Securities Act and such other laws or such resale is exempt from such registration. Such Member is aware that an exemption from the registration requirements of the Securities Act pursuant to Rule 144 promulgated thereunder is not presently available, and the Company has no obligation to register the Membership Interests subscribed for hereunder or to make available an exemption from the registration requirements pursuant to such Rule 144 or any successor rule for resale of the Membership Interest. Such Member understands that there is no market for its Membership Interest and there can be no assurance that such a market will exist at any future time;

(k) All documents pertaining to the investment in the Membership Interest have been made available for inspection by such Member and such legal, tax, accounting and financial advisers as it has deemed necessary or desirable. Such Member and such advisors have had a reasonable opportunity to ask questions and receive information from a person or persons acting on behalf of the Company concerning such investment, the Company Assets, the Company, the Property Company LLC and such other matters as such Member and any of its advisors have deemed necessary or desirable. All such questions have been answered to the full satisfaction of such Member and any such advisors, and such Member has received all such information requested but such Member has in all events relied upon its own due diligence in evaluating this instrument. Such Member acknowledges and agrees that it has been represented by counsel in connection with its acquisition of its Membership Interest;

(l) Such Member further acknowledges that any projections or similar financial information provided to it with respect to the intended activities of the Company and the Property Company LLC are based upon assumptions that are subject to significant economic, competitive and other uncertainties, many of which are beyond the control of the Company and the Property Company LLC. The actual results of the Company and the Property Company LLC will differ from those projected because, among other reasons, some assumptions may not materialize and unanticipated events and circumstances may occur, and those differences may well be materially adverse to the Company or the Property Company LLC;

(m) In evaluating the suitability of an investment in the Company, such Member has carefully reviewed all information that it considers to be necessary or desirable in connection with such investment and is familiar with and understands the terms of such investment. Such Member has carefully considered and has, to the extent such Member believes such discussion necessary or desirable, discussed with its professional legal, tax, accounting and financial advisers the suitability of an investment in the Membership Interest for its particular tax and financial situation and has determined that the Membership Interest being subscribed for by it is a suitable investment for such Member. With respect to individual or other tax and other economic considerations involved in this investment, such Member is not relying on the Company, the Property Company LLC or any other person;

(n) Such Member hereby acknowledges that no federal or state agency has made any finding or determination as to the fairness of the terms of the purchase and sale of the Membership Interest for investment nor any recommendation or endorsement of the investment in the Membership Interest;

(o) The issuance of the Membership Interests to the Members is intended to be exempt from registration under the Securities Act by virtue of Section 4(2) of the Securities Act, and, if applicable, in the sole judgment of the Company, the provisions of Regulation D thereunder, which is in part dependent upon the truth, completeness and accuracy of the statements made by such Member herein and in any other documents furnished by such Member to the Company;

(p) It is understood that in order not to jeopardize the exempt status under Section 4(2) of the Securities Act of the purchase and sale of the Membership Interests and, if applicable, in the sole judgment of the Company, Regulation D thereunder and the status of the Company under Section 3(c)(7) of the Investment Company Act, any transferee of the Membership Interests (if such transfer is otherwise permitted hereunder) may be required to fulfill the investor suitability requirements thereunder, including, without limitation, the requirement that such transferee by a "qualified purchaser" as such term is defined in Section 2(a)(51)(A) of the Investment Company Act; and

(q) Neither Member is aware of any brokerage commission, finders fee or similar fee payable by the Company or the Property Company LLC in connection with the formation of the Company or the Property Company LLC or the Company's or the Property Company LLC's acquisition of the Property. AA SPE hereby agrees to indemnify, protect, defend and hold harmless GEPT SPE, GEPT SPE's Affiliates, the Company and the Property Company LLC from any loss, claim, damage or liability for any brokerage commissions or finder's fees claimed by any broker or other party in connection with AA SPE's acquisition of its interest in the Company, the formation of the Company or the Property Company LLC or the Company's or the Property Company LLC's acquisition of the Property, which arises from any commitment or other action in favor of a third party of AA SPE or any of its Affiliates. GEPT SPE hereby agrees to indemnify, protect, defend and hold harmless AA SPE from any loss, claim, damage or liability for any brokerage commissions or finder's fees claimed by any broker or other party in connection with GEPT SPE's acquisition of its interest in the Company, the formation of the Company or the Property Company LLC or the Company's or the Property Company LLC's acquisition of the Property, which arises from any commitment or other action in favor of a third party of GEPT SPE or any of its Affiliates.

6.2 Representations and Warranties of AA SPE. In addition to the covenants, warranties and representations made elsewhere in this Agreement, AA SPE does hereby warrant and represent to GEPT SPE and the Company that, as of the date of this Agreement (and only as of the date of this Agreement), the following representations and warranties related to AA SPE are true and correct in all material respects:

(a) There have been no amendments to the Purchase and Sale Agreement, and the Purchase and Sale Agreement continues in full force and effect. Neither AAI nor AA SPE previously has assigned, pledged, or otherwise encumbered (or transferred to any other person or entity) any interest in the Purchase and Sale Agreement or the Property (other than as described in the Recitals).

(b) AA SPE is a limited partnership duly organized under the laws of the State of California. The Ernest Rady Trust (existing under a Declaration of Trust dated March 10, 1983) owns, directly or indirectly (and free and clear of any rights, claims, interests, liens or other encumbrances of any other party whatsoever), (i) 100% of the interests within the sole general partner within AA SPE, and (ii) at least 51% of the interests within the sole limited partner within AA SPE. Said limited partner holds, free and clear of any other claims of any other parties whatsoever, at least 75% of the interests within the profits and losses of AA SPE. AA SPE has provided GEPT SPE with an unaudited balance sheet for the Ernest Rady Trust, and the same is accurate as of the stated date thereof in all material respects (it being understood that the assets included in the unaudited balance sheet are reflected on a cost basis).

(c) AA SPE holds its Membership Interest within the Company free and clear of any rights, claims, interests, liens or other encumbrances of any other persons or entities whatsoever.

(d) AA SPE has provided GEPT SPE with copies of (or have made available to GEPT SPE for inspection) all material documents provided by the Seller under the Purchase and Sale Agreement to AAI and or any of its Affiliates, and neither AAI nor AA SPE have discovered additional information with respect to the Purchase and Sale Agreement or the Property which has not been disclosed in writing to GEPT SPE and which reasonably could be expected to have a material adverse impact on the Company or GEPT SPE. To the actual knowledge of AA SPE after due inquiry, the provision of such information and materials to GEPT SPE does not violate or result in a breach of any confidentiality obligations owed by AAI or any other person or entity arising out of the Purchase and Sale Agreement or any other agreements entered in connection therewith.

(e) To the actual knowledge of AA SPE after due inquiry, (i) the right of first offer included in Section 19.5 of the Fireman's Fund Lease has been duly waived by the tenant thereunder, and (ii) the consummation of the sale of the Property to the Company pursuant to the Purchase and Sale Agreement on or before June 15, 2007 shall not violate the right of first offer or give rise to any claim in favor of the tenant under the Fireman's Fund Lease (or any other person or entity) on account of any purported failure to comply with the terms of the right of first offer.

(f) As of the date of this Agreement, the Managing Member has operated the Company in accordance with the Initial Annual Plan approved per the Existing LLC Agreement.

(g) After giving effect to the supplemental Capital Contributions described in Section 3.1(b), and the closing of the purchase of the Property pursuant to the Purchase and Sale Agreement, the Company Assets shall include liquid working capital equal to at least $250,000.

6.3 Member Indemnity/Guaranties.

(a) Each of the Members shall indemnify and hold harmless the Company and the other Member from and against any and all losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) and claims of any and every kind (collectively, "**Losses**") which in any way arise from any breach by such Member of the representations and warranties set forth in this Agreement. The aforesaid indemnity and hold harmless shall in each case (i) be several, not joint, (ii) be recourse as between the indemnifying Members, only to each such Member's Membership Interest, and (iii) be payable only to the extent of distributions to each such indemnifying Member, such that any amount to be otherwise distributed to such indemnifying Member shall be paid instead to such indemnified parties (pro rata among such indemnified parties in proportion to the total amounts owed to such indemnified parties).

(b) Subject to Section 3.2(e), if the Company, its Members or any Affiliates of such Members shall be required to provide a guaranty, assurances or indemnities in connection with any Loan, then both Members shall be obligated to provide such guaranty, assurances or indemnities and each Member hereby agrees that, except as provided below, each such Member's share of liability under any such guaranties, assurances or indemnities, notwithstanding the characterization of such any such liability as several under the applicable Loan document, shall be in an amount equal to the Member's respective Percentage Interests in the Company at the time such guaranty, assurance or indemnity is provided. Notwithstanding the foregoing, but subject to compliance with Code Section 514(c)(9)(E) and the Regulations promulgated thereunder as determined by GEPT SPE, to the extent the actions or inactions of only one of the Members results in liability under any of the aforementioned guaranties or indemnities to the other Member, the Member causing such liability shall bear the liability thereunder and shall indemnify and hold harmless the other Member from and against all damages, expenses and liabilities incurred by such Member under such guaranties and indemnities.

6.4 Survival. Notwithstanding anything to the contrary in this Agreement, the provisions of this Article VI shall survive the expiration or sooner termination of this Agreement.

ARTICLE VII
BOOKS AND RECORDS; STATEMENTS; AUDITS BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

7.1 Books and Records; Statements; Audits by Independent Certified Public Accountants.

(a) The Managing Member shall keep all books, records, reports and statements required to be kept or delivered by the Managing Member hereunder or by Manager under any Management Agreement. All books and records shall be kept in a manner consistent with appropriate accounting principles and procedures, consistently applied, that fully and accurately reflects the financial and other transactions with respect to the operation of the Company, the Property Company LLC and the Property. Each Member shall have access (and shall have the right to have its accountants and representatives have access) at all times to inspect and examine such books and records, accounts, reports, invoices, receipts and information related to the ownership and/or operation of the Company, the Property Company LLC and the Property upon reasonable advance written notice and each shall have the right to copy said books and records at the Company's expense.

(b) The books, accounts and records of the Company shall be at all times maintained at the principal office of the Company or at the Manager's office, as the case may be.

(c) As soon as practicable (but in no event later than fifteen (15) days after the end of each month of each Fiscal Year during the term of this Agreement), the Managing Member shall arrange for and furnish to the other Member unaudited balance sheets, an unaudited cash flow statement and an unaudited income statement for the Company and the Property Company LLC as at such month-end.

(d) As soon as practicable (but in no event later than thirty (30) days after the end of each quarter of each Fiscal Year during the term of this Agreement), the Managing Member shall arrange for and furnish to the other Member unaudited balance sheets, an unaudited cash flow statement and an unaudited income statement for the Company and the Property Company LLC as at such quarter-end.

(e) As soon as practicable (but in no event later than ninety (90) days after the end of each Fiscal Year during the term of this Agreement), the Managing Member shall use its best efforts to arrange for and furnish to the other Member audited financial statements certified by the Company Accountants (each, an "**Annual Report**") for such Fiscal Year accurately reflecting the financial condition and the results of operation of the Company and the Property Company LLC, all prepared using fair value basis accounting and in accordance with the applicable provisions of this Agreement.

(f) The Managing Member shall cause to be prepared by the Company Accountants all returns which must be filed by the Company and the Property Company LLC with any taxing authority. The Company Accountants shall submit such returns in draft form to the Company and the Members for their approval at least thirty (30) days prior to the required filing date (as extended by all extensions available as of right); each Member shall review and comment thereon in a timely manner so as to enable the Company to meet all filing deadlines and all deadlines set forth in this Section 7.1 and no tax return may be filed without the approval of both Members. The Managing Member shall use its best efforts to cause the Company Accountants to deliver to the Company and each Member as soon as

practicable, but in any event no later than fifteen (15) days prior to the filing deadline (as extended by all extensions available as of right) for the Company's and the Property Company LLC's tax returns for each Fiscal Year, (i) a copy of the Company's and the Property Company LLC's tax returns for such Fiscal Year and (ii) the Schedule K-1 thereto for such Member. In addition, the Managing Member shall cause to be made available to each Member such other information as any Member may reasonably require to enable such Member to prepare its own tax returns, and other filings required by law to be made by such Member, in a timely and accurate manner.

(g) The Managing Member shall deliver to GEPT SPE: (i) copies of monthly, quarterly and annual reports that the Company delivers to any lender under any Loan; and (ii) such other reports, statements and financial information concerning the Company, the Property Company LLC or the Property as may be requested by GEPT SPE.

(h) Except as otherwise expressly provided herein, the costs incurred in connection with Section 7.1(a)-(i) shall be expenses of the Company.

(i) Subject in all events to the provisions set forth in this Section 7.1(i), the Managing Member shall have full power and authority to act for the Company as Tax Matters Partner, as defined in Section 6231(a)(7) of the Code, with all the rights and responsibilities of that position described in Sections 6222-32 of the Code and to act in any similar capacity under applicable state or local law. The Tax Matters Partner covenants and agrees to observe and perform its duties and obligations in accordance with the following provisions:

(i) Subject to the provisions of Section 4.5 hereof, the Tax Matters Partner shall take no action in such capacity which may have a material effect upon the other Member without the authorization or consent of the Other Member, other than such action as the Tax Matters Partner may be required to take by law. The Tax Matters Partner shall use its best efforts to comply with the responsibilities outlined in Sections 6222 through 6232 of the Code.

(ii) Subject to the provisions of Section 4.5 hereof, the Tax Matters Partner shall not enter into any extension of the period of limitations for making assessments on behalf of the Members without first obtaining the written consent of the other Member.

(iii) Subject to the provisions of Section 4.5 hereof, the Tax Matters Partner shall not bind the Company or the Property Company LLC to a settlement agreement without obtaining the written concurrence of the other Member. For purposes of this clause (iii), the term "settlement agreement" shall include a settlement agreement at either an administrative or judicial level. Any Member that enters into a settlement agreement with respect to any Company items or the Property Company LLC items (within the meaning of Section 6231(a)(3) of the Code) shall notify the other Member of such settlement agreement and its terms within ninety (90) calendar days after the date of settlement.

(iv) With respect to any tax issue relating to UBTI, GEPT SPE shall have the right to approve all judicial and administrative proceedings in connection therewith, and (i) the Tax Matters Partner shall not take any action, including extending the Company's statute of limitations and entering into a settlement agreement (as defined above), without the prior consent of GEPT SPE and (ii) the Tax Matters Partner, the Company and the Property Company LLC shall take any actions directed by GEPT SPE, subject to the consent of the Managing Member which may not be unreasonably withheld, delayed or conditioned.

(v) The provisions of this Section 7.1(i) shall survive the termination of the Company or the Property Company LLC or the termination of any Member's Membership Interest in the Company or the Company's interest in the Property Company LLC and shall remain binding on the Members for a period of time necessary to resolve with the Internal Revenue Service or the United States Department of the Treasury any and all matters regarding the United States federal income taxation of the Company.

(vi) The Tax Matters Partner, in its capacity as the Tax Matters Partner, shall be reimbursed by the Company for any third party out-of-pocket costs and expenses reasonably incurred by it in the performance of its duties as Tax Matters Partner. No Member shall be reimbursed by the Company for any costs and expenses incurred by such Member in pursuing on its own behalf any of its rights to file petitions, seek judicial review, etc. under this Section 7.1(i) unless (y) the other Member, in its sole discretion, agrees to such reimbursement, or (z) such costs or expenses are incurred by GEPT SPE with respect to its activities pursuant to Section 7.1(i)(iv) hereof.

(vii) Any provision hereof to the contrary notwithstanding, solely for United States federal income tax purposes, each of the Members hereby agrees that the Company will be subject to all provisions of Subchapter K of Chapter l of Subtitle A of the Code; provided, however, that the filing of partnership tax returns shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members. Except as otherwise provided in this Agreement, the Tax Matters Partner shall make such elections as the Tax Matters Partner shall reasonably determine, subject to compliance with Code Section 514(c)(9)(E) and the Regulation promulgated thereunder (as determined by GEPT SPE). Each Member will, upon request, supply the information necessary properly to give effect to such election. Subject to the provisions of Section 4.5 hereof, any election that the Tax Matters Partner wishes to make under the Code or, except as otherwise provided in this Agreement, any Treasury Regulation shall be subject to the consent of the other Member if such election could have an adverse tax or other effect on the other Member.

7.2 Property Records.

(a) Managing Member shall, or shall cause Manager to, render monthly reports for the preceding calendar month, on or before the twentieth (20th) day of each month, in form and with content satisfactory to GEPT SPE. Such monthly reports shall include, without limitation, the following:

(i) A current rent roll;

(ii) A tenant aged collection report;

(iii) A budget variance report, including a summary and detail variance analysis together with a narrative explanation of such variations; and

(iv) A leasing activity report.

(b) Managing Member shall, or shall cause Manager to, prepare and submit to the Members on or before October 15th of each year during the term of this Agreement, a ten (10) year discounted cash flow model for the Property in such form and incorporating such assumptions and projections as reasonably directed by GEPT SPE.

(c) Managing Member shall, or shall cause Manager to, deliver to the Members such other reports in such formats and with such supporting information GEPT SPE may from time to time reasonably request. Managing Member shall, or shall cause Manager to, maintain at the Property all documentation necessary to support the information included on the reports set forth in Section 7.2(a) and 7.2(b).

ARTICLE VIII
CAPITAL ACCOUNTS; DISTRIBUTIONS

8.1 Capital Accounts. There shall be established on the books and records of the Company a capital account (a "**Capital Account**") for each Member.

8.2 Adjustments. As of the last day of each Period, the balance in each Member's Capital Account shall be adjusted by (a) increasing such balance by such Member's (i) allocable share of Net Profit (allocated in accordance with Section 8.5) for such Period, (ii) Capital Contributions made by such Member during the Period (reduced by any liabilities encumbering assets other than cash contributed by such Member during the Period, which liabilities the Company is considered to assume or take subject to under Code Section 752), and (b) decreasing such balance by (y) the amount of cash or the fair market value of other assets distributed to such Member (net of any liabilities encumbering the distributed assets that such Member is considered to assume or take subject to under Code Section 752), and (z) such Member's allocable share of Net Loss (allocated in accordance with Section 8.5). Each Member's Capital Account shall be further adjusted with respect to any special allocations pursuant to this Article VIII. The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Sections 1.704-1(b) and 1.514(c)-2, and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

8.3 Distributions. Subject to the provisions of Section 9.2 and the terms of any Loan, undistributed Cash Flow, if any, shall be distributed quarterly (no later than the earlier of the fifteenth (15th) day after the end of each quarter or the fifth (5th) business day after the receipt by the Company of any net proceeds from any Disposition) to the Members as follows:

(i) First, to AA SPE to the extent of any contributions made by it pursuant to Section 3.2(e)(ii) hereof;

(ii) Second, to the Members in proportion to and to the extent of their respective amounts of Unrecovered Capital;

(iii) Third, to the Members in the proportion and to the extent necessary for each Member to recognize an 8% Internal Rate of Return taking into account all prior distributions pursuant to Sections 8.3(ii) and (iii); and

(iv) Fourth, to the Members in accordance with their respective Residual Distribution Percentages.

8.4 Negative Capital Accounts. No Member shall be required to make up a negative balance in its Capital Account.

8.5 Allocations of Net Profit and Net Loss.

(a) Subject to and after application of Sections 8.5(c), 8.5(d) and 8.9 hereof, Net Profit for each Period shall be allocated as follows:

(i) First, to the Members in amounts sufficient to offset, in reverse order, all prior allocations of Net Losses pursuant to the second sentence of Section 8.5(b)(ii) hereof;

(ii) Second, to the Members in proportion to and to the extent of the Net Losses allocated to them pursuant to Section 8.5(b)(i);

(iii) Third, to the Members, in proportion to their Percentage Interests, until the Adjusted Capital Account balance of each Member is equal to an amount which, if distributed on the Calculation Date and taking into account all prior distributions pursuant to Sections 8.3(ii) and (iii), would allow such Member to recognize an 8% Internal Rate of Return through the end of the Calculation Period;

(iv) Fourth, to the Members in the proportion to and to the extent of any distributions made to them pursuant to Section 8.3(iv); and

(v) Thereafter, to the Members in accordance with their respective Residual Distribution Percentages.

(b) (i) Subject to and after application of Sections 8.5(c), 8.5(d) and 8.9 hereof, Net Loss for each Period shall be allocated to the members in accordance with their respective Percentage Interests.

(ii) Notwithstanding Section 8.5(b)(i) hereof, Net Loss allocated pursuant to Section 8.5(b)(i) to any Member for any Period shall not exceed the maximum amount of Net Loss that may be allocated to such Member without causing such Member to have an Adjusted Capital Account Deficit at the end of such Period. Any Net Loss in excess of the limitation in this Section 8.5(b)(ii) shall be specially allocated solely to the other Member to the maximum extent permitted by this Section 8.5(b)(ii).

(c) If, despite the Managing Member's best efforts to the contrary, the Adjusted Capital Accounts of the Members do not have balances which, if distributed, would result in the Members receiving distributions in the order of priorities set forth in Section 8.3 hereof, then the Managing Member shall allocate Net Profit or Net Loss or items of income, gain, loss and deduction among the Members in such manner as shall, in the Managing Member's reasonable discretion (but subject to compliance with Code Section 514(c)(9)(E) and the Treasury Regulations thereunder), eliminate as rapidly as possible the disparity between such Adjusted Capital Accounts and the balances required to conform with the priorities of such Section 8.3. An allocation of Net Profit or Net Loss to a Member shall be treated as an allocation to such Member of the same share of each item of income, gain, loss and deduction that is taken into account in computing such Net Profit or Net Loss, as the case may be.

(d) Notwithstanding Sections 8.5(a), (b) or (c), the following special allocations shall be made in the following order prior to the application of Sections 8.5(a), (b) or (c) (as the case may be):

(i) If there is a net decrease in Partnership Minimum Gain (as such decrease is determined as provided in Treasury Regulations Sections 1.704-2(d) and 1.704-2(g)) during any Period, certain items of income and gain, including gross income or gain, shall be allocated to the Members in the amounts and manner described in Treasury Regulations Section 1.704-2(f). The allocations otherwise required pursuant to this Section 8.5(d)(i) shall, however, not apply to a Member to the extent that the minimum gain chargeback rules are inapplicable in a particular circumstance as specified in or under the Regulations. This Section 8.5(d)(i) is intended to comply with the minimum gain chargeback requirement relating to partnership non-recourse liabilities (as defined in Treasury Regulations Section 1.704-2(f)) and shall be so interpreted.

(ii) If there is a net decrease in Minimum Gain Attributable to Partner Nonrecourse Debt (determined pursuant to Treasury Regulations Section 1.704-2(i)) during any Period, certain items of income and gain, including gross income or gain, shall be allocated as quickly as possible to those Members which had a share of the Minimum Gain Attributable to Partner Nonrecourse Debt (such share to be determined pursuant to Treasury Regulations Section 1.704-1(i)(5)) in the amounts and manner described in Treasury Regulations Sections 1.704-2(i) and (j). The allocations otherwise required pursuant to this Section 8.5(d)(ii) shall, however, not apply to a Member to the extent that the minimum gain chargeback rules are inapplicable in a particular circumstance as specified in or under the Regulations. This Section 8.5(d)(ii) is intended to comply with the minimum gain chargeback requirement relating to Partner Nonrecourse Debt set forth in Treasury Regulations Section 1.704-2(i)(4)) and shall be so interpreted.

(iii) Deductions attributable to obligations with respect to which a Member bears the economic risk of loss within the meaning of Treasury Regulation Section 1.704-2(b)(4) shall be allocated to the Member or Members that bear the economic risk of loss for such debt in accordance with the requirements of Treasury Regulation Section 1.704-2(i)(1). “Nonrecourse Deductions” (as such term is defined in Treasury Regulations Sections 1.704-2(b)(1) and 1.704-2(c)) of the Company shall be allocated to the Members in proportion to their Percentage Interests.

(iv) If one or more of the Members unexpectedly receives any adjustment, allocation or distribution described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), then items of income and gain shall be specially allocated to such Members in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit created by such adjustments, allocations or distributions as quickly as possible; provided that an allocation pursuant to this Section 8.5(d)(iv) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 8.5 have been tentatively made as if this Section 8.5(d)(iv) were not in this Agreement. This provision is intended to qualify as a “qualified income offset” within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

(v) If a Member has an Adjusted Capital Account Deficit at the end of any Period, such Member shall be specially allocated items of Company income and gain to bring such Member’s Adjusted Capital Account balance to zero; provided that an allocation pursuant to this Section 8.5(d)(v) shall be made only if and to the extent that (x) such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 8.5 have been made as if Section 8.5(d)(iv) hereof and this Section 8.5(d)(v) were not in the Agreement and (y) such allocation complies with the requirements of Code Section 514(c)(9)(E) and the Treasury Regulations thereunder.

(vi) The allocations set forth in Section 8.5(d)(i)-(v) hereof (the “**Regulatory Allocations**”) are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 8.5(d)(vi). Therefore, the Managing Member shall make such offsetting special allocations of Company income, gain, loss and deduction in whatever manner it reasonably determines to be appropriate, subject to compliance with the requirements of Code Section 514(c)(9)(E) and the Treasury Regulations thereunder, so that, after such offsetting allocations are made, each Member’s Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Sections 8.5(a), (b) and (c). In exercising its discretion, the Managing Member shall take into account future Regulatory Allocations pursuant to Sections 8.5(d)(i) and (ii) hereof that, although not yet made, are likely to offset other Regulatory Allocations previously made under Section 8.5(d)(iii) hereof.

(e) In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, items of income, gain, loss and deduction with respect to any property contributed to the capital of the Company and Company property revalued pursuant to the definition of "Gross Asset Value" herein shall, solely for federal income tax purposes, be allocated to the Members so as to take into account any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Gross Asset Value under any permitted method under Treasury Regulations Section 1.704-3 selected by the Managing Member. Allocations pursuant to this Section 8.5(e) are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Profits, Net Losses, other items, or distributions pursuant to any provision of this Agreement.

(f) Solely for purposes of determining a Member's proportionate share of excess non-recourse liabilities of the Company within the meaning of Treasury Regulations Section 1.752-3(a)(3), a Member's interest in the Company's profits shall be equal to its Percentage Interest.

8.6 Other Allocation Rules.

(a) For purposes of determining the profits, losses, or any other items allocable to any period, Net Profits, Net Losses, and any such other items shall be determined on a daily, monthly, or other basis, using any permissible method under Code Section 706 and the Treasury Regulations thereunder which is approved by both Members.

(b) The Members are aware of the income tax consequences of the allocations made by this Article VIII and hereby agree to be bound by the provisions of this Article VIII in reporting their shares of Company income and loss for income tax purposes.

8.7 Withholding. The Managing Member is authorized to withhold from allocations or distributions to the Members any amounts required to be so withheld pursuant to the Code or any other applicable foreign, federal, state or local law and to pay over to foreign, federal, state or local government authorities such amounts. Any amounts so allocated to a Member shall be treated as an amount distributed to such Member pursuant to this Article VIII for all purposes of this Agreement. If the Company makes a distribution in kind to a Member and such distribution is subject to withholding in the manner described above, the Managing Member shall notify such Member as to the extent of the amount of such withholding and such Member shall promptly pay the Company such amount.

8.8 Final Distribution. The final distributions following dissolution shall be made in accordance with the provisions of Section 9.2.

8.9 Section 514(c)(9)(E). Notwithstanding any other provision of this Agreement, if any provision of this Agreement would result in a violation of the rules of Code Section 514(c)(9)(E) and the Treasury Regulations thereunder, such provision will be deemed amended hereby to the minimum extent necessary to cause the Company to continue to be in strict compliance with Code Section 514(c)(9)(E) and the Treasury Regulations thereunder.

ARTICLE IX
DISSOLUTION

9.1 Dissolving Events. The Company shall be dissolved in the manner hereinafter provided promptly following the happening of any of the following events:

(a) upon December 31, 2017; provided that the Members may, by mutual written agreement (but in each party's sole discretion), extend the term for up to three (3) successive one (1) year periods;

(b) the unanimous vote of the Members to dissolve, wind up, and liquidate the Company;

(c) the disposition by the Company of all or substantially all of the Company Assets and the collection of all amounts derived from any such disposition, including all amounts payable to the Company under any promissory notes or other evidences of indebtedness derived by the Company from any such disposition;

(d) any other event which under applicable law would cause the dissolution of the Company, provided, however, that, unless required by law, the Company shall not be liquidated as a result of any such event and the Company shall be reconstituted;

(e) the delivery of a notice by GEPT SPE pursuant to Section 4.2(b) to require that the Company Assets be sold and the Company liquidated; and

(f) the dissolution of, or a Bankruptcy Event with respect to, either Member, unless the other Member elects within ninety (90) days after the occurrence of any such event to continue the business of the Company.

9.2 Methods of Liquidation. If the Company is dissolved and not reconstituted, an accounting of the Company assets, liabilities, and operations through the last day of the month in which the dissolution occurs shall be made by the Company Accountants, and the affairs of the Company shall be wound up and terminated. The Managing Member shall serve as the liquidating trustee of the Company unless the Managing Member has caused the dissolution pursuant to a Bankruptcy Event of the Managing Member or the Managing Member is the Non-Contributing Member, in which case the other Member shall designate a liquidating trustee. The liquidating trustee shall be responsible for winding up and terminating the affairs of the Company and shall determine all matters in connection therewith (including, without limitation, the arrangements to be made with creditors, to what extent and under what terms the assets of the Company are to be sold, and the amount or necessity of cash reserves to cover contingent liabilities) as it deems advisable and proper; provided, however, that all decisions of the liquidating trustee shall be made in accordance with the fiduciary duty owed by the liquidating trustee to the Company and each of the Members; provided further that any action which would constitute a Major Decision under this Agreement shall require the approval of both Members to the extent required pursuant to Article IV of this Agreement. The liquidating trustee thereafter shall liquidate the assets of the Company as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient therefor, shall be applied and distributed in accordance with the following:

(a) First, to the payment of the debts and liabilities of the Company, other than to the Members, and to the expenses of liquidation in the order of priority as provided by law; then

(b) Second, to the establishment of, or addition to, any reserves deemed necessary by the liquidating trustee, for any contingent or unforeseen liabilities or obligations of the Company; provided, however, that any such reserves established hereunder shall be paid over to a bank or other escrow agent to be held in escrow for the purpose of paying any such contingent or unforeseen liabilities or obligations and, at the expiration of such period as the liquidating trustee deems advisable, of distributing the balance of such reserves in the manner provided hereinafter in this Section 9.2; then

(c) Third, to the repayment of any liabilities or debts of the Company to any of the Members pro rata to the respective outstanding balances of such liabilities or debts; and then

(d) Fourth, to the Members with positive Capital Account balances, in proportion to and to the extent thereof.

9.3 Adjustment of Distributions. The Members intend that the allocations of Profit and Loss pursuant to this Agreement will result in the Capital Account balances of the Members being such that all distributions upon dissolution will be the same as if such distributions were made pursuant to Section 8.3. However, if the Manager reasonably determines that there is a reasonable possibility that this result would not occur, the Manager may adjust the allocations of Net Profit and Net Loss (or items thereof) otherwise provided for herein in order to attempt to achieve such result, subject to the condition that the Manager has obtained an opinion of counsel or a nationally-recognized accounting firm that such adjusted allocations would be considered to have substantial economic effect under Section 704(b) of the Code and would not result in this Agreement violating Section 514(c)(9)(E)(i) of the Code. The Members agree to amend this Agreement to reflect such adjustments, if required by the Manager upon the advice of such counsel or accounting firm.

9.4 Reasonable Time for Liquidating. A reasonable time shall be allowed for the orderly liquidation of the Company Assets pursuant to Section 9.2 above in order to minimize the losses normally attendant upon such a liquidation; provided, however, that such liquidation shall comply in all events with the timing requirements of Treasury Regulations Section 1.704-1(b)(2)(ii)(b).

9.5 Date of Liquidation. The Company shall be liquidated and terminated when all Company Assets have been converted into cash, all promissory notes or other evidences of indebtedness derived by the Company from such conversion of the Company Assets have been collected or otherwise converted into cash, and all such cash has been applied and distributed in accordance with the provisions of Section 9.2 above. The establishment of any reserves shall not have the effect of extending the term of the Company, but such reserves shall be distributed in accordance with Section 9.2 and in the manner and within the time period as the liquidating trustee deems advisable and appropriate.

9.6 Withdrawals. The Members do hereby covenant and agree that they shall not withdraw or retire from the Company except as a result of a permitted Transfer of their entire respective Membership Interests and that they shall carry out their duties and responsibilities hereunder while Members and until the Company is terminated, liquidated, and dissolved under this Article IX.

9.7 Filing of Articles of Dissolution. If the Company is dissolved, the Members shall promptly file a Certificate of Dissolution with the Delaware Secretary of State. If there are no remaining Members, the Certificate of Dissolution shall be filed by the last Person to be a Member; or if neither, the Certificate of Dissolution shall be filed by the legal or personal representatives of the Person who last was a Member.

ARTICLE X
SALE, ASSIGNMENT, TRANSFER

10.1 Transfers of Membership Interests.

(a) General. Except as permitted in this Article X or pursuant to Article XI hereof, no Member may sell, transfer, assign, convey or otherwise dispose of or subject to a security interest or otherwise charge or encumber, either directly or indirectly, voluntarily or by operation of law (collectively, "**Transfer**") all or any part of its Membership Interest. Any such act in violation of this Section 10.1(a) shall be void. The approval of any such Transfer in any one or more instances shall not limit or waive the requirement for such approval in any other or future instance. All Transfers hereinafter permitted are subject to Sections 10.5, 10.6 and 10.7.

(b) Permitted Transfers. Notwithstanding the foregoing, subject to the satisfaction of Sections 10.5, 10.6 and 10.7 (but not subject to the requirements of Section 10.2 hereof), the following Transfers (each, a "**Permitted Transfer**") shall be permitted: (i) Transfers of all or any portion of a Member's Membership Interest in the Company to an Affiliate of such Member; (ii) Transfers of all or any portion of a Member's Membership Interest in the Company to the other Member or an Affiliate of the other Member; and/or (iii) in the case of a Member which is a trust funding one or more employee benefit plans, or which is directly or indirectly beneficially owned by one or more trusts funding one or more employee benefit plans, Transfers to a successor trustee or trustees of any such trust or to a trustee or trustees of one or more trusts which evolve or devolve from any such trust. GEPT SPE may make no Transfer the result of which would be to jeopardize the status of the Company as a REOC.

10.2 Additional Transfer Terms.

(a) Right of First Offer on Membership Interests.

(i) At any time, with respect to any Transfer other than a Permitted Transfer, any Member wishing to Transfer its Membership Interest (or any portion thereof) (the "**Transferring Member**") will be required to provide not less than sixty (60) days' prior written notice (the "**ROFO Notice**") to the other Member (the "**Non-Transferring Member**"). The ROFO Notice shall set forth the proposed terms of a Transfer (including the price payable in cash, but subject to (and without reduction with respect to) any outstanding Loans, at which the Transferring Member would be willing to sell its Membership Interest (or such portion thereof), the "**ROFO Price**"). The proposed terms shall contemplate that the ROFO Price shall be calculated with the assumption that all items of pre-closing income and expense shall be received and paid as of the closing of the proposed transfer, and that all such items attributable to post-closing periods shall not have been received or paid (and that no reserves shall have been established therefor); the terms further shall provide that if this assumption is not true as of the closing, then appropriate prorations adjustments shall be made at closing with respect to the cash required to be delivered by the buyer. The Non-Transferring Member will have a right of first offer with respect to the Membership Interest of the Transferring Member at the ROFO Price. The Non-Transferring Member may exercise the right of first offer by: (A) advising the Transferring Member in writing (the "**ROFO Election**") that such Non-Transferring Member has elected within forty-five (45) days after receipt of the ROFO Notice to purchase the Membership Interest of the Transferring Member at the ROFO Price; (B) depositing within forty-five (45) days after receipt of the ROFO Notice with a mutually acceptable escrow agent a deposit in cash (the "**ROFO Deposit**") equal to five percent (5%) of the ROFO Price for such Membership Interest being acquired by such Non-Transferring Member (which deposit shall be credited against the applicable portion of the ROFO Price if the purchase closes); and (C) closing the purchase within thirty (30) days after the election by the Non-Transferring Member(s) to purchase the Membership Interest of the Transferring Member by payment of the remaining portion of the ROFO Price in cash (subject to any prorations adjustments, as described above), or as otherwise agreed by the parties hereto. If the Non-Transferring Member either (X) fails to deliver the ROFO Election (and the ROFO Deposit) to the Transferring Member within forty-five (45) days after receipt of the ROFO Notice, (Y) waives in writing its right to purchase the Membership Interest being offered by the Transferring Member under this Section 10.2(a) or (Z) defaults in consummating the acquisition of the Membership Interest offered by the Transferring Member in accordance with clause (C) above (each a "**ROFO Termination Date**"), the Membership Interest offered by the Transferring Member may be sold by the Transferring Member, for not less than ninety-five (95%) percent of the ROFO Price offered to the Non-Transferring Member, at any time during the next one hundred eighty (180) day period subsequent to ROFO Termination Date.

(ii) If a Non-Transferring Member shall have exercised its right to purchase the Membership Interest that was the subject of the ROFO Notice and shall have then defaulted in consummating the transaction, the Transferring Member shall have the right to sell the applicable Membership Interest as described in the preceding paragraph, and the Transferring Member may, as its exclusive remedy, retain the ROFO Deposit as liquidated damages, and not as a penalty. A Non-Transferring Member who exercised its right to purchase the applicable Membership Interest and then defaulted in consummating the transaction shall not be entitled to a return of any portion of the ROFO Deposit.

10.3 Put/Call.

(a) Either Member, for a period of thirty (30) days following the occurrence of a Trigger Event (as hereinafter defined), by written notice (the "**Offer Notice**") to the other Member (the Member entitled to give, and giving, the Offer Notice being hereinafter called the "**Notifying Party**" and the Member receiving the Offer Notice being hereinafter called the "**Notified Party**"), may declare that it intends either (i) to purchase the Interest of Notified Party, or (ii) to sell its Membership Interest to Notified Party, in either case for a price (the "**Purchase Price**"); provided that if a Default has occurred with respect to AA SPE, AA SPE shall not be permitted to deliver an Offer Notice under this Section 10.3(a) (except with respect to a Trigger Event under clause (2) of the definition thereof as a consequence of a transfer by GEPT SPE, in which case AA SPE shall have a right to deliver an Offer Notice notwithstanding such Default) (it being understood that the foregoing is not intended to limit in any way AA SPE's right to deliver a Buy/Sell Notice under Section 10.4(a) hereof). As soon as reasonably possible after the Offer Notice has been received by the Notified Party, the Members shall jointly direct the Company Accountants to determine, at Company expense, the Purchase Price for each of the Interest of the Non-Purchasing Member and the Purchasing Member (as such terms are defined below) as soon as reasonably practicable (but in no event after fifteen (15) days after receipt of the Offer Notice by the Notified Party), which, in each case, shall equal the amount each such Member would receive in liquidation of its Interest pursuant to Section 9.2(d) hereof assuming the Company Assets were sold (in an all-cash transaction and all known debts and obligations of the Company were immediately paid in full) for an amount identified by the Notifying Party in the Offer Notice (the "**Designated Value**"). The Designated Value shall be deemed to take into account all economic terms relevant to the value of the Company Assets, including, without limitation, deferred maintenance and contingent liabilities or obligations. The Designated Value shall be calculated with the assumption that all items of pre-closing income and expense shall be received and paid as of the closing of the hypothetical sale, and that all such items attributable to post-closing periods shall not have been received or paid (and that no reserves shall have been established therefor); if this assumption is not true as of the closing of the transfer contemplated by this Section 10.3, then appropriate prorations adjustments shall be made at closing with respect to the cash required to be delivered by the buyer. As soon as either Member has been informed of such Purchase Price calculations, it shall, if the other Member has not been so notified, provide written notice of same to the other Member. Within ten (10) days after the date of the Offer Notice, each Member shall give written notice to the other Member and the Company Accountants as to whether or not (A) such Member has actual knowledge of any pending or threatened litigation against the Company or relating to the Property of which the Company or such Member has not previously notified such other Member in writing and, if so, listing and describing such litigation, and (B) such Member has taken any action as of the date of its notice in material violation of this Agreement or not in the ordinary course of business since the date of the most recent financial statement of the Company, and if so, giving a description thereof. If Notified Party's notice discloses any matter which, in the reasonable judgment of Notifying Party, materially affects the value or marketability of the Company or the Property or the Notified Party's Membership Interest, Notifying Party shall have the right, at its option, to withdraw its Offer Notice within ten (10) days after the effective date of Notified Party's notice under this Section 10.3(a) by giving written notice thereof to Notified Party. For purposes of this Section 10.3, a "**Trigger**

Event" shall mean (1) a disagreement as to any Major Decision which is still continuing, in which case either Member may be the Notifying Party; provided that such Member shall have provided written notice to the other Member setting forth the Major Decision that is the subject of the disagreement and identifying such disagreement as a potential Trigger Event for purposes of this Agreement, and shall have made good faith efforts to resolve any disputes or disagreements with the other Member prior to the giving of the Offer Notice, or (2) the discovery by a Member of a Transfer by the other Member in violation of the terms of this Agreement, in which case only the non-transferring Member may be the Notifying Party, or (3) the discovery by a Member of the occurrence of a Default by the other Member, in which case only the non-defaulting Member may be the Notifying Party, or (4) in the event that the Members do not approve an Annual Plan for the Company by June 30 of the applicable Fiscal Year, or (5) in the event that, at any time that AA SPE is the Managing Member, GEPT SPE delivers a written notice (the "**Sale Proposal**") to AA SPE proposing a sale of the Property by the Property Company LLC and AA SPE does not provide, within twenty (20) days of receipt of the Sale Proposal, a written response to GEPT SPE committing to sell Property by the Property Company LLC in accordance with the terms set forth in the Sale Proposal, or (6) with respect to AA SPE only, in the circumstances described in Section 4.2(b); provided that under no circumstances shall a Trigger Event be deemed to have occurred with respect to the circumstances described in clause (1) or (5) above until the expiration of two (2) years after the date of this Agreement.

(b) Within one hundred eighty (180) days after the effective date of any Offer Notice, the Notified Member shall declare that it intends to purchase the Interest of the Notifying Party (in which case the Notified Party shall be referred to as the "**Purchasing Member**" and the Notifying Party shall be referred to as the "**Non-Purchasing Member**") or to sell its Membership Interest to the Notifying Party (in which case the Notifying Party shall be referred to as the "**Purchasing Member**" and the Notified Party shall be referred to as the "**Non-Purchasing Member**"), provided, however, that the failure by the Notified Party to make an election within such one-hundred eighty (180) day period shall be deemed to be an election by such Notified Party to sell its Membership Interest to the Notifying Party. Upon the delivery of an Offer Notice with respect to its Membership Interest, no Member shall have any further right to deliver a ROFO Notice under Section 10.2(a) hereof during the period prior to the Put/Call Closing (as defined below) or the default of either party to consummate the transactions contemplated pursuant to this Section 10.3. If either Member Transfers any of its Membership Interest following the giving by the Notifying Party of the Offer Notice to any transferee, such transferee shall be bound by the transferor's election (or deemed election) with respect to the Offer Notice.

(c) The closing (the "**Put/Call Closing**") of the transactions contemplated by this Section 10.3 shall occur within thirty (30) days after the earlier to occur of the election by Notified Party pursuant to Section 10.3(b) or the end of the period within which the Notified Party is to make the election contemplated thereby, shall be consummated through an escrow with a national title company selected by the Purchasing Member subject to the approval of the Non-Purchasing Member (which approval shall not be unreasonably withheld or delayed) and shall take place during normal business hours at the principal place of business of the Purchasing Member or its counsel, or at such other place as the Members may mutually agree. The time and date of the Put/Call Closing shall be specified by the Purchasing Member by at least ten (10) days prior notice to the Non-Purchasing Member.

(d) The following events will take place simultaneously at the Put/Call Closing:

(i) the Purchasing Member shall pay the Purchase Price to the Non-Purchasing Member (subject to any prorations adjustments required by Section 10.3(a));

(ii) the Non-Purchasing Member shall assign to the Purchasing Partner (or its nominee) all of the Non-Purchasing Member's right, title and interest in, to and under the Company, including, without limitation, the Non-Purchasing Member's Membership Interest;

(iii) No call for an Additional Capital Contribution may be made to provide the Company with funds necessary to satisfy any obligation of the Company which becomes due as a result of the transactions contemplated by this Section 10.3 (it being understood, however, that the foregoing is not intended to exculpate either Member from liability for causing the Company or any Company Assets to become liable for any obligations in a manner that violates the terms of this Agreement); and

(iv) the Purchasing Member shall pay or cause to be paid in full, by wire transfer of immediately available funds, all loans made by the Non-Purchasing Member or any of its Affiliates to either the Company or the Purchasing Member or any of its Affiliates, whether or not the terms and provisions of such loans expressly provide that such loan is due and payable at the Put/Call Closing.

All instruments executed in connection with the Put/Call Closing shall be without recourse, representation or warranty whatsoever, except that each Member shall represent that the notices given by such party under Sections 10.3(a) and 10.3(b) were true and correct and that, since the date of such notice, it has not taken any action in violation of this Agreement or not in the ordinary course of business and the Non-Purchasing Member shall represent and warrant that it holds title to its Membership Interest free and clear of any liens and encumbrances. Each Member shall pay the fees and expenses of its own attorneys, accountants and advisors in connection with the transaction contemplated by this Section 10.3, and all other expenses of said transactions, including, without limitation, all transfer taxes, recording fees and other costs in connection with such conveyance and transfer, shall be paid by the Purchasing Member.

(e) The Purchase Price and all other amounts payable in connection with the transactions contemplated by this Section 10.3 (subject to any required prorations adjustments) shall be payable at the Put/Call Closing by federal wire of immediately available funds.

(f) On or before the fifteenth (15th) day after the Purchasing Member has been determined pursuant to this Section 10.3, the Purchasing Member shall deposit in escrow with a bank or trust company designated by the Non-Purchasing Member an amount equal to five percent (5%) of the Purchase Price (the "**Put/Call Deposit**"), such amount to be credited to the Purchase Price at the Put/Call Closing. In the event of a default by the Purchasing Member of the provisions of this Section 10.3, the Non-Purchasing Member shall be entitled to the following remedies, which shall be the sole remedies available to the Non-Purchasing Member as a consequence of such default of the provisions of this Section 10.3 (it being expressly acknowledged and agreed that the Non-Purchasing Member shall retain any and all other remedies which it may have as a result of the Trigger Event or any Default):

(i) The Non-Purchasing Member may terminate the sale and retain the Put/Call Deposit as liquidated damages and not as a penalty. **THE PARTIES AGREE THAT IT WOULD BE IMPRACTABLE OR EXTREMELY DIFFICULT TO QUANTIFY THE ACTUAL DAMAGES TO THE NON-PURCHASING MEMBER IN THE EVENT OF A BREACH BY THE PURCHASING MEMBER AND THAT THE AMOUNT OF THE PUT/CALL DEPOSIT IS A REASONABLE ESTIMATE OF SUCH ACTUAL DAMAGES GIVEN THE CIRCUMSTANCES EXISTING AS OF THE DATE HEREOF.**

/s/ BB	/s/ RVS
Initials of AA SPE	Initial of GEPT SPE

(ii) Further, and in addition to the remedy described in clause (i) above, the Non-Purchasing Member shall have the right, but not the obligation, exercisable by written notice to the Purchasing Member within thirty (30) days from the date the Non-Purchasing Member learns of such default, to elect to purchase the former Purchasing Member's Membership Interest for the applicable Purchase Price determined pursuant hereto and otherwise in accordance with the provisions of this Section 10.3, including the provisions related to the timing of the Put/Call Closing. In the event that, after default of the former Purchasing Member of the provisions of this Section 10.3, the former Non-Purchasing Member elects to purchase the Membership Interest of the former Purchasing Member, the former Purchasing Member shall have no right to make a counter-offer for, and no further right to elect to purchase, the Membership Interest of the former Non-Purchasing Member on account of the Put/Call Notice which initially triggered this Section 10.3.

(g) If any Member which is a Non-Purchasing Member fails to perform its obligations contained in this Section 10.3, the Purchasing Member may, in addition to its other remedies set forth in this Agreement (but subject to the limitation on liability contained herein) enforce its rights under this Section 10.3 by an action for specific performance. Furthermore, if any Member fails to perform its obligations contained in this Section 10.3, such Member shall be in Default for purposes of Article XI hereof.

10.4 Buy/Sell.

(a) Following a Default or an alleged Default by AA SPE under Section 11.1(a)(iii) and provided that an Offer Notice that is still effective has not been given pursuant to Section 10.3, AA SPE may, by written notice (the "**Buy/Sell Notice**") to GEPT SPE within thirty (30) days after receipt of notice from GEPT SPE of such Default or alleged Default, declare that it intends either (i) to purchase the Interest of GEPT SPE, or (ii) to sell its Membership Interest to GEPT SPE, in either case for a price (the "**Buy/Sell Price**"). As soon as reasonably possible after the Buy/Sell Notice has been received by GEPT SPE, the Members shall jointly direct the Company Accountants to determine, at Company expense, the Buy/Sell Price for the Interest of each of GEPT SPE and AA SPE as soon as reasonably practicable (but in no event later than fifteen (15) days after receipt of the Buy/Sell Notice by GEPT SPE), which in each case shall equal the amount each such Member would receive in liquidation of its Interest pursuant to Section 9.2(d) hereof assuming the Company Assets were sold (in an all-cash transaction and all known debts and obligations of the Company were immediately paid in full) for an amount identified by AA SPE in the Buy/Sell Notice (the "**Designated Buy/Sell Value**"). The Designated Buy/Sell Value shall be deemed to take into account all economic terms relevant to the value of the Company Assets, including, without limitation, deferred maintenance and contingent liabilities or obligations. The Designated Buy/Sell Value shall be calculated with the assumption that all items of pre-closing income and expense shall be received and paid as of the closing of the hypothetical sale, and that all such items attributable to post-closing periods shall not have been received or paid (and that no reserves shall have been established therefor); if this assumption is not true as of the closing of the transfer contemplated by this Section 10.4, then appropriate prorations adjustments shall be made at closing with respect to the cash required to be delivered by the buyer. As soon as either Member has been informed of such Buy/Sell Price calculations, it shall, if the other Member has not been so notified, provide written notice of same to the other Member. In the Buy/Sell Notice, AA SPE shall give written notice to GEPT SPE and the Company Accountants as to whether or not (A) AA SPE has actual knowledge of any pending or threatened litigation against the Company or relating to the Property of which the Company or AA SPE has not previously notified GEPT SPE in writing and, if so, listing and describing such litigation, and (B) AA SPE has taken any action as of the date of the Buy/Sell Notice in material violation of this Agreement or not in the ordinary course of business since the date of the most recent financial statement of the Company, and, if so, giving a description thereof. Within ten (10) days after receipt of the Buy/Sell Notice by GEPT SPE, GEPT SPE shall give written notice to AA SPE and

the Company Accountants as to whether or not (1) GEPT SPE has actual knowledge of any pending or threatened litigation against the Company or relating to the Property of which the Company or GEPT SPE has not previously notified AA SPE in writing and, if so, listing and describing such litigation, and (2) GEPT SPE has taken any action as of the date of the Buy/Sell Notice in material violation of this Agreement or not in the ordinary course of business since the date of the most recent financial statement of the Company, and, if so, giving a description thereof.

(b) Within seventy-five (75) days after the effective date of any Buy/Sell Notice, GEPT SPE shall declare that it intends to purchase the Interest of AA SPE (in which case GEPT SPE shall be referred to as the "**Buying Member**" and AA SPE shall be referred to as the "**Selling Member**") or to sell its Membership Interest to AA SPE (in which case AA SPE shall be referred to as the "**Buying Member**" and GEPT SPE shall be referred to as the "**Selling Member**"), provided, however, that the failure by GEPT SPE to make an election after written request therefore within such seventy-five (75) day period shall be deemed to be an election by GEPT SPE to sell its Membership Interest to AA SPE. Upon the delivery of a Buy/Sell Notice, no Member shall have any further right to deliver a ROFO Notice under Section 10.2(a) hereof during the period prior to the Buy/Sell Closing (as defined below) or the default of either party to consummate the transactions contemplated pursuant to this Section 10.4. If either Member Transfers any of its Membership Interest following the giving by AA SPE of the Buy/Sell Notice, the transferee shall be bound by the transferor's election (or deemed election) with respect to the Buy/Sell Notice.

(c) The closing (the "**Buy/Sell Closing**") of the transactions contemplated by this Section 10.4 shall occur as follows:

(i) If GEPT SPE is the Selling Member, the closing shall take place within ninety (90) days after the earlier to occur of the election by GEPT SPE pursuant to Section 10.4(b) or the end of the period within which GEPT SPE is to make the election contemplated thereby, shall be consummated through an escrow with a national title company selected by the GEPT SPE and shall take place during normal business hours at the principal place of business of AA SPE or its counsel, or at such other place as the Members may mutually agree. The time and date of the Buy/Sell Closing shall be specified by AA SPE by at least ten (10) days prior notice to GEPT SPE; or

(ii) If GEPT SPE is the Buying Member, the closing shall take place within ninety (90) days after the election by GEPT SPE pursuant to Section 10.4(b), shall be consummated through an escrow with a national title company selected GEPT SPE and shall take place during normal business hours at the principal place of business of GEPT SPE or its counsel, or at such other place as the Members may mutually agree. The time and date of the Buy/Sell Closing shall be specified by GEPT SPE by at least ten (10) days prior notice to AA SPE.

(d) The following events will take place simultaneously at the Buy/Sell Closing:

(i) the Buying Member shall pay the Buy/Sell Price to the Selling Member (subject to any prorations adjustments required by Section 10.4(a));

(ii) the Selling Member shall assign to the Buying Member (or its nominee) all of the Selling Member's right, title and interest in, to and under the Company, including, without limitation, the Selling Member's Membership Interest;

(iii) No call for an Additional Capital Contribution may be made to provide the Company with funds necessary to satisfy any obligation of the Company which becomes due as a result of the transactions contemplated by this Section 10.4 (it being understood, however, that the foregoing is not intended to exculpate AA SPE from liability for causing the Company or any Company Assets to become liable for any obligations in a manner that violates the terms of this Agreement); and

(iv) the Buying Member shall pay or cause to be paid in full, by wire transfer of immediately available funds, all loans made by the Selling Member or any of its Affiliates to either the Company or the Buying Member or any of its Affiliates, whether or not the terms and provisions of such loans expressly provide that such loan is due and payable at the Buy/Sell Closing.

All instruments executed in connection with the Buy/Sell Closing shall be without recourse, representation or warranty whatsoever except that each Member shall represent that the notices given by such party under Sections 10.4(a) and 10.4(b) were true and correct and that, since the date of such notice, it has not taken any action in violation of this Agreement or not in the ordinary course of business and the Selling Member shall represent and warrant that it holds title to its Membership Interest free and clear of any liens and encumbrances. Each Member shall pay the fees and expenses of its own attorneys, accountants and advisors in connection with the transaction contemplated by this Section 10.4, and all other expenses of said transactions, including, without limitation, all transfer taxes, recording fees and other costs in connection with such conveyance and transfer, shall be paid by the Buying Member.

(e) The Buy/Sell Price and all other amounts payable in connection with the transactions contemplated by this Section 10.4 (subject to any required prorations adjustments) shall be payable at the Buy/Sell Closing by federal wire of immediately available funds.

(f) On the fifteenth (15th) day after the Buying Member has been determined pursuant to this Section 10.4, the Buying Member shall deposit in escrow with a bank or trust company designated by the Selling Member an amount equal to five percent (5%) of the Buy/Sell Price (the "**Buy/Sell Deposit**"), such amount to be credited to the Buy/Sell Price at the Buy/Sell Closing. In the event of a default by the Buying Member of the provisions of this Section 10.4, the Selling Member shall be entitled to the following remedies, which shall be the sole remedies available to the Selling Member as a consequence of such default of the provisions of this Section 10.4 (it being expressly acknowledged and agreed that the Selling Member shall retain any and all other remedies which it may have as a result of any Default):

(i) The Selling Member may terminate the sale and retain the Buy/Sell Deposit as liquidated damages and not as a penalty. **THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO QUANTIFY THE ACTUAL DAMAGES TO THE SELLING MEMBER IN THE EVENT OF A BREACH BY THE BUYING MEMBER AND THAT THE AMOUNT OF THE BUY/SELL DEPOSIT IS A REASONABLE ESTIMATE OF SUCH ACTUAL DAMAGES GIVEN THE CIRCUMSTANCES EXISTING AS OF THE DATE HEREOF.**

/s/ BB	/s/ RVS
Initials of AA SPE	Initial of GEPT SPE

(ii) Further and in addition to the remedy described in clause (i) above, the Selling Member shall have the right, but not the obligation, exercisable by written notice to the Buying Member within thirty (30) days from the date the Selling Member learns of such default, to elect to purchase the former Selling Member's Membership Interest for the applicable Buy/Sell Price determined pursuant hereto and otherwise in accordance with the provisions of this Section 10.4, including the provisions related to the timing of the Buy/Sell Closing. In the event that, after default of the former Buying Member of the provisions of this Section 10.4, the former Selling Member elects to purchase the Membership Interest of the former Buying Member, the former Buying Member shall have no right to make a counter-offer for, and no further right to elect to purchase, the Membership Interest of the former Selling Member on account of the Buy/Sell Notice which initially triggered this Section 10.4.

(g) If any Member which is a Selling Member fails to perform its obligations contained in this Section 10.4, the Buying Member may, in addition to its other remedies set forth in this Agreement (but subject to the limitation on liability contained herein) enforce its rights under this Section 10.4 by an action for specific performance. Furthermore, if any Member fails to perform its obligations contained in this Section 10.4, such Member shall be in Default for purposes of Article XI hereof.

10.5 Restraining Order/Specific Performance/Other Remedies.

(a) If any Member shall attempt to Transfer all or any portion of any Membership Interest in the Company in violation of the provisions of this Agreement and any rights hereby granted, then any other Member, in addition to all rights and remedies available hereunder, at law and/or in equity, shall be entitled to a decree or order restraining and enjoining such Transfer and the offending party shall not plead in defense thereto that there would be an adequate remedy at law; it being hereby expressly acknowledged and agreed that damages at law shall be an inadequate remedy for a breach or threatened breach or violation of the provisions concerning Transfers set forth in this Agreement.

(b) In addition, except as to a failure by the applicable Non-Transferring Member to consummate the purchase contemplated by Section 10.2(a), which failure shall have the exclusive remedy specified in Section 10.2(a)(ii), it is expressly agreed that the remedy at law for breach of any of the obligations set forth in this Article X is inadequate in view of (i) the complexities and uncertainties in measuring the actual damages that would be sustained by reason of the failure of a party to comply fully with each of said obligations, and (ii) the uniqueness of each Member's business and assets and the relationship of the Members. Accordingly, each of the aforesaid obligations shall be, and is hereby expressly made, enforceable by specific performance.

10.6 Compliance with Law and Loan Documents. The Members hereby agree that no sale or other Transfer of any interest in the Company shall be made which would result in the violation of any applicable law, order, rule, or regulation to the extent applicable to such sale or other Transfer, including without limitation, the Securities Act, which violation has or might be reasonably deemed to have an adverse impact on the Company, any of the Company Assets or any of the Members. The Members hereby further agree that no sale or other Transfer of any interest in the Company (and no transfer of any direct or indirect interest in any Member) shall be made which would result in the violation of or default under the terms of any Loan Documents.

10.7 Substitute Members. In the event any Member Transfers its Membership Interest in compliance with the other provisions of this Article X, the transferee thereof shall have the right to become a substitute Member (a "**Substitute Member**") of the Company only upon satisfaction of the following (with the failure to satisfy the following rendering any such attempted Transfer null and void *ab initio*):

(a) the transferee of any Member's Membership Interest (or such portion thereof) accepts and agrees in writing to be bound by all of the terms and provisions of this Agreement;

(b) the transferring Member and the transferee each provide a certificate to the effect that (i) the proposed Transfer will not be effected on or through (A) a U.S. national, regional or local securities exchange, (B) a foreign securities exchange, or (C) an interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers (including, without limitation, the National Association of Securities Dealers Automated Quotation System), and (ii) it is not,

and its proposed Transfer will not be made by, through or on behalf of, (A) a Person, such as a broker or a dealer, making a market in interests in the Company, or (B) a Person who makes available to the public bid or offer quotes with respect to interests in the Company;

(c) the transfer will not be effected on or through an "established securities market" or a "secondary market or the substantial equivalent thereof", as such terms are used in Treasury Regulations Section 1.7704-1;

(d) the proposed Transfer will not result in the Company having more than 100 Members, within the meaning of Treasury Regulations Section 1.7704-1(h)(1) (determined pursuant to the rules of Treasury Regulations Section 1.7704-1(h)(3));

(e) the proposed Transfer shall not (i) be or result in a non-exempt "prohibited transaction" under ERISA, (ii) be subject to or in violation of any state statutes applicable to regulation of investments of and fiduciary obligations with respect to "employee benefit plans", as defined in Section 3(3) of ERISA, "plans", as defined in Section 4975(e) of the Code, or "governmental plans" within the meaning of Section 3(32) of ERISA, or (iii) cause the Company's assets to become "plan assets" subject to ERISA;

(f) the proposed transferees shall be "qualified purchasers" as such term is defined in Section 2(a)(51)(A) of the Investment Company Act.

The Members in their sole discretion may agree to waive any or all of the conditions set forth in paragraphs (b) and (c) of this Section 10.7. In addition, a certificate from any transferring Member and the transferee of such transferring Member certifying that the conditions specified in Sections 10.6 and 10.7(b), (c), (d) and (f) are satisfied, shall, absent fraud or bad faith, be deemed conclusive evidence that such conditions are satisfied. In addition, upon being admitted as a Member, either the transferor or the transferee shall pay a transfer fee to the Company equal to all actual and reasonable third-party expenses, including, without limitation, attorneys' and accountants' fees, lenders' fees and expenses, transfer taxes and expenses incurred by the Company or its Members in connection with the admission of such Person as a Member, including, without limitation, the amendment to this Agreement.

10.8 Overall Transfer Prohibitions.

(a) Notwithstanding anything to the contrary herein contained, no interest in the Company may be transferred if giving effect to such proposed Transfer would result in a default under any Loan (provided, however, that the provisions of this Section 10.8(a) may be waived by a Purchasing Member under Section 10.3 or a Buying Member under Section 10.4).

(b) The Member whose interest in the Company is to be the subject of any Transfer shall, if not otherwise required pursuant to any other provision of this Article X, give the other Member at least fifteen (15) days' prior written notice before attempting to effect any such Transfer.

10.9 Section 754 Election. Upon the request of a Member transferring substantially all of its interest in the Company pursuant to this Agreement, or upon the request of the transferee, the Company shall file an election pursuant to Section 754 of the Code to adjust the basis of the Property in the manner provided in Section 743 of the Code. The incremental cost of making such an election shall be borne by the requesting party; provided that if the requesting party is the transferor and such transferor is not a Member immediately after such transfer, or subsequently ceases to be a Member, such cost shall be borne by the transferee.

10.10 Release of Liability. In the event any Member shall sell its entire Membership Interest in the Company (other than in a sale of the Property or the entire Membership Interests of all Members), in compliance with the provisions of this Agreement without retaining any interest therein, directly or indirectly, then the selling Member shall be relieved of any further liability arising hereunder for events occurring from and after the date of such Transfer.

10.11 Single Member. For the purposes of this Article X, if a Member transfers less than its entire Membership Interest in the Company to any Person in accordance with this Agreement and such Person shall become a Substituted Member, such Member and such Substitute Member(s) shall be considered a single Member for purposes of this Agreement, and any election, decision, action or approval required to be made by such Member shall be made by such Member and such Substitute Member(s), jointly, and any conflict or dispute between or among such Member and such Substitute Member(s) shall be resolved pursuant to a separate written agreement between such Member and such Substitute Member(s).

10.12 Reimbursement Agreement. It shall be a condition precedent for the benefit of AAI to the closing of a transaction contemplated by (a) Section 10.2 hereof where GEPT SPE is the Non-Transferring Member, (b) Section 10.3 hereof where GEPT SPE is the Purchasing Member, or (c) Section 10.4 hereof where GEPT SPE is the Buyer Member, that GEPT SPE shall execute a reimbursement agreement in the form attached hereto as Exhibit F (the "**Reimbursement Agreement**").

ARTICLE XI
DEFAULTS

11.1 Defaults.

(a) A Member shall be in "**Default**" hereunder upon the occurrence of any of the following events:

(i) if such Member withdraws from the Company in violation of this Agreement;

(ii) if such Member effects a Transfer which, immediately following the consummation thereof, is in violation of this Agreement and fails to cure same within ten (10) Business Days after notice is given of such default by or on behalf of the Company or any Member;

(iii) if such Member, or any of its Affiliates, is in breach of, or in default under, any material provision of this Agreement or any Affiliate Agreement (it being understood that with respect to any provision pertaining to an action or inaction of the Managing Member or any of its Affiliates, if (A) such action or inaction is not a Major Decision, such fact shall not be determinative that such action or inaction is not material, and (B) if such action or inaction is a Major Decision, such fact shall not be determinative that such action or inaction is material); provided that if such breach did not cause a non-curable default under any of the Company's financing documents or leases, such event may be cured within thirty (30) days after notice of such breach or default is given by or on behalf of the Company or any Member; provided further that, if any non-monetary breach (other than a breach that caused a non-curable default under any of the Company's financing documents or leases) is susceptible of cure but not within the above-specified cure period, the period of time for cure shall be extended as is reasonably necessary to permit cure, but in no event to a date later than sixty (60) days after the breaching Member is notified of the breach, and only so long as the breaching Member is diligently pursuing the cure to completion at all times during such period; provided further that, if any such breach causes a non-curable default under any of the Company's financing documents or leases, then such breach shall not cause a Default hereunder if such breach is disclosed to the other Member promptly after discovery

thereof by the breaching Member, but only for so long as the lender or tenant under the applicable agreement does not indicate an intent to exercise any remedies it may have as a consequence of such breach;

(iv) if such Member is found to have committed fraud, misappropriation, theft or other willful misconduct against the Company or the Property Company LLC; provided that, if any of the foregoing events is committed (A) by an employee of a Member or its Affiliate who is not an officer, director or direct or indirect equity holder with respect to such Member or Affiliate, and (B) without the actual prior knowledge of any Person who is an officer, director or direct or indirect equity holder with respect to such Member or Affiliate, such event may be cured if it did not cause a non-curable default under any of the Company's financing documents or leases and, within ten (10) days after being notified of such event, such Member makes full restitution to the Company of all damages caused by such event and promptly takes all appropriate actions necessary to remediate the situation and protect the interests of the Company and the other Members;

(v) if any Member knowingly makes a material misrepresentation or knowingly breaches any material representations and/or warranties hereunder; or

(vi) if a Bankruptcy Event shall occur with respect to such Member or any managing member or general partner in a Member.

(b) A Member shall be deemed to be in "Default" hereunder during any period of time that such Member shall be a Non-Contributing Member (as defined below).

(c) In the event of a Member's Default hereunder (a "**Defaulting Member**"), the other Member who is not a Defaulting Member ("**Non-Defaulting Member**"), in addition to all other claims for damages, rights and remedies provided herein or otherwise available at law or in equity, including, without limitation, specific performance, shall have all the rights and remedies set forth in this Article XI.

11.2 Defaulting Member.

(a) During the continuation of a Default by a Member, such Defaulting Member and its Affiliates will lose its right to vote on Major Decisions and such Defaulting Member shall not have the right to approve matters pertaining to the Company's or the Property Company LLC's business, or in any way to participate in the control or management of the business of the Company or the Property Company LLC.

(b) A Defaulting Member shall remain obligated from and after such Default to make Additional Capital Contributions in accordance with Article III.

(c) The Non-Defaulting Member shall have the right to terminate all agreements between the Company or the Property Company LLC and Defaulting Member or any Affiliate of Defaulting Member.

(d) In the event that the Defaulting Member is the Managing Member, the Defaulting Member shall be deemed to have automatically resigned as the Managing Member.

11.3 Contribution Remedies.

(a) If a Member fails to fund its entire required share of an Additional Capital Contribution (a "**Non-Contributing Member**"), the Contributing Member may elect, by written notice of such election to the Non-Contributing Member, at any time following the failure of the Non-Contributing Member, to fund the amount of any Additional Capital Contribution which the Non-Contributing Member has failed to contribute (with rights and remedies specified below in this Section 11.3(a) being the sole and exclusive rights and remedies available to the Contributing Member arising from the Non-Contributing Member's failure to fund its required share of an Additional Capital Contribution):

(i) Unless the Contributing Member has required the return of its Additional Capital Contributions pursuant to clause (ii) below, the Contributing Member may elect, by notice to the Non-Contributing Member, to advance the unfunded portion of such Additional Capital Contribution required of the Non-Contributing Member (the Contributing Member so advancing being hereinafter referred to as an "**Electing Member**"). Each advance by the Electing Member shall constitute a recourse loan (a "**Contribution Loan**") by each Electing Member to the Non-Contributing Member. Each such Contribution Loan shall bear interest at the rate, compounded quarterly, equal to the lesser of (A) fifteen percent (15%) per annum, or (B) the highest rate permitted by applicable law. Prior to the repayment of such Contribution Loan in full together with interest, any amount otherwise distributable to the Non-Contributing Member hereunder, if any, shall instead be paid to the Electing Member in repayment of the Contribution Loan. Contribution Loans shall be repaid on a "last in", "first out" priority. Any Electing Member who made a Contribution Loan shall be entitled at any time following the date that is one hundred eighty (180) days after the making of the Contribution Loan by such Electing Member, to elect, by the delivery of written notice to the Non-Contributing Member, to have that Contribution Loan treated as a Capital Contribution by the Electing Member and to cause a corresponding portion of the Membership Interest of the Non-Contributing Member to be transferred in the manner set forth in Section 11.4 below as of the date of such election (a "**Reallocation Right**"). If such election is made and upon delivery of notice of such election, the Electing Member shall, for purposes of effectuating the transfer of such portion of the Non-Contributing Member's Membership Interest and maintaining the Members' respective Capital Accounts, be treated as having made a Capital Contribution on its own behalf to the capital of the Company, and its Capital Account balance shall be increased and its Percentage Interest increased, and the Non-Contributing Member's Capital Contribution shall be reduced, and its Capital Account balance shall be reduced by the same amount and its Percentage Interest reduced, as provided for in Section 11.4 below.

(ii) The Contributing Member may, but shall not be obligated to, require that all or any portion of the Capital Contribution advanced to the Company by such Member pursuant to Article III in connection with the capital call that resulted in there being a Non-Contributing Member be returned to the Contributing Member (with a corresponding debit to such Members' Capital Accounts). To the extent that the Contributing Member has required the return of its Capital Contribution by the Company as provided above, the Contributing Member may not exercise its remedies under subparagraph (i) of this Section 11.3(a). In the event that the Contributing Member has exercised any of its remedies set forth in Section 11.3(a)(i), it may not thereafter require return of its Capital Contribution pursuant to this Section 11.3(a)(ii).

11.4 Transfer of Membership Interest. If a portion of a Non-Contributing Member's Membership Interest is transferred pursuant to Section 11.3(a)(i) above, then the Percentage Interests of the Electing Member shall be adjusted (without duplication of the adjustment described in Section 11.3(a)(i)) and Schedule A hereto shall be amended in order to reflect an increase in such Member's Percentage Interest by a percentage equal to (i) the principal amount of the applicable Contribution Loan plus the accrued and unpaid interest owed thereon divided by (ii) the total Capital Contributions made by all Members through and including the date the Electing Member made the Capital Contribution pursuant to Section 11.3(a)(i). The Percentage Interest of the Non-Contributing Member shall be reduced by the

sum of all Percentage Interests transferred to the Electing Member(s) pursuant to the preceding sentence. After the date that an Electing Member elects to acquire the portion of the Membership Interest pursuant to Sections 11.3(a)(i) above, there shall be no right on the part of the Non-Contributing Member to cure or repay the Contribution Loan or to reverse the Reallocation Right.

11.5 Exclusive Remedies. Except as set forth in Section 11.6, no Member, Affiliate of any Member or any Person owning a beneficial interest in such Member shall have any personal obligation to fund the Initial Capital Contribution or Additional Capital Contribution and the specific rights and remedies provided for in this Agreement are and shall be deemed to be the sole and exclusive rights and remedies of the Contributing Members and/or Non-Defaulting Members.

11.6 Further Actions. A Defaulting Member will cooperate with the Non-Defaulting Members and act in good faith to execute any and all documents reasonably necessary to effectuate the transfers of Membership Interests contemplated by this Article XI.

ARTICLE XII
NOTICES

12.1 In Writing; Address. All notices, demands, consents, reports and other communications provided for in this Agreement shall be in writing, shall be given by a method prescribed in Section 12.2 and if intended for the Company, shall be delivered to the Company's principal office determined pursuant to Section 2.3 hereof, and if intended for either Member to the address of such Member set forth on Schedule A hereto or at such other address(es) as such party hereto may hereafter specify by at least fifteen (15) days' prior written notice to the other Members.

12.2 Method. Such notice or other communication may only be delivered by personal delivery, sent by United States express mail, postage prepaid, sent by nationally recognized overnight courier service or by facsimile transmission and confirmed by letter and will be deemed properly given (a) if sent by United States express mail, one Business Day after posting, (b) if sent by nationally recognized overnight courier service providing evidence of the date of delivery, one Business Day after delivery to such service, (c) if sent by facsimile transmission, on the date sent or, if not a Business Day, on the first Business Day thereafter; provided that confirmatory notice is sent by first-class mail, postage prepaid, and (d) if delivered by hand, on the date of delivery or, if not a Business Day, on the first Business Day thereafter. Rejection or other refusal to accept or the inability to give or serve such notice because of changed address of which no notice was given shall be deemed to be the giving of the notice, demand or request sent. Notice shall be effective if given in accordance with the methods hereinabove set forth in this Section 12.2.

ARTICLE XIII
MISCELLANEOUS

13.1 Additional Documents and Acts. In connection with this Agreement, as well as all transactions contemplated by this Agreement, each Member agrees to execute and deliver such additional documents and instruments, and to perform such additional acts as may be reasonably necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement, and all such transactions.

13.2 Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the Person or Persons may require.

13.3 Entire Agreement. This instrument contains all of the understandings and agreements of whatsoever kind and nature existing between the parties hereto with respect to this Agreement and the rights, interests, understandings, agreements and obligations of the respective parties pertaining to the formation and continuing operations of the Company. Representatives of all parties have

participated equally in the negotiation and drafting of this Agreement, and accordingly, this Agreement shall not be more strictly construed against any party hereto on account of the role played by such party's representative in the negotiation and drafting hereof.

13.4 References to this Agreement. Numbered or lettered Articles and Sections herein contained refer to Articles and Sections of this Agreement unless otherwise expressly stated.

13.5 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

13.6 Binding Effect. Except as herein otherwise expressly stipulated to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and permitted assigns.

13.7 Counterparts. This Agreement may be executed in a number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

13.8 Amendments. This Agreement may not be amended, altered or modified except by a written instrument signed and with the unanimous written approval of both Members.

13.9 Exhibits and Schedules. All Exhibits and Schedules attached hereto are made a part hereof by this reference.

13.10 Severability. Every provision of this Agreement is hereby declared to be independent of, and separable from, every other provision of this Agreement. If any such provisions shall be held to be invalid or unenforceable, that holding shall be without effect upon the validity or enforceability of any other provision of this Agreement. It is the intention of the parties hereto that in lieu of each provision of this Agreement which is determined to be invalid or unenforceable, there shall be added, as part of this Agreement, such an alternative Section or provision as may be valid or enforceable but otherwise as close to the applicable original provision as possible.

13.11 Waiver; Modification. Failure by any Member to insist upon or enforce any of its rights shall not constitute a waiver thereof, and nothing shall constitute a waiver of such Member's right to insist upon strict compliance with the provisions hereof. Any Member may waive the benefit of any provision or condition for its benefit contained in this Agreement.

13.12 Third Party Beneficiaries. This Agreement is made solely and specifically between and for the benefit of the parties hereto, and their respective successors and permitted assigns subject to the express provisions hereof relating to successors and assigns, and no other person or party shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

13.13 Reliance on Authority of Person Signing Agreement; Designated Representatives.

(a) In the event that a Member is a partnership, limited partnership, limited liability company, joint venture, corporation, or any entity other than a natural person, the Members and the Company (i) shall not be required to determine the authority of the person signing this Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such person, (ii) shall not be required to see to the application or distribution of proceeds paid or credited to persons signing this Agreement or any document executed in connection herewith on behalf of such entity, and (iii) shall be entitled to rely on the authority of the person signing this Agreement or any document in connection herewith with respect to the voting of the interest of such entity and with respect to the giving of consent on behalf of such entity in connection with any matter for which consent is permitted or required under this Agreement or any document in connection herewith.

(b) In dealing with the Managing Member and its duly appointed agents (including any Manager), no Person shall be required to inquire as to its authority to bind the Company. Any act of the Managing Member within the scope of the Managing Member's authority purporting to bind the Company shall bind the Company. Within the scope of the Managing Member's authority, the Managing Member shall have the full right and authority to execute and deliver any and all agreements, contracts, documents and instruments relating to the business and affairs of the Company, without the joinder of the other Members, or any other Person. Any Person dealing with the Company may rely upon the Managing Member's execution and delivery of any agreement, contract, document or instrument as the act and deed of the Company, without the necessity for further inquiry and notwithstanding any other provision of this Agreement.

13.14 Exculpation. Except as specifically set forth elsewhere in this Agreement to the contrary, or as otherwise required by law (including, without limitation, ERISA), no Member nor any of its successors, assigns, transferees or any of their respective shareholders, partners, managers, members, officers, trustees, directors, employees, agents or representatives (each of whom is an "**Indemnitee**") shall be liable, responsible or accountable in damages or otherwise to the other Member or the Company for any act performed by Indemnitee within the scope of the authority conferred upon him or it by this Agreement, or for any failure or refusal by Indemnitee to perform any act, unless such act or failure or refusal to act constitutes willful misconduct, gross negligence, fraud, or breach in the performance of Indemnitee's obligations to the Company or the Members. The doing of any act or the failure to do any act by any Indemnitee, the effect of which may cause or result in loss or damage to the Company or the other Members, shall not subject Indemnitee to any liability under this Agreement if done or omitted pursuant to a favorable opinion of law issued by counsel of recognized standing engaged by the Company and experienced in the matters at issue.

13.15 Indemnification. To the full extent permitted by the Delaware Act or other applicable law (including, without limitation, ERISA), the Company shall indemnify, defend and hold harmless each Indemnitee from and against any direct claim, action, suit or proceeding brought or threatened against such Indemnitee, and from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, proceedings, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, all reasonable costs and expenses of attorneys, defense, appeal and settlement of any and all suits, actions or proceedings instituted or threatened against the Indemnitees or the Company) and all costs of investigation in connection therewith incurred by such Indemnitee ("**Damages**") by reason of any act performed, or failure or refusal to act, by him or it for and on behalf of the Company within the scope of his or its authority under this Agreement; provided that, in the case of a criminal proceeding, such Indemnitee had no reasonable cause to believe its conduct was unlawful, and provided further that in each case the act or failure or refusal to act did not constitute willful misconduct, gross negligence, fraud, or breach of any obligations of such Indemnitor under this Agreement. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which he or it reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or its conduct was unlawful. Expenses (including reasonable out-of-pocket attorneys' fees and direct expenses) incurred by an Indemnitee in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Indemnitee to repay such amount if it shall ultimately be determined that he or it is not entitled to be indemnified by the Company as authorized in this Section.

13.16 Cooperation of the Managing Member. In the event of a Transfer of all or any portion of an interest in a Member or a Transfer of a Membership Interest in accordance with the terms hereof, the Managing Member shall, and shall cause any Manager to, upon reasonable notice, (a) make available to the prospective transferee at reasonable hours all books of account, correspondence, leases and all other information related to the Property and to the management thereof at the request and expense of the requesting Member, or copies thereof, and (b) cause the management personnel involved directly or indirectly in the affairs of the Company to cooperate reasonably with the requesting Member and its proposed transferee or designees of either of them and furnish information requested by such persons as to the status of the affairs of the Company.

13.17 Herein. Wherever used in this Agreement, the words “herein”, “hereof” or words of similar import shall be deemed to refer to this Agreement in its entirety and not to a specific Section unless otherwise stated.

13.18 Including. Wherever used in this Agreement, the word “including” shall be deemed to mean “including, without limitation”.

13.19 Cost of Counsel. In any judicial action between the parties to enforce any of the provisions of this Agreement or any right of any party under this Agreement, in addition to any other remedy, the unsuccessful party shall pay to the prevailing party all costs and expenses, including reasonable attorneys’ fees and expenses, incurred therein by the prevailing party in connection with such action.

13.20 Days. Unless otherwise stated, a day shall be deemed to mean a calendar day.

13.21 Time of Essence. Time is the essence of each and every provision of this Agreement.

13.22 Confidentiality.

(a) Each Member agrees not to disclose or permit the disclosure of any of the terms of this Agreement (as opposed to the existence of this Agreement and the parties hereto) without the prior written consent of the other Member; provided that such disclosure may be made: (i) to any Person who is a direct or indirect Member, Affiliate, officer, director or employee of such Member or to counsel to or accountants or consultants or bankers of the foregoing persons; (ii) to potential Members and/or purchasers of all or any portion of any Member’s Membership Interest or all or any portion of the Company Assets; (iii) pursuant to a subpoena or order issued by a court, arbitrator or governmental body, agency or official; (iv) if required by any applicable statute or law, or any rule or regulation promulgated thereunder; or (v) by the rules and regulations governing any recognized stock exchange. No press release with respect to the entering into of this Agreement shall be issued by any Member without the approval of the other Member.

(b) In the event that a Member shall receive a request to disclose any of the terms of this Agreement under a subpoena or order, such Member shall (i) promptly notify the other Member thereof, (ii) consult with the other Member on the advisability of taking steps to resist or narrow such request, and (iii) if disclosure is required or deemed advisable, cooperate with the other Member in any attempt it may make to obtain an order or other assurance that confidential treatment will be accorded those terms of this Agreement that are disclosed.

13.23 Governing Law. The terms and provisions of this Agreement and the rights, remedies, liabilities and obligations of the Parties hereunder and all disputes arising hereunder shall be governed by, interpreted and enforced in accordance with the internal laws of the State of Delaware without regard to principles of conflicts of laws.

13.24 Liability of Members. No Member nor any partners or members of any Member shall be personally liable for any obligations of the Company except to the extent of such Member's interest in the Company or as otherwise required by the Delaware Act. Each Member agrees that in seeking payment or satisfaction or any obligation hereunder of any other Member, it shall look solely to the Member's Membership Interest in the Company.

13.25 No Employees. Notwithstanding anything to the contrary in this Agreement, the Members agree that the Company shall have no employees. Managing Member shall itself and/or shall cause any Manager, through the employees of the Managing Member and/or Manager or by independent contractors hired pursuant to contracts and or Affiliate Agreements permitted in accordance with this Agreement, to provide all personnel necessary to develop, operate and maintain the Company and/or the Property and provide any other services required by the Company. Notwithstanding that such personnel shall not be employees of the Company, all wages, salaries, fringe benefits and other costs of such employment or contracts shall be costs of the Company (to be borne by it through reimbursement of the appropriate Person(s)) to the extent included in the Annual Plan approved by the Members or as otherwise approved in writing by the Members.

13.26 Jurisdiction; Choice of Forum. Each party hereby (a) irrevocably submits to the non-exclusive jurisdiction of any California State or Federal Court sitting in the County of Los Angeles (California), (b) agrees that any such courts in which a proceeding arising out of or relating to this Agreement, the relations between the parties with any matter, action or transaction contemplated hereunder "first commenced" shall have exclusive jurisdiction over such actions or proceedings, (c) waives the defense of inconvenient forum to the maintenance and continuation of such action or proceedings, (d) consents to the service of any and all process in any such action or proceedings by the mailing of copies (certified mail, return receipt requested and postage prepaid) of such process to them at their addresses specified in Section 12.1, and (e) agrees that a final and non-appealable judgment rendered by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

13.27 WAIVER OF JURY TRIAL. EACH MEMBER, FOR ITSELF AND ON BEHALF OF ITS AFFILIATES, HEREBY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, LAWSUIT OR PROCEEDING RELATING TO ANY DISPUTE ARISING OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION DESCRIBED IN THIS AGREEMENT OR DISPUTE BETWEEN THE PARTIES (INCLUDING DISPUTES WHICH ALSO INVOLVE OTHER PERSONS).

13.28 Unanimous Decisions. The following decisions ("**Unanimous Decisions**") shall not be taken by the Managing Member (or GEPT SPE pursuant to its authority granted by Section 4.5(b)(ii) hereof) without the written consent of each Member which would be adversely affected by the decision:

(a) Committing a Member to act as a surety, guarantor or accommodation party, or to provide other credit enhancement to any obligation;

(b) Causing the Company to enter into Affiliate Agreements or any other transactions with an Affiliate of a Member.

(c) Extending the term of the Company;

(d) Causing the Company to become an entity other than a Delaware limited liability company, or permitting the Company to merge with or into another entity;

(e) Changing the purposes of the Company;

(f) Entering into, or causing the Company to enter into, any agreement (i) which would cause such Member or its Affiliates to become a guarantor or to otherwise become personally liable for any indebtedness of the Company or (ii) which is recourse to such Member or its Affiliates;

(g) Causing the Company to redeem or purchase all or any portion of the Membership Interest of a Member;

(h) Causing the Company to borrow money from a Member or its Affiliates; or

(i) Acquiring any property or other material asset other than property that was approved for acquisition by the Members prior to AA SPE being removed as Managing Member, or taking any action on behalf of the Company that is not within the scope of the Company purposes as set forth in this Agreement.

13.29 Arm's Length Transactions. All terms of every contract or other business arrangement entered into by the Company, either with its Members or with third parties, shall be at arm's length and priced at fair market value for comparable goods or services.

[Signature page follows.]

IN WITNESS WHEREOF, the Members have caused this Agreement to be signed, sealed and delivered through their respective authorized signatories the day and year first above written.

Novato FF PT Investor, LLC,
a Delaware limited liability company

By: /s/ Roland Siegl
Roland Siegl
Its Authorized Officer

Pacific Novato Holdings, LP,
a California limited partnership

By: Pacific Novato Assets, Inc.,
a California corporation
Its general partner

By: /s/ John Chamberlain
John Chamberlain
President

By: /s/ Robert Barton
Robert Barton
Chief Financial Officer

EXHIBIT A

Legal Description of the Property

Real property in the City of Novato, County of Marin, State of California, described as follows:

PARCEL A:

PARCEL ONE:

PARCEL 2, AS SHOWN UPON THAT CERTAIN PARCEL MAP ENTITLED, “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4,1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL TWO:

EASEMENTS AND RIGHTS, INCLUDING WITHOUT LIMITATION RIGHTS RELATING TO THE USE, REPAIR, MAINTENANCE OR IMPROVEMENTS OF CERTAIN REAL PROPERTY, AS PROVIDED FOR IN THE DECLARATION ESTABLISHING COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS RECORDED OCTOBER 4, 1984 AS RECORDER’S SERIAL NO. 84-047231 AND RE-RECORDED DECEMBER 20,1984 AS RECORDER’S SERIAL NO. 84-058411, AND AMENDMENT THERETO RECORDED JUNE 1,1989 AS RECORDER’S SERIAL NO. 89-031686, MARIN COUNTY RECORDS, OVER THAT PORTION OF PARCEL 1 DESIGNATED “COMMON AREA EASEMENT APPURTENANT TO PARCEL 2 & 3”, AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR FIRE MAIN PURPOSES OVER THOSE AREAS OF PARCEL 1 DESIGNATED “C FIRE MAIN EASEMENT (10’ WIDE) APPURTENANT TO PARCELS 2 & 3” AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4,1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER PARCEL 1 (22 P.M. 36) AS CONVEYED IN THAT CERTAIN RECIPROCAL GRANT OF EASEMENTS AND AGREEMENT WHICH WAS RECORDED JULY 17,1985 AS RECORDER’S SERIAL NO. 85-029843, MARIN COUNTY RECORDS.

PARCEL B:

PARCEL ONE:

PARCEL 3, AS SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORDS OCTOBER 4,1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL TWO:

EASEMENTS AND RIGHTS, INCLUDING WITHOUT LIMITATION RIGHTS RELATING TO THE USE REPAIR, MAINTENANCE OR IMPROVEMENTS OF CERTAIN REAL PROPERTY, AS

PROVIDED FOR IN THE DECLARATION ESTABLISHING COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS RECORDED OCTOBER 4, 1984 AS RECORDER'S SERIAL NO. 84-47231, AND RE-RECORDED DECEMBER 20,1984 AS RECORDER'S SERIAL NO. 84-58411, AND AMENDMENT THERETO RECORDED JUNE 1,1989 AS RECORDER'S SERIAL NO. 89-31686, MARIN COUNTY RECORDS, OVER THAT PORTION OF PARCEL 1 DESIGNATED "COMMON AREA EASEMENT APPURTENANT TO PARCEL 2 & 3", AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL THREE:

NON-EXCLUSIVE EASEMENT FOR FIRE MAIN PURPOSES OVER THOSE AREAS OF PARCEL 1 DESIGNATED "C FIRE MAIN EASEMENT (10' WIDE) APPURTENANT TO PARCELS 2 & 3" AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4,1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FOUR:

NON-EXCLUSIVE EASEMENT FOR ACCESS AND PUBLIC UTILITY PURPOSES, WATER LINE AND SANITARY SEWER PURPOSES OVER THAT PORTION OF PARCEL 1 DESIGNATED "ACCESS & PUBLIC UTILITY EASEMENT & W.L.E. & S.S.E. APPURTENANT TO PARCEL 3" AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER PARCEL 1 (22 P.M. 36) AS CONVEYED IN THAT CERTAIN RECIPROCAL GRANT OF EASEMENTS AND AGREEMENT WHICH WAS RECORDED JULY 17,1985 AS RECORDER'S SERIAL NO. 85029843, MARIN COUNTY RECORDS.

PARCEL C:

PARCEL ONE:

PARCEL 1, AS SHOWN UPON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL TWO:

EASEMENTS AND RIGHTS, INCLUDING WITHOUT LIMITATION RIGHTS RELATING TO THE USE, REPAIR, MAINTENANCE OR IMPROVEMENTS OF CERTAIN REAL PROPERTY, AS PROVIDED FOR IN THE DECLARATION ESTABLISHING COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS RECORDED OCTOBER 4,1984 AS RECORDER'S SERIAL NO. 84-047231 AND RE-RECORDED DECEMBER 20,1984 AS RECORDER'S SERIAL NO. 84-058411, AND AMENDMENT THERETO RECORDED JUNE 1,1989 AS RECORDER'S SERIAL NO. 89-031686, MARIN COUNTY RECORDS.

PARCEL THREE:

AN EASEMENT FOR THE COOLING TOWER, COOING TOWER PIPELINE AND ACCESS TO THE COOLING TOWER OVER THOSE CERTAIN EASEMENTS DESIGNATED “COOLING TOWER EASEMENT APPURTENANT TO PARCEL 1”, “C COOLING TOWER PIPELINE EASEMENT (10’ WIDE) APPURTENANT TO PARCEL 1”, AND “COOLING TOWER ACCESS EASEMENT APPURTENANT TO PARCEL 1”, ALL LYING WITHIN THE BOUNDARIES OF PARCEL 3 AS SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR FIRE MAIN PURPOSES, 10 FEET WIDE, OVER THOSE PORTION OF PARCELS 2 AND 3 DESIGNATED “C FIRE MAIN EASEMENT (10’ WIDE) APPURTENANT TO PARCELS 1 & 2” AND “C FIRE MAIN EASEMENT (10’ WIDE) APPURTENANT TO PARCELS 1 & 3” AS SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION THEREOF CONTAINED IN THE QUITCLAIM DEED RECORDED NOVEMBER 5,1993 AS RECORDER’S SERIAL NO. 93-093959, MARIN COUNTY RECORDS.

PARCEL FIVE:

NON-EXCLUSIVE EASEMENTS FOR FIRE MAIN PURPOSES AS CONTAINED IN THE DEED FROM 775/779 SAN MARIN ASSOCIATES, L.P. RECORDED NOVEMBER 15,1993 AS RECORDER’S SERIAL NO. 93-093960, MARIN COUNTY RECORDS.

PARCEL SIX:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER PARCEL 2 (22 P.M. 36) AS CONVEYED I N THAT CERTAIN RECIPROCAL GRANT OF EASEMENTS AND AGREEMENT WHICH WAS RECORDED JULY 17,1985 AS RECORDER’S SERIAL NO. 85-029843, MARIN COUNTY RECORDS.

EXHIBIT B

Calculation of Internal Rate of Return

The term "**Internal Rate of Return**" means, as to each Member, a non-modified internal rate of return which equals the discount rate that equates (a) the present value of the actual distributions received from time to time by such Member pursuant to Sections 8.3 and 9.2 to (b) the capital contributions made by such Member pursuant to Sections 3.1 and 3.2. For the purposes of calculating such Internal Rate of Return:

(i) Capital contributions shall be deemed to be made on the last day of the month in which they were actually received by the Company (other than (A) the capital contributions made pursuant to Section 3.1(a), which shall be deemed to have been made on March 7, 2007, and (B) the capital contributions made pursuant to Section 3.1(b), which shall be deemed to have been made as of the date upon which such funds were wired to the escrow agent under the Purchase and Sale Agreement, for use in connection with the purchase of the Property);

(ii) A distribution shall be deemed to be made on the last day of the month in which such distribution is received by the Members;

(iii) An assignee of a Member's interest in the Company shall be deemed to have made the capital contribution of its predecessor(s) in interest and to have received the distributions received by its predecessor(s) in interest;

(iv) Neither the allocation of Profits and Losses, nor the payment of any taxes by a Member, shall affect the calculation of the Internal Rate of Return;

(v) The number of periods to be used in calculating the Internal Rate of Return shall be the number of months occurring during the period which commences on the date as of which the initial capital contributions are made to the Company by the Member and ending with (and including) the month during which the calculation is being made; and

(vi) The Internal Rate of Return shall be computed using Excel software or any similar commercial spreadsheet software readily convertible into Excel (including Quattro Pro, or similar software).

EXHIBIT C

Insurance Requirements

As used herein, the term "Managing Manager" shall mean the Managing Member or the Manager acting at the direction of the Managing Member

Managing Member shall obtain and maintain, on or before the Effective Date, the insurance required to be maintained pursuant to that certain $190,458,087 loan (the "**Bank Loan**"; the Bank Loan together with any amendments, modifications or supplements thereto or replacements and/or refinancings thereof, a "**Loan**") from Bank of America, N.A., a national banking association (together with its successors and assigns, "**Lender**") to the Company secured by an encumbrance on the property (the encumbrance, together with any modifications, supplements, replacements or assignments thereof, the "**Mortgage**") or as otherwise approved by the Members in the Company's name insuring the Company and the Property.

Managing Member shall deliver promptly to the Company all certificates of insurance issued by the company or companies providing such insurance and shall be an additional named insured on all liability policies. Managing Member shall notify the Members within twenty-four (24) hours of Managing Member's knowledge of any personal injury or property damage occurring to or claimed by any tenant or other person on or with respect to the Property. In the case of any fire, accident or other casualty to the Property, Managing Member shall also, within twenty-four (24) hours of being notified thereof, telephone notice thereof to the Company's insurance agent so that an insurance adjuster can view the damage before repairs are started, and complete all customary loss reports. Managing Member shall promptly forward to the Company's insurance carrier any summons, subpoena, or other like legal documentation served upon or received by Managing Member relating to actual or alleged potential liability of the Company, the Property Company LLC, Managing Member or the Property. Managing Member shall concurrently send to the Company copies of all correspondence, notices, claims and documents given to the Company's insurance carriers. Managing Member shall furnish the Company with certificates evidencing such insurance, bearing an endorsement indicating that the Company must be notified in writing at least thirty (30) days before any such policy or any applicable endorsement thereto is canceled, within five days of request by the Company.

Managing Member shall maintain minimum limits of (A) $5,000,000 per occurrence professional liability insurance and such policy shall not be canceled without notifying the Company in writing at least thirty (30) days prior thereto, and (B) insurance against loss, theft, embezzlement, or other fraudulent acts on the part of all of Managing Member's employees with respect to the Property (including, without limitation, all employees of Managing Member or the Property who have access to or are responsible for the Company's funds or the Property), in an amount not less than $1,000,000. Managing Member shall furnish the Company, within five days after request therefor by the Company, with certificates evidencing such insurance (i) bearing an endorsement indicating that the Company must be notified in writing at least thirty (30) days before any such policy or any applicable endorsement thereto is canceled, and (ii) showing the Company as a loss payee thereunder.

Managing Member shall cause all contractors, subcontractors and suppliers prior to performing work on or providing supplies to the Property to maintain insurance coverage at such parties' expense, in the following minimum amounts:

(a) Worker's Compensation — in an amount required by applicable law;

(b) Employer's Liability — where required, $100,000;

(c) Commercial General Liability —$1,000,000 bodily injury per person and per occurrence; $1,000,000 property damage; and $2,000,000 annual aggregate limit;

(d) Business Auto Liability — $1,000,000 bodily injury and property damage combined single limit, per accident, to cover owned, leased, hired or non owned vehicles; and

(e) Excess and Umbrella Liability — $3,000,000.

Liability limits specified herein may be adjusted by Managing Member in its reasonable business judgment, taking into account the nature of the services being performed. Certificates of insurance policies shall name the Members and Managing Member as additional named insureds and shall include provisions to the effect that the Members and Managing Member will be given at least thirty (30) days' prior written notice of cancellation, non renewal or material change in coverage of any of the aforesaid policies.

Managing Member shall obtain an Owner's ALTA Title Policy with respect to the Property for the Property Company LLC. Said title policy shall have a face amount at least equal to the Purchase Price and shall assume that the Property Company LLC owns fee title to the Property subject only to commercially reasonable exceptions.

Managing Member understands and agrees that the insurance coverage required herein by this Agreement shall not limit the extent of Managing Member's responsibilities and liabilities otherwise imposed by this Agreement or by any Federal, State or local law.

EXHIBIT D

Asset Management Agreement

ASSET MANAGEMENT AGREEMENT

by and between

NOVATO FF PROPERTY, LLC,
a Delaware limited liability company,
as Owner

and

AMERICAN ASSETS, INC.,
a California corporation,
as Manager

Dated: As of May 15, 2007

TABLE OF CONTENTS

EXHIBITS

Exhibit A - Legal Description
Exhibit B - Manager's Certificate
Exhibit C - Existing Loan Documents
Exhibit D - Certain Bank Accounts
Exhibit E - Additional Duties of Manager

ASSET MANAGEMENT AGREEMENT

THIS ASSET MANAGEMENT AGREEMENT (this "Agreement"), made as of this May 15, 2007, by and between NOVATO FF PROPERTY, LLC, a Delaware limited liability company ("Owner"), having an office at 11455 El Camino Real, Suite 200, San Diego, CA 92130, and AMERICAN ASSETS, INC., a California corporation ("Manager"), having an office at 11455 El Camino Real, Suite 200, San Diego, California 92130.

RECITALS

A. Substantially concurrently herewith, Owner obtained record ownership of that certain project located at 775-779 San Marin Drive, Novato, California (the "Project"), and located on the real property more particularly described in Exhibit A attached hereto (the "Land"). The Project is located within Marin County in Novato, California (the "Project Area"). The Project, the Land, all other rights appurtenant thereto and all personal property owned by Owner and located at the Project are collectively referred to as the "Property".

B. Substantially concurrently herewith, Owner became the current "landlord" under the following leases at the Property: (i) a lease pertaining to "San Marin I" dated November 4, 1992, as amended by a First Amendment, dated August 5, 2005; and (ii) a lease pertaining to "San Marin II" and "San Marin III", dated November 4, 1992, as amended by a First Amendment, dated August 5, 2005 (collectively, the "Fireman's Fund Lease").

C. Owner wishes to engage Manager to perform certain services with respect to the development and management of the Property and Manager has agreed to perform such services in accordance with, and subject to, the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties hereto agree as follows.

ARTICLE I

Appointment of Manager

SECTION 1.01. Appointment. Owner hereby appoints Manager as an independent contractor to supervise the management, operation, maintenance and repair of the Project, and hereby authorizes Manager to exercise such powers with respect to the Project as may be necessary for the performance of Manager's obligations under this Agreement, and Manager accepts such appointment on the terms and conditions hereinafter set forth. Manager shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever except to the extent specifically provided herein.

ARTICLE II

Management Duties

SECTION 2.01. General Duties. Manager shall devote all commercially reasonable efforts in good faith to serve Owner in the supervision of the management, operation, maintenance and repair of the Project and shall perform to the best of its ability, conforming with the professional standards of office properties of similar size, age and construction in the Project Area, all duties pertaining to such supervision of the management, operation, maintenance and repair of the Project. Manager, on behalf of Owner, shall implement, or cause to be implemented, the decisions of Owner and shall otherwise supervise the management, operation, maintenance and repair of the Project, subject to the terms of this Agreement (including, without limitation, the additional duties of Manager described in Exhibit E, prepared so as to facilitate the successful exploitation of certain unique potential development opportunities at the Property). Manager shall at all times conform to the policies and programs established by Owner and the scope of Manager's authority shall be limited as set forth herein. Manager shall act in a fiduciary capacity with respect to the proper protection and accounting for Owner's assets. Manager shall perform its duties hereunder in a diligent, careful and professional manner to maximize revenues and minimize expenses and losses.

SECTION 2.02. Employment of Personnel.

(a) Except for personnel employed by independent contractors engaged by Manager pursuant to Section 2.03 below, Manager shall investigate, select, train, hire, employ, pay, supervise, direct and discharge all full-time personnel necessary to properly perform Manager's obligations under this Agreement. Such full-time personnel shall in every instance be deemed employees of Manager (and shall not be employees of Owner) and shall be employed by Manager at Manager's expense; provided, however, that such expenses shall be subject to reimbursement by Owner to the extent set forth in the Approved Budget (hereinafter defined) then in effect. The costs of such full-time employees, to the extent set forth in the Approved Budget then in effect, shall be reimbursed to Manager by Owner weekly, bi-weekly or monthly, as incurred. The cost of any full-time, on-site building employee shall include (to the extent set forth in the Approved Budget then in effect), but not be limited to: (i) all wages and other compensation; (ii) fringe benefits; (iii) contributions and severance pay required by any applicable collective bargaining agreement; (iv) uniforms; (v) applicable income and sales taxes; (vi) insurance; (vii) training/educational reimbursement; and (viii) any and all liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees) incurred by Manager on claims made by or against such on-site building personnel regarding the performance of their duties at the building or arising out of Manager's operation and management of the building, whether such claim is against Owner or Manager or both. Manager shall employ at all times a sufficient number of competent employees to enable it to properly and efficiently perform its duties hereunder or, subject to the Approved Budget, Manager shall engage such independent contractors as Manager deems necessary to complement Manager's employees and properly and officially perform its duties under this Agreement.

(b) All matters pertaining to the employment, supervision, compensation, promotion and discharge of Manager's employees and others engaged by Manager for the operation and maintenance of the Project are the exclusive responsibility of Manager. Manager shall fully comply with all applicable laws and regulations having to do with worker's compensation, social security, unemployment insurance, hours of labor, wages, pension plans, working conditions, employment discrimination, handicapped accessibility and other employer-employee related subjects in connection with the Project. In the event solicitation of labor union representation in addition to that currently in existence at the Project is made at the Project, Manager shall promptly give Owner notice thereof.

SECTION 2.03. Service Contracts. Manager shall contract, for periods not in excess of one year, in the name and at the expense of Owner, for gas, electricity, water, landscape maintenance, security services, vending, telephone, trash removal, extermination, and such other services as are necessary to own, operate and maintain the Project as a first class office property; except that where any of such services are the obligation of the tenant under the Fireman's Fund Lease, Manager shall routinely monitor and ensure that such tenant has made adequate provisions for the rendering of such service so that the Project will at all times be operated and maintained as a first class office property. Manager shall use due care in the selection of all persons and entities selected to provide services to or for the benefit of the Project. Manager shall have the right, without the prior written consent of Owner, to execute any contracts in compliance with the competitive bidding procedures set forth in Section 2.05 and otherwise within the guidelines set forth in the then applicable Approved Budget; provided, however, Manager shall not, without the prior written consent of Owner, execute any service contract or other agreement for all or any portion of the Project which (a) does not permit Owner, without cause and without payment of any penalty or premium, to terminate same (i) upon no more than thirty (30) days prior written notice, and (ii) upon the sale of all or any portion of the Project, and/or (b) requires the payment or expenditure of any amount in excess of the respective amount set forth on the then applicable Approved Budget. Manager shall not borrow any money or enter into any lease as lessee for or on behalf of Owner without Owner's prior written consent. Manager shall disclose to Owner any relationships which Manager has with any persons or entities selected to provide services to or for the benefit of the Project pursuant to this Section 2.03.

SECTION 2.04. Inventories and Supplies. Manager shall supervise and purchase, or arrange for the purchase, at the expense of Owner, in an economical manner, all inventories, provisions, supplies and operating equipment which, in the normal course of business, are necessary and proper to maintain and operate the Project in a manner consistent with the express plan of Owner and the then applicable Approved Budget. Manager shall use its good faith reasonable efforts to qualify for any cash and trade discounts, refunds, credits, concessions or other incentives available, and such discounts, refunds, credits, concessions or other incentives shall inure to, and belong to, Owner and Owner shall receive the benefit thereof, except to the extent that such discounts, refunds, credits, concessions or other incentives reduce common area maintenance expenses, in which case they shall inure to, and belong to, the tenants responsible for such common area maintenance expenses.

SECTION 2.05. Competitive Bids. Manager shall not enter into any agreement or arrangement for the furnishing to, or by, Owner of goods or services (including employment) unless the price, compensation or other consideration paid for any such goods or services shall not exceed the amount ordinarily paid for such goods or services in the Project Area and shall not exceed expenditures authorized pursuant to an Approved Budget. Except for contracts expressly provided for in the Approved Budget as not requiring competitive bids, any purchase, contract, agreement or arrangement anticipated to have a cost in excess of Ten Thousand Dollars ($10,000) shall be competitively bid by Manager. When taking bids, issuing purchase orders or otherwise arranging for any such goods or services, Manager shall act at all times in the best interests of Owner and shall use all reasonable efforts to secure for, and credit to, Owner any rebates, discounts or commissions obtainable with respect to such purchases or other transactions. Manager shall not accept or allow any of Manager's employees, agents, representatives, or related or affiliated entities to accept any gift or gratuity from any supplier of goods or services above a *de minimus* value.

SECTION 2.06. Maintenance.

(a) General Standards. Manager shall (i) provide regular, systematic inspections of buildings and grounds in order to comply with any agreement affecting the Property or Project including, without limitation, any and all license agreements, mortgages and reciprocal easement agreements affecting the Property, and (ii) use all commercially reasonable efforts to cause and ensure that each of the tenants of the Project comply with the provisions and obligations of their respective leases. Manager shall maintain, or cause to be maintained, the Project in accordance with standards reasonably acceptable to Owner, including within such maintenance, without limitation thereof, interior cleaning and janitorial service, exterior grounds and landscaping services, restroom supplies, repairs to improvements and common areas, enforcement of construction warranties (excluding those of tenants that perform their own tenant improvement work), maintenance of mechanical systems and equipment, maintenance of safety and security of tenants and the property of both Owner and the tenants and such other normal maintenance, alteration and repair work as may be reasonably advisable or necessary to maintain the Project in a manner consistent with maintenance of office properties of similar size, age and construction in the Project Area; provided that no single expenditure described in this Section 2.06(a) shall exceed the sum of Twenty-Five Thousand Dollars ($25,000) without Owner's prior written approval.

(b) Emergencies. In the event of an emergency (i) for which repairs are immediately necessary for the preservation and safety of the Project, (ii) to avoid the suspension of any essential services to the Project, or (iii) to avoid danger to life or property (each of which shall constitute an "emergency"), such emergency repairs shall be made by Manager on behalf of Owner at Owner's cost (except to the extent such costs, expenses or charges are to be paid or reimbursed by tenants, in which event such emergency repair cost shall be paid by Manager, at Owner's expense, and Manager shall seek payment or reimbursement of such emergency costs, expenses or charges directly from such tenants) without the prior approval of Owner; provided that such emergency expenditure shall not exceed the sum of Twenty-Five Thousand Dollars ($25,000) per emergency. Manager shall promptly, and in no event later than twenty-four (24) hours from the time Manager learns of any such emergency, provide Owner with notice in reasonable detail of such emergency.

(c) Compliance. Manager shall, at Owner's expense, further use all reasonable efforts to cause all things to be done with respect to the Project which are necessary and/or desirable to comply with any and all regulations of any governmental authority having jurisdiction over the Project.

SECTION 2.07. Enforcement of Leases and Contracts.

(a) Enforcement. Manager shall, subject to being reimbursed by Owner for out-of-pocket expenses approved by Owner or in the Approved Budget, take all proper and necessary action reasonably required to enforce the terms of all leases and contracts and to collect and account for all revenue, rent and other charges including, without limitation, additional rent as and when due from or payable by such tenants and others. Owner authorizes Manager, subject to being reimbursed by Owner for out-of-pocket expenses approved by Owner or in the Approved Budget, to request, collect and receive all such rent and other charges. Upon obtaining Owner's approval, Manager may, subject to being reimbursed by Owner for out-of-pocket expenses approved by Owner or in the Approved Budget, retain counsel on behalf of Owner, collection agencies and such other persons and firms as Manager shall deem appropriate or advisable to enforce the rights and remedies of Owner against any tenant in default in the performance of its obligations under its lease by such actions as are directed or approved by Owner. Notwithstanding any provision of this Agreement to the contrary, Owner shall have the sole right at all times to control or direct its representation in any such legal action and to determine whether to terminate the lease of a tenant in default.

(b) Tenant Supervision. Manager shall (i) supervise all dealings with tenants of the Project on behalf of Owner and receive and consider service requests, (ii) receive and use all commercially reasonable efforts to resolve any complaints, disputes or disagreements among tenants, (iii) monitor the activities of tenants to ensure their compliance with terms and conditions of their respective leases and use all reasonable efforts to notify the respective tenants and Owner of any non-compliance with such leases, (iv) supervise the moving in and out of all tenants of the Project and to arrange the dates thereof so that there shall be a minimum of disturbance to the operation of the Project and of inconvenience to the other tenants, and (v) work closely with the tenants in order to enhance the entry and inspection rights of the landlord at the Property.

(c) Notices. Manager shall be responsible for the giving of all notices and statements required to be given to tenants of the Project under the terms of the respective tenants' leases and for the giving of all other notices necessary relating to management of the Project.

(d) Rules and Regulations. Manager shall consider and advise Owner from time to time as to appropriate or desirable rules and regulations or any additional rules and regulations Manager may deem appropriate or desirable to be made under the leases with tenants of the Project or for the better or more efficient operation of the Project. Manager shall see that all tenants of the Project are informed with respect to such rules, regulations and notices as may be promulgated by Owner or Manager.

(e) Security. Manager shall, at Owner's expense, place and maintain a contract or contracts to provide security for the physical protection of the Property; except that where such security is an obligation of the tenant under the Fireman's Fund Lease, Manager shall routinely monitor and ensure that such tenant has made adequate provisions for such security service.

(f) Compliance. Except to the extent that Owner may otherwise direct Manager, Manager, subject to being reimbursed by Owner for out-of-pocket expenses approved by Owner or in the Approved Budget, (i) shall use all commercially reasonable efforts to secure compliance by the other party or parties, if any, to each agreement, mortgage, lease, reciprocal easement agreement, operating agreement, rule, regulation and other instrument to which Owner is or shall hereafter become a party, and (ii) shall use all commercially reasonable efforts to cause the obligations of Owner under such agreements, mortgages, leases, reciprocal easement agreements, operating agreements, rules, regulations and other instruments to be performed in accordance with the terms thereof (including, without limitation, such obligations of Owner to deliver notifications of events and to respond to notices received).

(g) Additional Duties. Manager shall undertake such additional duties as Owner may reasonably request from time to time and as are usual and customary for managers of first class office properties in the Project Area and are consistent with Manager's employment to supervise the management and operation of the Project under the terms and provisions of this Agreement without additional compensation therefor.

SECTION 2.08. Compliance with Laws. Insofar as any of the following enumerated matters relate to or affect the condition, use or occupancy of the Project, unless Owner has affirmed its intention to contest the same (in which event Manager, at Owner's sole cost and expense, shall participate in such contest to the extent requested by Owner), Manager shall use all reasonable efforts to comply with and cause the Project, at Owner's expense, to be kept, maintained, used and occupied in compliance with the following, as now in effect or as may be hereafter in effect,: (a) all applicable laws, statutes and ordinances; (b) all applicable rules, regulations and orders of any governmental authority (specifically including, but not by way of limitation, building codes, fire regulations and, subject to Section 2.10, environmental rules and regulations); (c) any direction or occupancy or use certificate issued pursuant to any law, regulation or rule by any public officer; and (d) the provisions of any agreement, mortgage, lease, reciprocal easement agreement, operating agreement, rule, regulation or other instrument to which Owner is a party or by which the Project is bound. Promptly upon receipt thereof, Manager shall submit to Owner a copy of each notice or statement received from any governmental agency together with any other notices or statements received by Manager which threaten or might have a material effect upon the Project. All of the provisions of this Section shall be further subject to the limitations and restrictions on the authority of Manager set forth in this Agreement.

SECTION 2.09. Handicapped Accessibility Law Compliance. Upon request by Owner, Manager shall, at Owner's expense, contract with a qualified independent contractor to prepare an inspection report on behalf of Owner to determine whether the Project is in compliance with the Americans with Disabilities Act of 1990 (as such Act may be amended from time to time), and any other applicable federal, state or local laws, rules and regulations applicable to the Project and pertaining to handicapped accessibility. If the Project is not in compliance, then Manager, with such independent contractor, shall propose a plan and budget in order to attain such compliance. If such plan and budget are approved in writing by Owner, such compliance shall be undertaken at Owner's expense. If such compliance is the obligation of tenant under the Fireman's Fund Lease, then Manager shall enforce the terms of the Fireman's Fund Lease so as to cause such tenant to attain such compliance.

SECTION 2.10. Hazardous Materials, Toxic Wastes and Asbestos. If during the term of this Agreement, Manager becomes aware of the existence of hazardous materials or wastes, toxic substances or wastes, asbestos or asbestos bearing materials and the like at, in, on or under the Project, Manager shall immediately notify Owner of the condition, both orally and in writing. Owner shall exclusively determine such further course of action with respect to such hazardous condition. Manager shall not supervise or oversee any work involving remediation of any hazardous or potentially hazardous wastes or conditions unless specifically hired by Owner to do so pursuant to a separate agreement between Owner and Manager. Manager shall always use its good faith commercially reasonable efforts to prevent and detect the occurrence or existence of any hazardous condition at the Project and shall reasonably cooperate with Owner, at no additional fee or cost to Owner, in abating and remedying any hazardous condition at the Project; provided, however, (i) the actual costs of abatement or remedial action shall be borne by Owner, (ii) remediation shall be undertaken only at the direction of Owner or a third party environmental consultant hired by Owner, and (iii) Owner acknowledges that Manager is not qualified to evaluate any hazardous condition at the Project and Owner agrees that in no event will Manager be required to make an independent determination as to the presence or absence of any hazardous condition at the Project or whether or not any particular tenant space is in compliance with all applicable rules, regulations and orders of any governmental authority, including, but not by way of limitation, environmental rules and regulations. Notwithstanding anything to the contrary set forth in this Section 2.10, Manager shall comply with the terms of any asbestos operations and maintenance program, mold management program or other operations and maintenance program ("O&M Program") in effect or which shall become effective with respect to the Project at the Property's expense, provided that Manager has been provided with a copy of such O&M Program.

SECTION 2.11. Taxes and Assessments. Manager, at Owner's request, shall annually review and submit, or cause to be submitted, to Owner a written report on all real estate and personal property taxes and assessments affecting the Project. In addition, if so requested, Manager shall advise Owner as to the use and selection of third party tax consultants and shall file all personal property tax returns, state and local sales tax reports, and form 1099's relating to the Project, if required and if requested by Owner, after consulting with Owner concerning the contents thereof. Manager shall not be required to prepare on behalf of Owner any state or federal income tax return relating to the Project. Manager shall promptly furnish Owner with copies of all real estate and personal property tax and assessment notices received by Manager.

SECTION 2.12. Reports on Insurance Claims. Manager shall promptly notify Owner of any casualty and promptly investigate and make (subject to Owner's approval) a complete and timely written report to the appropriate insurance company as to all accidents, claims for damage relating to the development, ownership, operation and maintenance of the Project, any damage or destruction to the Project and the estimated cost of repair thereof and shall prepare (for Owner's approval) any and all reports required by any insurance company in connection therewith. All such reports shall be timely filed with the insurance company as required under the terms of the insurance policy involved and a final copy of such report shall be furnished to Owner. Notwithstanding any provision of this Agreement to the contrary, Manager shall not settle any claim against insurance companies without the prior approval of Owner.

SECTION 2.13. Assistance with Proposed Sale, Financing, Refinancing. Manager shall cooperate with and assist Owner from time to time in any attempt(s) by Owner to sell, finance or refinance the Project. Such cooperation shall not entitle Manager to any additional compensation and Manager shall not be deemed to be acting as a broker unless Owner and Manager enter into a separate written agreement engaging Manager as broker with respect to the Project. Such cooperation shall include, without limitation, answering prospective purchasers' and lenders' questions about the Project, preparing rent rolls, notifying tenants about the sale of the Project and obtaining estoppel certificates and other documents from all tenants of the Project in the form required by the prospective purchaser or lender.

SECTION 2.14. Property Transition. Manager shall assist Owner in coordinating with any prior manager of the Project to ensure a smooth transition from such prior manager to Manager. Such transition responsibilities will include, without limitation, assistance in transferring of bank accounts and security deposits, obtaining all files and personal property with respect to management of the Project, notifying tenants and other interested parties, and collecting such other information required by Owner and imputing the same into a software program designated by Owner. In addition, upon termination of this Agreement, Manager shall reasonably assist Owner in coordinating with any successor manager of the Project to ensure a smooth transition from Manager to such successor property manager.

SECTION 2.15. Inspections. Manager acknowledges that, during the term of this Agreement, designated representatives of firms other than Owner or affiliated companies, may have reason to review and examine during normal business hours the accounting books and records, the lease files, revenue, operating expenses, and other property data that is under the control of Manager and is maintained at Manager's on-site office facilities, regional offices and/or principal offices with respect to the Project, and Manager will cooperate with these designated representatives. Manager further acknowledges that these services are included within the scope of this Agreement and that no additional fees are required over and above the basic asset management fee contained within this Agreement unless recoverable by Manager from such designated representatives.

SECTION 2.16. Limitation of Authority. Notwithstanding any provision of this Agreement to the contrary, Manager shall not, without prior approval by Owner: (a) convey or otherwise transfer or pledge or encumber any property or other asset of Owner; (b) retain

attorneys on behalf of Owner; (c) institute or defend lawsuits or other legal proceedings on behalf of Owner; (d) enter into any dealings concerning the Project or with tenants of space at the Project for Manager's own account in its capacity as property manager; provided, however, that if Manager shall enter into any dealings with tenants of space at the Project in its capacity as a tenant representative or otherwise in a leasing capacity, Manager shall give Owner prior written notice thereof, but shall not require Owner's approval of such activities, (e) pledge the credit of Owner, except for purchases made in the ordinary course of business of operating the Project or as otherwise contemplated pursuant to this Agreement in conformity with an Approved Budget; (f) borrow money or execute any promissory note or other obligation or mortgage, security agreement or other encumbrance in the name of or on behalf of Owner; (g) execute any leases or any contracts for construction, remodeling, rehabilitation, landscaping or other work to be done on the Property unless previously approved in writing by Owner or in conformity with an Approved Budget. The limitations set forth in this Section 2.16 shall be in addition to all other restrictions on the authority of Manager set forth in this Agreement.

SECTION 2.17. Development. Manager shall use diligent and professional efforts to carry out any development work at the Property requested by Owner in a timely manner in accordance with the requirements set forth by Owner, and shall perform all general management functions necessary to procure, coordinate, administer and implement any such development work. In connection therewith, Manager shall, if requested by Owner, (a) apply for and obtain all applicable governmental approvals, (b) procure, coordinate, administer and implement all aspects of the development work planning, preparation, design and engineering, (c) act as a liaison with all governmental authorities having jurisdiction over the development work, (d) conduct and prepare preliminary construction cost analyses and preliminary construction cost estimates, and (e) bid and use diligent professional efforts to negotiate, administer and coordinate a construction contract between Owner and a general contractor for the construction of the development work.

ARTICLE III

Banking, Recordkeeping and Reporting Duties

SECTION 3.01. Operating Account.

(a) General. Manager shall, and shall cause any person or entity engaged to collect or handle monies received from the operation of the Project pursuant to Section 2.03 hereof to, handle all monies received from operation of the Project in accordance with any applicable restrictions of which it becomes aware that may be imposed pursuant to any loan documents evidencing or securing any loans for which the Project serves as security ("Project Loan Documents"). In this regard, Manager acknowledges that it has received and reviewed the Project Loan Documents presently encumbering the Project as described in Exhibit C to this Agreement. Owner has informed Manager that Owner has established the first bank account described in Exhibit D to this Agreement in order to comply with certain provisions of the Project Loan Documents described in Exhibit C. Owner has informed Manager that Owner has established the second bank account described in Exhibit D to this Agreement as a separate special account for the Project (the "Operating Account") and, subject to applicable requirements

under the Project Loan Documents, Manager shall deposit, no later than one (1) business day after receipt, all monies received by Manager from the operation of the Project into the Operating Account, and Manager shall not commingle such monies with funds of Manager or with funds received from the operation of any other property. Manager represents and warrants to Owner that Manager shall not change the Operating Account (or establish additional accounts to serve as part of the Operating Account) except with the prior written approval of Owner. All monies received by Manager for or on Owner's account shall be received and held by Manager in trust for Owner. Manager shall, subject to Section 3.01(b), use funds deposited in the Operating Account to pay operating expenses for the Project. The Operating Account shall be styled in a manner approved by Owner. Manager shall regularly transfer excess funds to the money-market type account to serve as part of the Operating Account (such account listed as the third account in Exhibit D to this Agreement), with any material excess funds being invested temporarily in interest-bearing investments permitted by the terms of any Project Loan Documents executed by Owner and the permitted investment guidelines established by Owner. Upon request of Owner, Manager shall change the accounts and depository institutions utilized by Manager for the Operating Account.

(b) Payments. Unless otherwise directed by Owner, Manager shall timely pay all taxes, insurance premiums, debt service payments and other operating expenses authorized pursuant to the then applicable Approved Budget, but not otherwise (other than as provided in Section 3.06); except that where the payment of any of such operating expenses are the obligation of tenant under the Fireman's Fund Lease, Manager shall routinely monitor and ensure that such tenant has timely made such payment. Manager shall submit to Owner for approval, not more than once per month, a list of all operating expenses by major account (e.g., payroll, repairs and maintenance, and general and administrative) that are not then authorized pursuant to the then applicable Approved Budget and, to the extent approved by Owner in writing, Manager shall pay such operating expenses. Owner shall approve or disapprove such expenses within five (5) business days after submission thereof. Manager shall make no payment from the Operating Account, without Owner's prior written consent, for any expense which, under the provisions of this Agreement, requires Owner's prior written approval or consent (unless within the Approved Budget) or for any expense not related to the operation of the Project. Manager shall disburse to Owner its share of net revenues quarterly, no later than the earlier of the fourteenth (14th) day after the end of each quarter or the fifth (5th) business day after the receipt by Manager of any net proceeds from any disposition of the Property; provided, however, that a working capital balance, in an amount reasonably determined by Owner from time to time, will be maintained in the Operating Account.

(c) Insufficient Funds. Manager shall monitor the cash flow of the Project and shall provide to Owner a monthly report detailing such cash flow and a forecast of such cash flow for the next succeeding month. If, at any time, funds in the Operating Account shall be projected to be or are insufficient to pay such expenditures, Manager shall notify Owner and request a sufficient amount to satisfy same so that Manager will have sufficient funds in the Operating Account to prevent any delinquency in payment for such expenditures. Notwithstanding any other provision of this Agreement, Manager shall not be obligated to advance any of its own funds to or for the account of Owner or in the Approved Budget, nor to incur any liability unless Owner shall have furnished Manager with funds necessary for the

discharge thereof. If Manager advances any additional funds in payment of an expense in the maintenance or operation of the Project which was authorized by Owner, Owner shall reimburse Manager within five (5) days after Owner's receipt of itemized invoices or bills thereof.

(d) Signature Requirements. Checks or other documents of withdrawal on the Operating Account in excess of Ten Thousand Dollars ($10,000) shall require co-signature by a representative of Owner, except to the extent for an item in the Approved Budget or otherwise approved in writing by Owner. The designation of the authorized representatives of Manager may be made by any one of Manager's officers. All such representatives of Manager shall be bonded or otherwise insured (at Manager's sole expense) in accordance with Section 4.02 or otherwise in a manner reasonably satisfactory to Owner. Owner shall have the right to withdraw any funds deposited in the Operating Account or otherwise invested pursuant to this Agreement on the basis of its signature alone and without the joinder of Manager. Manager's authority to make disbursements pursuant to this Agreement and draw checks or make withdrawals from the Operating Account or other bank accounts established, held or maintained by Manager in the name of or on behalf of Owner shall immediately terminate upon the expiration or earlier termination of this Agreement and/or during any period in which Manager is in default of this Agreement.

SECTION 3.02. Security Deposit Account. To the extent required under the laws of the state in which the Project is located, all security deposits collected by Manager shall be segregated from other funds received in connection with the Project and deposited immediately upon receipt in a special separate interest-bearing account for the Project (the "Security Deposit Account"), maintained in a federally insured banking institution acceptable to Owner. The Security Deposit Account shall be styled as follows: [Manager Name], as Manager for [Owner's Name] for [Property Name]—[Property Number]. Manager shall maintain accurate records of all security deposits held by Owner, including the amount of each security deposit, the party from whom each security deposit is collected, interest earned on each security deposit (if the particular lease requires payment of interest thereon), the amount of such interest required (if so required by applicable law) to be paid to each tenant with respect to such tenant's security deposit, and the date(s) upon which Manager collected each security deposit. Manager shall deliver a monthly report to Owner which indicates when a refund of all or any portion of a security deposit is required and has been approved by Manager, and Manager shall keep an accurate record of all refunds. Manager is solely responsible for complying with all applicable state, local and other laws, rules and regulations regarding security deposits held in a segregated account, including laws, rules and regulations regarding the payment of interest thereon and the return thereof. All interest earned on such security deposits that is not required to be paid to tenants shall be deposited monthly by Manager in the Operating Account. Owner shall have the right to withdraw any funds deposited in the Security Deposit Account or otherwise invested pursuant to this Agreement on the basis of its signature alone and without the joinder of Manager.

SECTION 3.03. Books and Records. Manager shall maintain separate and complete books and records in connection with its management and operation of the Project. Such books and records shall be kept in a manner sufficient to respond to Owner's reasonable financial information requirements and shall show, without limitation, the actual financial

information for the Project for each month and each calendar year to date as compared to the budgeted information for such month and calendar year. Manager shall use certain computer software programs designated by Owner from time to time to prepare and maintain the books, records and reports required pursuant to this Agreement. Manager acknowledges that Owner has initially designated the MRI computer software program. Manager will make the books of account and all other records relating to or reflecting the operation of the Project readily available to Owner and its representatives at the Project (or at Manager's principal office) at all reasonable times for examination, audit, inspection and transcription. Manager shall prepare and keep current a list of all personal property owned by Owner and used at the Project or in its operation. Upon Owner's reasonable request, Manager shall deliver to Owner the copies of any source materials utilized by Manager in preparing the records, books and accounts. All books and records at all times shall be the property of Owner. Upon termination of this Agreement, Manager shall turn over all such books and records to Owner, but Manager may retain copies thereof to the extent necessary to satisfy any legal reporting requirements applicable to Manager.

SECTION 3.04. Reporting Requirements.

(a) Monthly Reports. Manager agrees to render monthly reports for the preceding calendar month, on or before the twentieth (20th) day of each month, in form satisfactory to Owner and that meet the reporting obligations set forth in that certain Amended and Restated Limited Liability Company Agreement of Novato FF Venture, LLC, dated as May **[__]**, 2007, between Novato FF PT Investor, LLC and Pacific Novato Holdings, LP (the "LLC Agreement"). The monthly reports to be furnished by Manager to Owner hereunder shall be in such formats as designated by Owner from time to time, and shall include, without limitation, the following:

- Management Report Summary (a narrative summary of property operations and issues);
- Cash Flow Report, including a comparison of projected versus budgeted year-to-date Gross Receipts and expenses;
- Current Rent Roll
- Tenant Aged Collection Report;
- Budget Variance Report, including a summary and detail variance analysis together with a narrative explanation of such variations;
- Leasing Activity Report;
- Cash Reconciliation Report and corresponding bank statements;
- Security Deposit Report;
- Occupancy Report; and
- Project Summary Report.

In addition, Manager shall deliver to Owner such other reports in such formats and with such supporting information as Owner may from time to time reasonably request. Manager agrees to maintain at the Project or at Manager's principal office all documentation necessary to support the information included on the foregoing reports, including, without limitation, all bank statements, bank deposit slips, canceled checks, comprehensive bank reconciliations, detailed cash receipts and disbursement records, operating expense invoices and payroll supporting documentation.

(b) Quarterly and Semi-annual Reports. In addition to the foregoing, Manager agrees to deliver to Owner, within sixty (60) days after the end of each calendar quarter and the end of each calendar year during the term hereof, (i) an unaudited profit and loss statement and balance sheets (in summary and detail fashion) for the Project prepared with respect to the then immediately preceding calendar quarter or calendar year, as appropriate, (ii) a current rent roll, and (iii) a narrative explanation of any budget variances.

(c) Annual Reports. Manager shall cause to be prepared and furnished to Owner, within sixty (60) days after the close of each calendar year, annual financial statements prepared on an accrual basis of accounting, including a balance sheet and a statement of income, and otherwise in a format reasonably designated by Owner; provided, however, at the option of Owner, Manager shall, at Owner's expense, cause these annual financial statements to be audited and prepared by a certified public accounting firm selected and approved by Owner. In addition, within ninety (90) days after the end of each calendar year, at the option of Owner, Manager shall, at Owner's expense, cause such accountants to prepare and deliver to Owner a report setting forth in sufficient detail all such information and data with respect to business transactions affected by or involving Owner during such calendar year as shall enable Owner and its constituent partners to prepare their respective federal, state and local income tax returns in accordance with the laws, rules and regulations then prevailing. Finally, on or before October 15th of each year during the term of this Agreement, Manager shall cause to be prepared and delivered to Owner a ten (10) year discounted cash flow model for the Property in such form and incorporating such assumptions and projections as directed by Novato FF PT Investor, LLC and using the software program designated by Novato FF PT Investor, LLC from time to time.

(d) Other Reports. Manager shall cause to be prepared such other financial reports and budget requirements as are required under any loan now or hereafter secured by the Project. Manager shall cause to be prepared such other reports as required to meet the reporting obligations set forth in the LLC Agreement. Manager shall maintain an inventory of the personal property owned or leased by or on behalf of Owner; provided, however, that such inventory may exclude office supplies and other expendable items. Said inventory shall be available for review by Owner and shall be updated by Manager upon the request of Owner. Manager shall furnish Owner and/or Owner's agents, representatives or affiliates such other reports with respect to the Property as may reasonably be requested by Owner and/or Owner's agents, representatives or affiliates. In addition to the foregoing, Manager agrees to prepare and deliver to Novato FF Venture, LLC, within sixty (60) days after the end of each calendar quarter during the term hereof, a report providing information on the progress by Manager of those certain duties described in Exhibit E.

(e) Certification. All information contained in all reports, statements and other data required under this Section shall be certified to as accurate by Manager based upon Manager's actual knowledge.

(f) Accounting Policies and Procedures. Manager shall prepare and deliver all reports in accordance with, and shall otherwise comply with, Owner's accounting policies and procedures as adopted from time to time. Manager acknowledges receipt of a copy of Owner's current accounting policies and procedures.

SECTION 3.05. Audit Rights. Owner reserves the right and Manager hereby agrees that Owner, at Owner's expense, shall have the right to conduct examinations and/or audits of the books and records maintained by Manager for Owner. Owner may perform any and all audits relating to Manager's activities either at the Project or at the local office of Manager. Manager will cooperate with and give reasonable assistance to any independent certified public accountant or other agent retained by Owner to examine such books and records. Should Owner's employees or appointees discover either weaknesses in internal control or errors in record keeping, Manager, at its sole cost and expense, shall correct such discrepancies either upon discovery or within a reasonable period of time thereafter. Manager shall inform Owner in writing of the action taken to correct such audit discrepancies. Any and all audits conducted either by Owner's employees or appointees will be at the sole expense of Owner unless such audit reveals that the annual net cash flow (as determined on a cash basis method of accounting) for the Project is misrepresented or incorrect by an amount greater than five percent (5%), in which case Manager will bear such expense, not to exceed the amount of the discrepancy. In addition, if any audit discloses a deficiency in the amount of funds which Manager should have delivered to Owner during the period covered by the audit, Manager shall immediately deliver such deficiency to Owner, together with interest thereon at the rate of ten percent (10%) per annum. Such interest shall be paid by Manager from funds other than those generated by the Project. No audit shall be performed by anyone working on a contingency fee basis.

SECTION 3.06. Budgets. Manager will prepare and submit to Owner proposed budgets pursuant to and in accordance with the provisions of Section 4.3 of the LLC Agreement. The process for review and approval of the proposed budget by the Owner shall be as set forth in Section 4.3 of the LLC Agreement. Manager shall not make expenditures relating to the Project in any year except within the categories and amounts contained in the Approved Budgets for the Project for that year, unless such variance is in accordance with the terms of Section 4.3 of the LLC Agreement. Manager shall have no right to approve any budget or any revisions suggested by Owner thereto. As used herein, the term "Approved Budget" means any budget approved by Owner pursuant to the terms of this Section 3.06.

ARTICLE IV

Insurance, Indemnity and Ethical Conduct

SECTION 4.01. Manager's Insurance. Manager shall, at the expense of Manager, maintain in full force and effect insurance policies with respect to Manager's duties hereunder issued by insurance companies with an A.M. Best service rating of not less than AVII, which are licensed in the state in which the Project is located. Such policies shall provide at least the following coverages:

(a) Workers' Compensation Insurance in an amount in compliance with applicable statutory limits in the state in which the Project is located for Manager's employees. Manager shall provide Owner with a certificate evidencing such coverage with the following provisions: (i) coverage for injury, death or occupational disease of Manager's employees arising out of or in the scope of employment; and (ii) Employers' Liability Insurance with a limit of Five Hundred Thousand Dollars ($500,000) per each accident and per each employee; and

(b) Comprehensive automobile liability insurance for all owned, hired and non-owned vehicles used in connection with Manager's performance under this Agreement with limits of One Million Dollars ($1,000,000) combined single limits per occurrence for bodily injury and property damage liability.

All insurance policies required pursuant to this Section shall provide for thirty (30) days' written notice to Owner prior to cancellation or material change by endorsement of the coverage and, with respect to insurance policies required pursuant to clause (b) above, shall be endorsed to include Owner as an additional insured. Certificates of all insurance required under this Section shall be provided by Manager to Owner at least thirty (30) days prior to the expiration date of the then effective insurance policy. Manager shall deliver copies of all insurance certificates required of Manager signed by authorized representatives of the insurance companies, to Owner, prior to the effective date hereof. Manager shall also use all commercially reasonable efforts to obtain copies of insurance policies or certificates of insurance evidencing insurance required of its subcontractors and shall keep such documents in Manager's files available for inspection upon request by Owner.

SECTION 4.02. Fidelity and Comprehensive Crime Bond. Manager shall maintain, pay for and keep in full force fidelity, employee dishonesty or comprehensive crime bond or insurance coverage on all of its employees, agents, officers and directors who are involved in or employed in connection with the performance of Manager's obligations under this Agreement, which coverage shall be in a dollar amount equal to One Million Dollars ($1,000,000). Evidence of such coverage will be provided to Owner at Owner's request. The cost of such bond or insurance shall be the expense of Manager and shall not be reimbursable by Owner.

SECTION 4.03. Owner's Insurance. Manager shall obtain and maintain the insurance set forth in Section 4.12(a) of the LLC Agreement at the expense of Owner.

SECTION 4.04. Manager's Indemnity. In addition to, but not in lieu of Manager's other indemnification obligations under this Agreement, Manager shall indemnify, protect, defend (with counsel acceptable to Owner) and hold harmless Owner, its partners and their respective stockholders, directors, officers, trustees, employees, agents, successors and assigns (each an "Owner Party") from and against any and all claims, actions, suits, proceedings, losses,

costs and expenses, including reasonable attorneys' fees and court costs, incurred by or otherwise asserted against any Owner Party to the extent arising out of or resulting from any acts or omissions of Manager or its directors, officers, employees, contractors, subcontractors and agents (a) in violation of this Agreement, (b) outside the scope of Manager's authority hereunder, or (c) otherwise constituting gross negligence, fraud, malfeasance, breach of fiduciary duty or willful, reckless or criminal misconduct, except for any indemnity provided to Manager under the liability insurance provided in Section 4.03. The terms of this Section 4.04 shall survive the expiration or earlier termination of this Agreement, whether with or without cause.

SECTION 4.05. Owner's Indemnity. Owner shall indemnify, defend and hold harmless Manager, and its affiliates, and each of their respective partners, directors, officers, employees and agents (each a "Manager Party") from and against any and all claims, actions, suits, proceedings, losses, costs and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the acts or omissions of Manager and any such other Manager Party in connection with this Agreement, the performance of Manager's duties hereunder or arising out of or resulting from the acts or omissions of Owner, its partners and their respective stockholders, directors, officers, trustees and employees, except that such indemnification shall not apply (a) in the case of the acts or omissions of Manager or its directors, officers, employees, contractors, subcontractors, or agents in violation of this Agreement, outside the scope of Manager's authority hereunder or otherwise constituting gross negligence, fraud, malfeasance, breach of fiduciary duty or willful, reckless or criminal misconduct, (b) if, and to the extent, Manager and the matter is defended and paid for by the insurance maintained by Owner under Section 4.03, (c) any matter for which Manager has agreed to indemnify Owner under this Agreement, or (d) to the extent Manager shall have failed to maintain the fidelity bond or insurance required to be maintained by Manager under Section 4.02 and such bond or insurance would have defended and paid for such matter. The terms of this Section 4.05 shall survive the expiration or earlier termination of this Agreement, whether with or without cause.

SECTION 4.06. Conditions of Indemnification. The obligations of the parties under Section 4.04 and Section 4.05 are subject to the following conditions: (a) the party to be indemnified shall deliver a notice to the indemnifying party with respect to the matter promptly after the party to be indemnified becomes actually (and not constructively) aware of the same; and (b) the party to be indemnified shall not take any actions, including any admission of liability, which would bar the indemnifying party from enforcing any applicable coverage under policies of insurance or prejudice any defense and related legal proceedings or otherwise prevent such indemnifying party from defending itself with respect to the matter.

SECTION 4.07. Confidential Information. Manager agrees, for itself and all persons retained or employed by Manager in performing its services, to hold in confidence and not to use or disclose to others any confidential or proprietary information of Owner heretofore or hereafter disclosed to Manager, including, but not limited to, any data, information, plans, programs, processes, costs, operations, or names of tenants which may come within the knowledge of Manager in the performance of, or as a result of, its services (the "Confidential Information"), except where Owner specifically authorizes Manager to disclose any of the foregoing to others or such disclosure reasonably results from the performance of Manager's duties hereunder or is required by law or by court proceedings. The provisions of this Section

shall survive the termination of this Agreement. Confidential Information does not include, however, information which (a) is or becomes generally available to the public other than as a result of a disclosure by Manager, (b) was available to Manager, or known by Manager on a non-confidential basis prior to its disclosure by Owner, or (c) becomes available to Manager on a non-confidential basis from a person other than Owner, who is not known by Manager to be bound by a confidentiality agreement or otherwise under any obligation to keep such information confidential. If Manager is required by statute, government regulation, legal process, or judicial decree to disclose any Confidential Information, Manager may disclose such Confidential Information without liability to Owner. However, Manager agrees: (i) to give Owner prompt notice of any proceedings taken or initiated by others to obtain such an order or decree; (ii) to cooperate fully with Owner's counsel in response thereto (at Owner's expense); and (iii) to disclose only such portion[s] of the Confidential Information as are specifically required by such order or decree, once it is final and non-appealable.

SECTION 4.08. Business Conduct. The maintenance of extremely high standards of honesty, integrity, impartiality and conduct by Manager and its employees and agents is essential to assure the proper performance of business and the maintenance of public confidence in Owner. Owner expects Manager to uphold and meet these high standards and to use its best judgment to avoid misconduct and conflicts of interest and to require the same of its employees and agents. In general, Manager shall avoid using its position for private gain, giving preferential treatment to any person, losing complete independence or impartiality or making Owner's decisions outside authorized channels. Manager shall not take any action that would reasonably be believed to adversely affect the confidence of the public in the integrity of Owner and shall not engage in conduct prejudicial to Owner, including, without limitation, criminal, dishonest or immoral conduct. Manager shall not (a) misuse Owner's property, (b) use inside information obtained as a result of retention by Owner for private gain for Manager or another person, particularly one with whom Manager (or its officers, directors, employees or agents) has family, business or financial ties, (c) use its retention by Owner to coerce or give the appearance of coercing a person to provide financial benefit to any employee or another person, particularly one with whom Manager (or its officers, directors, employees or agents) has family, business or financial ties, or (d) because of such retention, receive or solicit from a person known by Manager to conduct business with Owner anything of more than *de minimus* value as a gift, gratuity, loan, entertainment or favor for Manager or another person. As a condition to performing any service at the Project, Manager agrees to request that each of Manager's employees, agents and representatives acknowledge that they have read and understood this Section. Any violation of this Section by Manager or its employees, agents and representatives will constitute a breach of this Agreement by Manager.

ARTICLE V

Fees, Commissions and Expenses

SECTION 5.01. Asset Management Fee. As an asset management fee for the services performed pursuant to this Agreement, Owner agrees to pay Manager, during the initial term of this Agreement, an amount equal to one and one quarter percent (1.25%) of Gross Receipts, payable monthly in arrears (with such asset management fee subject to annual

reconciliation based upon actual Gross Receipts). Manager may withdraw an amount equal to such monthly asset management fee, on or before the last day of each month during the term of this Agreement, from the Operating Account. In the event Owner is obligated to refund to any tenant any amount included in Gross Receipts for any prior month, Manager shall promptly pay to Owner or credit against the next succeeding fee owed Manager, the amount of all fees or other compensation paid to Manager with respect to such refunded amount. Manager shall not be entitled to any fees, leasing commissions, or other sums for its services hereunder, except pursuant to this Article V, and Manager specifically acknowledges and agrees that, unless otherwise agreed in writing by Owner, Manager shall not be entitled to any fees, commissions, or other sums in connection with any leasing, sale, transfer, exchange, financing, refinancing, or other disposition or encumbrance of all or any portion of the Project, or any interest therein. Nothing contained herein shall affect Manager's right to receive reimbursement for certain items as and to the extent set forth in this Agreement. The asset management fee provided for in this Section 5.01 shall only be payable by Owner to Manager for so long as American Assets, Inc. is the Manager pursuant to this Agreement.

SECTION 5.02. Gross Receipts. As used herein, the term "Gross Receipts" means, as to any period, the gross income from the Project actually collected by Manager during such period and payable to Owner, including (a) "Base Rent" received pursuant to the Fireman's Fund Lease, (b) forfeited security and other deposits, (c) rental interruption insurance proceeds, and (d) late charges and interest; provided that Gross Receipts shall not include (i) contributions to the capital of Owner, amounts deposited by Owner into the Operating Account to cover operating deficits, or interest thereon, (ii) proceeds of any sale, transfer, exchange, financing, refinancing, or other disposition or encumbrance of all or any portion of the Project, or any interest therein, (iii) insurance proceeds (other than from loss of rents), (iv) condemnation proceeds and awards or payments in lieu thereof, (v) any and all security or other deposits, unless and to the extent forfeited and applied against delinquent rent or operating expenses (as opposed to applied against repair costs or other expenses), (vi) tax reduction or abatement proceeds, (vii) discounts, rebates or dividends on insurance policies, (viii) interest and other investment income earned on monies held or managed by Manager, (ix) prepaid rent prior to the occurrence of the month for which such rent was prepaid, (x) any payments received by Owner in connection with the early termination of any lease to the extent such payments are applied by Owner against unamortized capital costs, (xi) income which is not directly related to the operation, leasing and management of the Project, or (xii) reimbursements from any tenant of any operating expenses, taxes or insurance premiums pursuant to any lease (including, without limitation, the Fireman's Fund Lease). Gross Receipts is intended to reflect a net income concept, after deduction of expenses (e.g., amounts reimbursed to Manager pursuant to Section 5.04, and any other amounts paid to suppliers or subcontractors from funds of the Owner) paid in connection with the ownership and operation of the Property (other than the Property Acquisition Fee pursuant to Section 5.03 or the asset management fee pursuant to Section 5.01).

SECTION 5.03. Property Acquisition Fee. As a fee for the services performed by Manager in acquiring the Property, Owner agrees to pay Manager, a fee (the "Property Acquisition Fee") in an amount equal to One Million Five Hundred Sixty Thousand Dollars ($1,560,000) payable on the closing of the acquisition of the Property (it being understood that no such Property Acquisition Fee shall be payable by Owner to Manager unless and until the closing of the acquisition of the Property has occurred).

SECTION 5.04. Reimbursable Expenses. The costs of gross salaries, payroll taxes, insurance, worker's compensation and other employee benefits of full-time, on-site employees shall be reimbursed by Owner to Manager only to the extent reflected in the then applicable Approved Budget. Owner shall have no obligation, unless otherwise agreed to by Owner in writing, to reimburse Manager for and Manager shall be solely responsible for the payment of the costs of payroll taxes, insurance, worker's compensation and other employee benefits granted to any part-time employee or any full-time on-site employee in excess of the amount set forth in the then applicable Approved Budget except as provided in Section 3.06. Any costs or fees payable to any subcontractor hired to provide management services to the Property shall be reimbursed by Owner to Manager only to the extent reflected in the then applicable Approved Budget.

SECTION 5.05. Non-Reimbursable Expenses. The following expenses or costs incurred by or on behalf of Manager in connection with the operation of Manager's business shall be the sole cost and expense of Manager and shall not be reimbursable by Owner:

(a) Cost of gross salary and wages, payroll taxes, insurance, worker's compensation, pension benefits, and any other benefits of Manager's principal office or regional office personnel.

(b) General accounting and reporting services using MRI accounting and reporting software, unless otherwise specifically set forth in the Approved Budget.

(c) Cost of forms stationery, ledgers, and other supplies and equipment used in Manager's principal office or regional office.

(d) Cost, or pro-rata cost of telephone and general office expenses incurred at the Project by Manager for the operation and management of properties other than the Project.

(e) Cost or pro-rata cost of electronic data processing, for data processing provided by computer service companies (unless specifically set forth in the Approved Budget), except as provided in Section 3.06.

(f) Cost of all bonuses, incentive compensation, profit sharing, or any pay advances by Manager to Manager's employees, except to employees located at the Project, and then only to the extent approved under the then applicable Approved Budget, except as provided in Section 3.06.

(g) Cost attributable to losses arising from criminal acts or from negligence or fraud on the part of Manager or Manager's affiliates or employees.

(h) Cost of comprehensive crime insurance purchased by Manager for its own account.

(i) Costs for meals, travel and hotel accommodations for Manager's principal office or regional office personnel who travel to and from the Project, except as provided for in the Annual Budget.

(j) Costs attributable to Manager's failure to comply with its obligations under this Agreement including, for example, compliance with laws as set forth in Section 2.08.

ARTICLE VI

Duration, Termination and Default

SECTION 6.01. Term. This Agreement shall become effective on the date set forth above, and shall terminate on the first anniversary of the effective date, unless extended or earlier terminated as hereafter provided. The term of this Agreement shall be automatically renewed for successive one-year periods thereafter, unless either party delivers notice of termination to the other at least thirty (30) days prior to the commencement of the then next succeeding renewal period or unless this Agreement is earlier terminated by Owner in accordance with Section 6.03 below.

SECTION 6.02. Sale, Demolition, Foreclosure, Condemnation or Casualty. In the event of (a) a bona fide sale or demolition of all or a substantial portion of the Project, or (b) foreclosure or deed in lieu of foreclosure with respect to any mortgage encumbering the Project, or (c) the Project is entirely or substantially either taken by eminent domain or deed in lieu thereof, or (d) the Project is entirely or substantially damaged by fire or other casualty, or (e) a sale of all or substantially all of the ownership interests in Owner or in the partners of Owner, Owner or Manager may terminate this Agreement without penalty upon not less than thirty (30) days' notice to the other (except in connection with a third party sale, such termination shall be effective upon the date of sale, even if there is less than thirty (30) days' notice).

SECTION 6.03. Termination by Owner. This Agreement may be terminated (a) without cause by Owner at any time on at least thirty (30) days prior written notice to Manager, and (b) for cause (as hereinafter defined) by Owner at any time (i.e., whether before or after the first anniversary of the effective date). As used herein, the term "for cause" shall mean the occurrence of any one or more of the following:

(i) if Manager or any of its directors, officers, employees, contractors, subcontractors or agents shall be guilty of any gross negligence, willful misconduct, fraud, malfeasance or breach of fiduciary duty;

(ii) if Manager shall assign this Agreement or delegate its duties hereunder without the consent of Owner, except as provided under Article VII;

(iii) if Manager's corporate existence shall be dissolved without the consent of Owner;

(iv) if any material license held by Manager and necessary for the performance of its duties or services hereunder shall be terminated or suspended, and Manager does not arrange for the reinstatement of such license immediately after its termination or suspension;

(v) if Manager, or any of its directors, officers, employees or agents, shall misappropriate any funds of Owner and Manager shall not (A) make full restitution thereof within two business (2) days after Manager's discovery thereof, and (B) thereafter permanently bar the director, officer, employee, agent or other representative who misappropriated such funds from acting in any capacity with respect to the Project and any other property owned by Owner or any affiliate or agent thereof;

(vi) if Manager shall fail to pay any amount payable to Owner under this Agreement when due and such default shall continue for ten (10) days after written notice thereof to Manager;

(vii) (A) if Manager shall fail to comply with any provision of this Agreement (other than as a result of any action or occurrence set forth elsewhere in this subsection) and such failure shall continue for thirty (30) days after written notice of such failure given by Owner to Manager, or (B) if such failure cannot reasonably be cured within such thirty (30) day period, if Manager shall fail to commence the curing of such default within such thirty (30) day period (and to notify Owner within such thirty (30) day period that Manager has commenced such cure and will prosecute such cure diligently and complete the same, which notice shall specify Manager's estimate of the time period within which such cure will be completed) or, thereafter, shall fail to prosecute such cure diligently and complete the same within a reasonable period of time not to exceed in any event sixty (60) days after delivery of such notice, or (C) if Owner is subject to any criminal liability or unbonded civil liability, the Project is subject to any unbonded lien or Owner or the Project are subject to any material risk of loss by reason of Manager's failure to comply with any provision of this Agreement, unless such failure to comply resulted from Owner's failure to provide sufficient funds to enable Manager to so comply after written request for funds by Manager;

(viii) (A) if Manager shall fail to follow any reasonable written direction of Owner with respect to the Project and such failure shall continue for five business (5) days after written notice of such failure given by Owner to Manager, or (B) if such failure cannot reasonably be cured within such five (5) business day period, if Manager shall fail to commence the curing of such failure within such five (5) day period (and to notify Owner within such five (5) day period that the Manager has commenced such cure and will prosecute such cure diligently and complete the same, which notice shall specify Manager's estimate of the time period within which such cure will be completed) or, thereafter, shall fail to prosecute such cure diligently and complete the same within a reasonable period of time not to exceed in any event sixty (60) days after delivery of such notice, or (C) if Owner is subject to any criminal liability or unbonded civil liability, the Project is subject to any unbonded lien or Owner or the Project is subject to any material risk of loss by reason of Manager's failure to comply with such direction of Owner, unless such failure to comply resulted from Owner's failure to provide sufficient funds to enable Manager to so comply after written request for funds by Manager;

(ix) (A) if Manager shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency, reorganization or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment of the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing, or (B) if an involuntary case or other proceeding shall be commenced against Manager seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency, reorganization or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of ninety (90) days, or (C) if an order for relief shall be entered against Manager under any bankruptcy, insolvency, reorganization or other similar law now or hereafter in effect; or

(x) If the Manager's Certificate attached hereto as Exhibit A is untrue on the date given and/or hereinafter becomes untrue at any time.

The right and ability of Owner to terminate this Agreement for cause shall be in addition to (and shall not waive or limit) the rights and remedies available to Owner as a result of the act or occurrence giving rise to such for cause termination.

SECTION 6.04. Thirty Day Termination Fee. In any instance in which Owner is required to provide Manager with thirty (30) days prior written notice of termination, Owner shall pay to Manager the Thirty Day Fee (hereinafter defined) and shall have the right upon payment to Manager of the Thirty Day Fee to require Manager to immediately vacate the Project and, in such event, Manager's authority hereunder shall immediately cease and Manager shall have no further right to act for Owner or draw checks on the Operating Account. As used herein, the term "Thirty Day Fee" shall mean an amount equal to the asset management fee paid to Manager for the calendar month immediately preceding the date of Owner's request for Manager to immediately vacate the Project.

SECTION 6.05. Termination by Manager. Manager shall have the right to terminate this Agreement, (a) if Owner shall fail to comply with any provision of this Agreement and such failure shall continue for thirty (30) days after written notice of such failure has been given by Manager to Owner, or if such failure cannot reasonably be cured within such thirty (30) day period, if Owner shall fail to commence the curing of such failure within such thirty (30) day period (and to notify Manager within such thirty (30) day period that Owner has commenced such cure and will prosecute such cure diligently and complete the same, which notice shall specify Owner's estimate of the time period within which such cure will be completed) or, thereafter, shall fail to prosecute such cure diligently and complete the same within a reasonable period of time, or (b) with or without cause upon at least sixty (60) days prior written notice to Owner. In the event of any such termination, Manager shall be entitled, as its sole and exclusive remedy, to the payment of its reimbursable expenses and, subject to the limitations contained in Section 5.03, accrued but unpaid asset management fees and through the effective date of any such termination, but not otherwise.

SECTION 6.06. Effect of Termination.

(a) Deliveries. Upon termination of this Agreement for any reason, Manager shall deliver the following to Owner, or Owner's duly appointed agent, as soon as reasonably possible, but in no event, except as noted below, later than five (5) business days following the termination date:

(i) A preliminary accounting, reflecting the balance of income and expenses for the Project as of the date of termination, with final accounting to be prepared and submitted to Owner as soon as reasonably possible, but in no event later than fifteen (15) days following the termination date;

(ii) Any balance and monies due to Owner or tenant security deposits, or both, held by Manager with respect to the Project;

(iii) All books, records, contracts, leases, receipts for deposits, unpaid bills then in the possession of Manager, the then current rent roll, and all other papers or documents (including, without limitation, all computer tapes, disks and software) which pertain to the Project; and

(iv) All keys, to any locks on the Project, then in the possession of Manager, together with any plans and specifications pertaining to the Project then in the possession of Manager.

(b) Authority. Upon termination of this Agreement for any reason, Manager's authority under this Agreement shall immediately cease and Manager shall have no further right to act for Owner nor to draw checks on the Operating Account.

(c) Assignment. Upon the expiration or earlier termination of this Agreement, (i) Owner shall assume and Manager shall assign all future obligations under contracts entered into by Manager on behalf of Owner pursuant to this Agreement, (ii) Owner shall pay for the costs of all services, materials and/or supplies, if any, which have been ordered by Manager as a result of its obligations hereunder, and (iii) Manager shall relinquish control and assign to Owner all of its rights in and to the Operating Account, the Security Deposit Account and any other bank accounts established, held or maintained by Manager in the name of or for the benefit of Owner.

(d) Fees. Except as set forth below, in the event of any termination (including expiration) of this Agreement, Manager shall be entitled, subject to the limitations contained in Section 5.03, to the payment of any asset management fees and reimbursable expenses due to Manager through the effective date of any such termination, but not otherwise. In the event Owner requires Manager to prepare reports relating to matters or operations after the termination of this Agreement, Manager shall be reimbursed for the reasonable cost incurred in providing any such reports.

ARTICLE VII

Assignment

SECTION 7.01. Assignment. This Agreement has been entered into by Owner on the basis, *inter alia*, of the reputation and expertise of Manager in the management of first-class office properties. As a result, this Agreement shall not be assigned by Manager without the prior written consent of Owner, except by merger, consolidation or a sale of substantially all of Manager's assets. This Agreement may be assigned by Owner without Manager's prior written consent and, except for any liability of Owner which expressly survives the expiration or earlier termination of this Agreement, Owner shall be released from liability hereunder upon any transfer of its interest in the Project; provided, however, if this Agreement is to continue following any such transfer, Owner shall only be released upon the assumption by the transferee of Owner's obligations hereunder from and after the date of any such transfer, but not otherwise, and if this Agreement is not to continue following any such transfer, the release of Owner shall be subject to the provisions of Section 6.03.

SECTION 7.02. Notification. Manager shall promptly notify Owner, if, at any time during the term of this Agreement, Manager is: (a) a corporation that is not publicly traded and any part or all of the shares of Manager shall be transferred by sale, assignment, bequest, inheritance, operation of law or other disposition so as to result in a change in effective voting control of Manager; or (b) a partnership or association or otherwise not a natural person (and not a corporation) and there shall occur any change in the identity of any of the persons who are general partners of such partnership or members of such association or who comprise Manager on the date of this Agreement. Any change set forth under the subparagraph (a) and/or (b) above, or any assignment under Section 7.01, without Owner's prior written consent (if required), shall constitute a breach by Manager of the provisions hereof, and Owner may terminate this Agreement at any time after such change or assignment without such prior written consent by giving Manager five (5) days' prior written notice of such termination.

ARTICLE VIII

Notices

SECTION 8.01. Notices. Any notice, demand or other communication which may or is required to be given under this Contract shall be in writing and shall be: (a) personally delivered; (b) transmitted by United States postage prepaid mail, registered or certified mail, return receipt requested; (c) transmitted by reputable overnight courier service, such as Federal Express; or (d) transmitted by legible facsimile (with answer back confirmation) to Owner and Manager as listed below. Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given on (i) the date of receipt if delivered personally, (ii) two (2) business days after the date of posting if transmitted by registered or certified mail, return receipt requested, (iii) the first (1st) business day after the date of deposit, if

transmitted by reputable overnight courier service, or (iv) the date of transmission with confirmed answer back if transmitted by facsimile, whichever shall first occur. A notice or other communication not given as herein provided shall only be deemed given if and when such notice or communication and any specified copies are actually received in writing by the party and all other persons to whom they are required or permitted to be given. Any notice may be given on behalf of either party by such party's legal counsel. Owner and Manager may change its address for purposes hereof by notice given to the other parties in accordance with the provisions of this Section, but such notice shall not be deemed to have been duly given unless and until it is actually received by the other parties. Notices hereunder shall be directed as follows:

If to Manager:	American Assets, Inc. 11455 El Camino Real, Suite 200 San Diego, CA 92130
If to Owner:	Novato FF Property, LLC c/o American Assets, Inc. 11455 El Camino Real, Suite 200 San Diego, CA 92130
with a copy to:	GE Asset Management Incorporated One Century Plaza 2029 Century Park East, Suite 2000 Los Angeles, CA 90067-3006 Attn: Roland Siegl Fax: (310) 556-0144
with a copy to:	GE Asset Management Incorporated 3001 Summer Street Stamford, CT 06904 Attn: Leanne Dunn Fax: (203) 356-4608
with a copy to:	Latham & Watkins LLP 600 West Broadway, Suite 1800 San Diego, CA 92101 Attn: Finance Department Notices GEPT – Fireman's Fund – BPS) Fax: (619) 696-7419

ARTICLE IX

Miscellaneous

SECTION 9.01. Qualification/Licenses. Manager shall, at its sole cost and expense, qualify to do business in the state where the Project is located and obtain and maintain such licenses as may be required for the performance by Manager and each of Manager's employees, agents and representatives of their respective services under this Agreement.

SECTION 9.02. Severability. Each provision of this Agreement is intended to be severable. If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

SECTION 9.03. Attorneys' Fees. In the event either of the parties hereto shall institute any action or proceeding against the other party relating to this Agreement, the non-prevailing party in such action or proceeding shall reimburse the prevailing party for its disbursements incurred in connection therewith and for its reasonable attorneys' fees.

SECTION 9.04. No Waiver. No consent or waiver, express or implied, by either party hereto or of any breach or default by the other party in the performance by the other of its obligations hereunder shall be valid unless in writing, and no such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of Owner shall not be construed to waive or limit the need for such consent in any other or subsequent instance.

SECTION 9.05. Governing Law; Amendments. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue of any action or proceeding brought by either party against the other arising out of this Agreement shall, to the extent legally permissible, be in Los Angeles County, California. This Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof. This Agreement may not be changed, waived, discharged or terminated orally but only by an instrument in writing signed by the person or entity against whom enforcement is sought.

SECTION 9.06. Interpretation. Unless otherwise specified herein, (a) the singular includes the plural and the plural the singular, (b) words importing any gender include the other gender, (c) references to persons include their permitted successors and assigns, (d) words and terms which include a number of constituent parts, things or elements shall be construed as referring separately to each constituent part, thing, or element thereof, as well as to all of such constituent parts, things or elements as a whole, (e) references to statutes are to be construed as including all rules and regulations adopted pursuant to the statute referred to and all statutory provisions consolidating, amending or replacing the statute referred to, (f) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms, (g) the words "approve", "consent" and "agree" or derivations of said words or words of similar import mean, unless otherwise expressly provided herein, the prior approval, consent or agreement in writing of the person holding the right to approve, consent or agree with respect to the matter in question, and the words "require", "judgment" and "satisfy" or derivations of said

words or words of similar import mean the requirement, judgment or satisfaction of the person who or which may make a requirement or exercise judgment or who or which must be satisfied, which approval, consent, agreement, requirements, judgment or satisfaction shall be in the sole and absolute discretion of the person or entity holding the right to approve, consent or agree, or who may make a requirement or judgment, or who must be satisfied, (h) the words "include" or "including" or words of similar import, shall be deemed to be followed by the words "without limitation", (i) the words "hereto" or "hereby" or "herein" or "hereof" or "hereunder", or words of similar import, refer to this Agreement in its entirety, (j) unless otherwise expressly provided herein, all references to Articles and Sections are to the Articles and Sections of this Agreement, (k) in computing any time period hereunder, the day of the act, event or default after which the designated time period begins to run is not to be included, and the last day of the period so computed is to be included, unless any such last day is not a business day in which event, such time period shall run until the next day which is a business day, and (l) the headings of Articles and Sections contained in this Agreement are inserted as a matter of convenience and shall not affect the construction of this Agreement. Owner and Manager have each jointly, with the advice and assistance of their respective legal counsel, participated in the negotiation and drafting of all of the terms and provisions of this Agreement, and, accordingly, it is agreed that no term or provision of this Agreement shall be construed in favor of or against any party by virtue of the authorship or purported authorship thereof by any party. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT TIME IS OF THE ESSENCE WITH RESPECT TO THIS AGREEMENT AND THE RESPECTIVE RIGHTS, OBLIGATIONS AND DUTIES OF THE PARTIES HERETO.

SECTION 9.07. Estoppel Certificates. Manager agrees to execute and deliver, at Manager's sole cost, to Owner, the holder of any lien, now or hereafter, against the Project or any prospective purchaser of the Project, a certificate pursuant to which (a) Manager discloses whether Owner is then in default hereunder, (b) Manager discloses whether this Agreement has been modified and, if so, enclosing a copy of such modification, and (c) Manager discloses such other and further matters as may be reasonably requested by Owner or such other person or entity.

SECTION 9.08. Representations and Warranties. Manager represents and warrants to Owner that:

(a) Manager is a corporation, duly organized and validly existing and in good standing under the laws of the State of California and has all requisite power and authority to carry on its business as now conducted and to execute, deliver and perform this Agreement;

(b) the execution, delivery and performance by Manager of this Agreement are within its power, have been authorized by all necessary action and do not contravene any provision of its formation or other governing documents;

(c) this Agreement has been duly executed and delivered by an authorized representative of Manager and represents a valid and binding obligation of Manager enforceable in accordance with its terms;

(d) the execution, delivery and performance of this Agreement does not conflict with or result in a breach of any of the provisions of or constitute a default under any bond, note or other evidence of indebtedness, indenture, mortgage, deed of trust, loan agreement or similar instrument, any lease or any other material agreement or contract by which Manager, its activities or, to the best of Manager's knowledge, the Project is bound or any applicable law or order, rule or regulation of any court or governmental authority having jurisdiction over Manager, its activities or, to the best of Manager's knowledge, the Project;

(e) Manager has obtained all licenses and permits necessary to legally and validly execute and deliver this Agreement and to perform its obligations hereunder, including, without limitation, any and all necessary brokerage or similar licenses under the laws of the state where the Project are located; and

(f) no order, permission, consent, approval, license, authorization, registration or filing by or with any governmental authority having jurisdiction over Manager, its activities or, to the best of Manager's knowledge, the Project is required for the execution, delivery or performance by Manager of this Agreement.

SECTION 9.09. No Partnership, Etc. Nothing in this Agreement shall be construed as making Owner or Manager partners, joint venturers or members of a joint enterprise or as creating between Owner and Manager any employer-employee relationship.

SECTION 9.10. Subordination. This Agreement shall be subject and subordinate to any financing or refinancing by debt, sale and leaseback or any other form of financing, relating to the Project and any deed of trust, mortgage or other instrument securing any financing hereinafter constituting a lien upon the Project or any part thereof other than a lien held by a party related to Owner. The subordination provided in this Section shall be self-operative and shall not require any further instrument or document. However, upon the request of Owner, Manager shall promptly execute, acknowledge and deliver to the holder of such financing or refinancing an instrument in form and substance satisfactory to Owner and such holder confirming such subordination and containing such other provisions as Owner or such holder shall reasonably request. Without limiting the generality of the foregoing and notwithstanding anything herein to the contrary, it is understood and agreed that, in the event of a sale or in lieu of foreclosure of any deed of trust, mortgage or other instrument to which this Agreement is subordinated pursuant to this Section, the purchaser or other transferee of the Project shall have no obligation which it might otherwise have to pay or perform any of Owner's obligations hereunder and the Project shall not be subject to any lien or other encumbrance for such obligations which it might otherwise be subject to. In the event Manager fails to execute, acknowledge and deliver an instrument required above within ten (10) business days after Owner's request for such an instrument, Owner shall have the right as attorney-in-fact for Manager to execute, acknowledge, deliver and record such an instrument on behalf of Manager, and Manager hereby irrevocably appoints Owner as Manager's attorney-in-fact coupled with an interest (with full power to substitute any other person in its place as such attorney-in-fact) to execute, acknowledge, deliver and record such an instrument or take any other action incidental thereto as Owner shall deem appropriate in its discretion, and Manager hereby irrevocably authorizes and directs any person to act upon the foregoing appointment and a certificate of Owner (or any person acting in Owner's place) that it is entitled to act as such attorney-in-fact for such purpose.

SECTION 9.11. Limitation of Liability. Manager acknowledges and agrees that Owner, each partner or shareholder thereof and their respective officers, directors, employees, trustees, successors and assigns shall have no personal liability for the payment or performance of any obligations hereunder. Notwithstanding anything to the contrary contained herein, if Manager shall recover any judgment against Owner in connection with this Agreement, Manager shall look solely to Owner's interest in the Project and the proceeds thereof and to any insurance on which Manager is named as additional insured for the collection or enforcement of any such judgment, and no other assets of Owner or such other persons and entities shall be subject to levy, execution or other process for the satisfaction or enforcement of such judgment, and neither Owner nor any person or entity having an interest, directly or indirectly, in Owner shall be liable for any deficiency.

SECTION 9.12. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original with the same effect as if the signatures thereto and hereto were on the same instrument.

SECTION 9.13. Waiver of Liens**.** To the extent the law of the state in which the Project is located provides Manager with any right to file a lien against the Project for the sums due Manager under this Agreement, Manager hereby irrevocably and unconditionally waives its right to assert or file such a lien.

SECTION 9.14. Waiver of Trial by Jury. TO THE EXTENT PERMITTED BY LAW, MANAGER AND OWNER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED UPON THIS AGREEMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER MANAGER OR OWNER.

SECTION 9.15. Additional Remedies. The rights and remedies of Owner and Manager under this Agreement shall not be mutually exclusive, that is, the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. Each of the parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agrees that, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy, but nothing herein contained is entitled to nor shall it limit or affect any right or rights at law or by statute or otherwise of either party aggrieved as against any other party for breach or threatened breach of any provisions of this Agreement, it being the intention of this Section 9.15 to make clear the agreement of Owner and Manager that the respective rights and obligations of Owner and Manager under this Agreement shall be enforceable in equity as well as at law or otherwise.

SECTION 9.16. Manager's Employees. Owner agrees not to solicit for hire any employee of Manager during the term of this Agreement and for a period of one hundred eighty (180) days after the termination or expiration of this Agreement.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of (but not necessarily on) the date first above written.

OWNER:

NOVATO FF PROPERTY, LLC,
a Delaware limited liability company

By: _____
Name: Robert Barton
Title: CFO

MANAGER:

AMERICAN ASSETS, INC.,
a California corporation

By: _____
Name: John Chamberlain
Title: CEO

EXHIBIT A

Legal Description

Real property in the City of Novato, County of Marin, State of California, described as follows:

PARCEL A:

PARCEL ONE:

PARCEL 2, AS SHOWN UPON THAT CERTAIN PARCEL MAP ENTITLED, “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4,1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL TWO:

EASEMENTS AND RIGHTS, INCLUDING WITHOUT LIMITATION RIGHTS RELATING TO THE USE, REPAIR, MAINTENANCE OR IMPROVEMENTS OF CERTAIN REAL PROPERTY, AS PROVIDED FOR IN THE DECLARATION ESTABLISHING COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS RECORDED OCTOBER 4, 1984 AS RECORDER’S SERIAL NO. 84-047231 AND RE-RECORDED DECEMBER 20,1984 AS RECORDER’S SERIAL NO. 84-058411, AND AMENDMENT THERETO RECORDED JUNE 1,1989 AS RECORDER’S SERIAL NO. 89-031686, MARIN COUNTY RECORDS, OVER THAT PORTION OF PARCEL 1 DESIGNATED “COMMON AREA EASEMENT APPURTENANT TO PARCEL 2 & 3”, AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR FIRE MAIN PURPOSES OVER THOSE AREAS OF PARCEL 1 DESIGNATED “C FIRE MAIN EASEMENT (10’ WIDE) APPURTENANT TO PARCELS 2 & 3” AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4,1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER PARCEL 1 (22 P.M. 36) AS CONVEYED IN THAT

CERTAIN RECIPROCAL GRANT OF EASEMENTS AND AGREEMENT WHICH WAS RECORDED JULY 17,1985 AS RECORDER'S SERIAL NO. 85-029843, MARIN COUNTY RECORDS.

PARCEL B:

PARCEL ONE:

PARCEL 3, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORDS OCTOBER 4,1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL TWO:

EASEMENTS AND RIGHTS, INCLUDING WITHOUT LIMITATION RIGHTS RELATING TO THE USE REPAIR, MAINTENANCE OR IMPROVEMENTS OF CERTAIN REAL PROPERTY, AS PROVIDED FOR IN THE DECLARATION ESTABLISHING COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS RECORDED OCTOBER 4, 1984 AS RECORDER'S SERIAL NO. 84-47231, AND RE-RECORDED DECEMBER 20,1984 AS RECORDER'S SERIAL NO. 84-58411, AND AMENDMENT THERETO RECORDED JUNE 1,1989 AS RECORDER'S SERIAL NO. 89-31686, MARIN COUNTY RECORDS, OVER THAT PORTION OF PARCEL 1 DESIGNATED "COMMON AREA EASEMENT APPURTENANT TO PARCEL 2 & 3", AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL THREE:

NON-EXCLUSIVE EASEMENT FOR FIRE MAIN PURPOSES OVER THOSE AREAS OF PARCEL 1 DESIGNATED "C FIRE MAIN EASEMENT (10' WIDE) APPURTENANT TO PARCELS 2 & 3" AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4,1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FOUR:

NON-EXCLUSIVE EASEMENT FOR ACCESS AND PUBLIC UTILITY PURPOSES, WATER LINE AND SANITARY SEWER PURPOSES OVER THAT PORTION OF PARCEL 1 DESIGNATED "ACCESS & PUBLIC UTILITY EASEMENT & W.L.E. & S.S.E. APPURTENANT TO PARCEL 3" AS SAID PARCEL AND EASEMENT ARE SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER PARCEL 1 (22 P.M. 36) AS CONVEYED IN THAT CERTAIN RECIPROCAL GRANT OF EASEMENTS AND AGREEMENT WHICH WAS RECORDED JULY 17,1985 AS RECORDER'S SERIAL NO. 85029843, MARIN COUNTY RECORDS.

PARCEL C:

PARCEL ONE:

PARCEL 1, AS SHOWN UPON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL TWO:

EASEMENTS AND RIGHTS, INCLUDING WITHOUT LIMITATION RIGHTS RELATING TO THE USE, REPAIR, MAINTENANCE OR IMPROVEMENTS OF CERTAIN REAL PROPERTY, AS PROVIDED FOR IN THE DECLARATION ESTABLISHING COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS RECORDED OCTOBER 4,1984 AS RECORDER'S SERIAL NO. 84-047231 AND RE-RECORDED DECEMBER 20,1984 AS RECORDER'S SERIAL NO. 84-058411, AND AMENDMENT THERETO RECORDED JUNE 1,1989 AS RECORDER'S SERIAL NO. 89-031686, MARIN COUNTY RECORDS.

PARCEL THREE:

AN EASEMENT FOR THE COOLING TOWER, COOING TOWER PIPELINE AND ACCESS TO THE COOLING TOWER OVER THOSE CERTAIN EASEMENTS DESIGNATED "COOLING TOWER EASEMENT APPURTENANT TO PARCEL 1", "C COOLING TOWER PIPELINE EASEMENT (10' WIDE) APPURTENANT TO PARCEL 1", AND "COOLING TOWER ACCESS EASEMENT APPURTENANT TO PARCEL 1", ALL LYING WITHIN THE BOUNDARIES OF PARCEL 3 AS SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP FIREMAN'S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR FIRE MAIN PURPOSES, 10 FEET WIDE, OVER THOSE PORTION OF PARCELS 2 AND 3 DESIGNATED "C FIRE MAIN

EASEMENT (10’ WIDE) APPURTENANT TO PARCELS 1 & 2” AND “C FIRE MAIN EASEMENT (10’ WIDE) APPURTENANT TO PARCELS 1 & 3” AS SHOWN UPON THAT CERTAIN MAP ENTITLED “PARCEL MAP FIREMAN’S FUND, A PORTION OF 3307 O.R. 154, NOVATO, MARIN COUNTY, CALIFORNIA”, FILED FOR RECORD OCTOBER 4, 1984 IN VOLUME 22 OF PARCEL MAPS, AT PAGE 36, MARIN COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION THEREOF CONTAINED IN THE QUITCLAIM DEED RECORDED NOVEMBER 5,1993 AS RECORDER’S SERIAL NO. 93-093959, MARIN COUNTY RECORDS.

PARCEL FIVE:

NON-EXCLUSIVE EASEMENTS FOR FIRE MAIN PURPOSES AS CONTAINED IN THE DEED FROM 775/779 SAN MARIN ASSOCIATES, L.P. RECORDED NOVEMBER 15,1993 AS RECORDER’S SERIAL NO. 93-093960, MARIN COUNTY RECORDS.

PARCEL SIX:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER PARCEL 2 (22 P.M. 36) AS CONVEYED I N THAT CERTAIN RECIPROCAL GRANT OF EASEMENTS AND AGREEMENT WHICH WAS RECORDED JULY 17,1985 AS RECORDER’S SERIAL NO. 85-029843, MARIN COUNTY RECORDS.

EXHIBIT B

Manager's Certificate

American Assets, Inc. ("Manager") hereby certifies to Novato FF Property, LLC ("Owner") that as of May 15, 2007, Manager is not, and that so long as the Asset Management Agreement, dated as of May 15, 2007, by and between Owner and Manager remains in effect, Manager will not become, "a person related to" Owner or any partner of Owner within the meaning of Section 267(b) of the Internal Revenue Code of 1986, as amended, (without modification by Section 267(e)(1)) or Section 707(b)(1)). For purposes of the preceding sentence, Sections 267(b) and 707(b)(1) shall be applied by (1) substituting "80 percent or more" for "more than 50 percent" each place it appears in such sections, (2) excluding brothers and sisters from the members of a person's family, and (3) disregarding section 267(f)(1)(A).

AMERICAN ASSETS, INC.,
a California corporation

By: /s/ Christopher Seaman
Name: Christopher Seaman
Title: Vice President/General Counsel

EXHIBIT C

Project Loan Documents

1. Amended and Restated Promissory Note A-1 for $99,879,692.00, dated October 1, 2005, by First States Investors 239, LLC, a Delaware limited liability company, for the benefit of Bank of America, N.A., a national banking association.
2. Amended and Restated Promissory Note A-1 for $90,578,395.00, dated October 1, 2005, by First States Investors 239, LLC, a Delaware limited liability company, for the benefit of Bank of America, N.A., a national banking association.
3. Note Severance Agreement, dated October 1, 2005, between First States Investors 239, LLC, a Delaware limited liability company, as borrower, and Bank of America, N.A., a national banking association, as lender.
4. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated August 5, 2005, by First States Investors 239, LLC, a Delaware limited liability company, as borrower, to First American Title Insurance Company, a California corporation, as trustee, for the benefit of Mortgage Electronic Registration Systems, Inc., a Delaware stock corporation, as beneficiary.
5. Assignment of Leases And Rents, dated August 5, 2005, by First States Investors 239, LLC, a Delaware limited liability company, as assignor, for the benefit of Mortgage Electronic Registration Systems, Inc., a Delaware stock corporation, as assignee.
6. Loan Agreement, dated August 5, 2005, between First States Investors 239, LLC, a Delaware limited liability company, as borrower, and Bank of America, N.A., a national banking association, as lender.
7. First Amendment to Loan Agreement, dated December 6, 2005, among First States Investors 239, LLC, a Delaware limited liability company, as borrower, Bank of America, N.A., a national banking association, as lender, and Bank of America, N.A., a national banking association, as master servicer for Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-5.
8. Assignment of Agreements, Permits and Contracts, dated August 5, 2005, by First States Investors 239, LLC, a Delaware limited liability company, for the benefit of Bank of America, N.A., a national banking association.
9. Exceptions to Non-Recourse Guaranty, dated August 5, 2005, by First States Group, L.P., a Delaware limited partnership, as guarantor, for the benefit of Bank of America, N.A., a national banking association, as lender.
10. Environmental Indemnity Agreement, dated August 5, 2005, by First States Investors 239, LLC, a Delaware limited liability company, and First States Group, L.P., a Delaware limited partnership, each as an indemnitor, for the benefit of Bank of America, N.A., a national banking association, as indemnitee.

11. UCC Financing Statement, by First States Investors 239, LLC, a Delaware limited liability company, for the benefit of Mortgage Electronic Registration Systems, Inc., a Delaware stock corporation.

EXHIBIT D

Certain Bank Accounts

Cash Management Account	**Account No. 1235465879 at Bank of America, N.A.**
Operations Account	**Account No. 4121518187 at Wells Fargo Bank, N.A.**
Money-Market Account	**Account No. 12957957 at Wells Fargo Bank, N.A.**

EXHIBIT E

Additional Duties of Manager

Section 1.01. General. The Property has certain unique development opportunities that require material active management, including, without limitation: (i) the development of approximately 600,000 square feet of unimproved land at the Property; and (ii) the re-deployment of material unoccupied space within the presently leased buildings at the Property (consisting of greater than 136,000 rentable square feet that the existing tenant at the Property is not occupying) so as to transform one or more of the buildings at the Property from a single-tenant space into a multi-tenant space (it being understood that in the event of the occurrence of such conversion, Manager shall provide the property management services). The potential utilization of any development opportunities at the Property are material to the decision by Novato FF Venture, LLC to invest in Owner and the Manager shall be responsible for actively managing the successful realization of such opportunities. Manager agrees that it shall use its best efforts to enhance the likelihood of successful realization of the development opportunity. Owner shall have the final determination, acting in its sole and absolute discretion, whether or not to proceed with any such development opportunities.

Section 1.02. Evaluation. In furtherance of the foregoing, Manager shall, within 120 days of the execution of the Agreement, (a) through brokers, consultants or otherwise, evaluate the potential market for leasing activity, including, without limitation, the status of the regional and local economy, the level of demand for local office space, the condition and characteristics of the Property, its location, ability to be expanded, other competing available properties in the region, and recent lease prices on comparable properties in the region; and (b) explore with the existing tenant any modifications to the terms of the existing leases at the Premises that may be necessary or, in the judgment of Manager, facilitating to the successful exploitation of (i) the development of the unimproved space described in Section 1.01 above of this Exhibit or (ii) the redeployment of the unoccupied space within the presently leased buildings. Within said 120 day period, Manager shall provide Owner with a written report summarizing its then current conclusions with respect to such issues, and Manager further shall update such report with supplemental written reports, as provided in Section 3.04(d) of the Agreement.

Section 1.03. Approval. Upon approval by Owner of any re-deployment or development opportunity for the Property, Manager, within 90 days of such approval, shall, as applicable:

(a) obtain and provide Owner with lease price and market summaries for the region;

(b) coordinate the development of marketing plans and materials for use in leasing;

(c) work diligently to negotiate suitable terms for the recapture of existing space and to procure new tenants for such space, including, but not limited to, hiring, supervision, and termination of leasing brokers to assist in the leasing of available spaces (if applicable);

(d) obtain and provide Owner with cost evaluations and estimates pertaining to the proposed construction of any additional building(s) on the Property or the re-deployment of any recaptured space within the existing buildings;

(e) meet with economic development entities involved in the community, as well as appropriate public agencies in the region;

(f) prepare a physical analysis of the facility for use in space planning, and make engineering recommendations on conditions affecting retrofitting and utilization of the Property;

(g) proceed with all steps necessary and appropriate for such further development and/or re-tenanting of the Property.

Section 1.04. Construction Management. In furtherance of any additional development and/or re-deployment of the Property approved in writing by the Owner, Manager shall:

(a) provide supervision of all construction and administrative personnel required for the construction of any development of the Property, including, without limitation, any contractors, consultants, legal counsel, and accounting personnel. All employees (except independent contractors retained by Manager from time to time) shall be employed directly by Manager who shall be solely responsible for fulfilling all payroll tax functions with respect to the same;

(b) supervise the books of account of the general contractor (which books shall be subject to inspection by Owner at all times) of all receipts and charges for the development project and render monthly written statements to Owner of receipts and charges for such project;

In fulfilling its obligations under this Section 1.04, Manager shall not be obligated to make any monetary advance or incur any liability for the account of the Owner. Manager may advance such funds as it deems necessary and the Owner agrees in such cases that upon notice by Manager, the Owner shall pay Manager the sums necessary to cover such funds.

Section 1.05. Asset Management.

(a) Manager shall supervise appraisers, counsel, and other consultants retained by Owner to evaluate Property value, performance, potential, and/or condition.

(b) Manager shall appeal property assessments or tax valuations, upon Owner's request or upon Managers reasonable estimate of success in reducing said assessments or tax valuations.

(c) Manager shall supervise the property management function, perform inspections of property, and shall when appropriate, make recommendations to Owner for changes, alterations, or capital improvements to enhance the value of the Property and optimize cash flow.

EXHIBIT E

Initial Annual Plan

The Initial Annual Plan for the Company (covering the period from the date hereof (assuming for this purpose that the closing of the purchase of the Property under the Purchase and Sale Agreement occurs on the date hereof) through December 31 2007) is for the Company to own and operate the Property for the balance of calendar year 2007 (with the revenues from the Property more than covering the associated expenses and debt service, as indicated in the attached Operating Budget and the Capital Budget). In addition, during the period from the date hereof (assuming for this purpose that the closing of the purchase of the Property under the Purchase and Sale Agreement occurs on the date hereof) through December 31 2007, the Managing Member shall take the following actions: (i) explore the opportunity to develop the approximately 600,000 square feet of unimproved land at the Property, (ii) explore the opportunity to re-deploy the material space within the presently leased buildings at the Property of greater than 136,000 rentable square feet of which the existing tenant at the Property is not occupying so as to transform one or more of the buildings at the Property from a single-tenant space into a multi-tenant space, and (iii) work with the tenant at the Property in order to enhance the entry and inspection rights of the landlord at the Property.

EXHIBIT F

Form of Reimbursement Agreement

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (the "**Agreement**") is made by Novato FF PT Investor, LLC, a Delaware limited liability company ("**GEPT SPE**") in favor of American Assets, Inc., a California corporation ("**AAI**"), as of _____, 20__.

Recitals

A. GEPT SPE and Pacific Novato Holdings, LP, a California limited partnership ("**AA SPE**"), are parties to that certain Amended and Restated Limited Liability Company Agreement of Novato FF Venture, LLC dated as of May **[__]**, 2007 (the "**LLC Agreement**").

B. Pursuant to Section 10.12 of the LLC Agreement, it is a condition precedent for the benefit of **[AA SPE][AAI]** to the closing of a transaction described in **[Section 10.2 of the LLC Agreement where GEPT SPE is the Non-Transferring Member][Section 10.3 of the LLC Agreement where GEPT SPE is the Purchasing Member][Section 10.4 of the LLC Agreement where GEPT SPE is the Buyer Member]** that GEPT SPE shall execute a reimbursement agreement in the form attached hereto as Exhibit F (the "**Reimbursement Agreement**"). As used herein, the term "Closing" shall refer to the closing of such transfer set forth in the preceding sentence.

C. GEPT SPE now desires to execute and deliver this Agreement in order to enable GEPT SPE to proceed with Closing. Capitalized terms used herein and not otherwise defined herein shall have the meaning given such terms in the LLC Agreement.

Agreement

Now, therefore, for good and valuable consideration, including, without limitation, the understanding that GEPT SPE could not proceed with the Closing were it not for the delivery of this Agreement, GEPT SPE hereby agrees as follows:

1. Upon presentation of evidence reasonably satisfactory to GEPT SPE demonstrating that **[AA SPE][AAI]** has incurred any of the following (such evidence to be provided by **[AA SPE][AAI]** to GEPT SPE within forty-five (45) days of the incurrence thereof), GEPT SPE shall reimburse **[AA SPE][AAI]**, within thirty (30) days of receipt of such evidence, for the following:

(i) any loss reasonably suffered under that certain Exceptions to Non-Recourse Guaranty, dated August 5, 2005 (as assumed by **[AA SPE][AAI]** pursuant to that certain Loan Assumption Agreement, dated May **[__]**, 2007) due to events taking place after the Closing; or

(ii) any loss reasonably suffered under that certain Environmental Indemnity Agreement, dated August 5, 2005 (as assumed by **[AA SPE][AAI]** pursuant to that certain **[**Loan Assumption Agreement, dated May **[__]**, 2007), due to events taking place after the Closing.

2. As collateral security for the prompt payment in full when due of the obligations set forth in paragraph (1) above, GEPT SPE hereby pledges and grants to **[AA SPE][AAI]** a security interest in all of GEPT SPE's right, title and interest in and to the following property, whether now owned or in the future acquired by GEPT SPE and whether now existing or in the future coming into existence (all of the property, assets and revenues described in this Section 2 being collectively, the "**Collateral**"):

(i) all of the Interests of GEPT SPE in the Company (collectively, the "**Pledged Ownership Interests**"); and

(ii) all shares, partnership interests, membership interests, securities, moneys or property representing a dividend on any of the Pledged Ownership Interests, or representing a distribution or return of capital upon or in respect of the Pledged Ownership Interests, or resulting from a split-up, revision,

reclassification or other like change of the Pledged Ownership Interests or otherwise received in exchange therefore, and any subscription warrants, rights or options issued to the holders of, or otherwise in respect of, the Pledged Ownership Interests.

3. GEPT SPE shall be entitled to a release of the liens created by this Agreement at such time as the Lender releases its security interest in the Property in accordance with the terms of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated August 5, 2005 (as assumed by AA SPE pursuant to that certain Loan Assumption Agreement, dated May **[__]**, 2007). **[AA SPE][AAI]** shall execute and deliver to GEPT SPE such documentation as GEPT SPE shall reasonably request to effect the termination and release of the liens created under this Agreement.

4. Miscellaneous. This Agreement shall be enforced under the laws of the State of California. The parties hereto hereby agree to pay all reasonably attorneys' fees and all other reasonably costs and out-of-pocket expenses which may be incurred by the other party in the enforcement or collection of this Agreement in the event that suit is filed. All amounts required to be paid to a party by the other party pursuant to the provisions of this Agreement shall bear interest from and after the date due at a rate of ten percent (10%) per annum. This Agreement embodies the entire agreement of the parties pertaining to the subject matter hereof. This Agreement may be amended, modified or supplemented only by a writing executed by each of the parties. The parties agree that any suit, action or proceeding arising out of or relating to this Agreement, or the interpretation, performance, or breach of this Agreement, shall be instituted in the United States District Court for the Central District of California or any court of the State of California located in Los Angeles County, and each party irrevocably submits to the jurisdiction of these courts and raises any and all objections to jurisdiction or venue that it might have under the laws of the State of California or otherwise. Time is of the essence with respect to each provision of this Agreement. The invalidity or unenforceability of any particular provision of this Agreement shall not effect the other provisions, and this Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted. Each party agrees to perform any and all further acts and to execute and deliver any and all further documents which may be reasonably necessary or requested to effect the provisions of this Agreement. **[AA SPE][AAI]** agrees that this document satisfies the obligations of GEPT SPE pursuant to the section referenced in Recital B above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, sealed and delivered through their authorized signatories the day and year first above written.

Novato FF PT Investor, LLC,
a Delaware limited liability company

By: _____
Roland Siegl
Its Authorized Signatory

American Assets, Inc.,
a California corporation

By: _____
Name:
Title:

SCHEDULE A

Schedule of Members

See attached

SCHEDULE B

Major Decisions

1. Approving the merger, consolidation, dissolution, transfer or winding up of the Company or the Property Company LLC.

2. Approving any changes in the purposes of the Company or the Property Company LLC or engaging in any other business not related to the purpose of the Company or the Property Company LLC.

3. (a) Responding to a petition filed against the Company or the Property Company LLC for a proceeding under any bankruptcy, insolvency, reorganization, or similar act, (b) filing of any consent to any such proceeding against the Company or the Property Company LLC, (c) making any decision to contest or not to contest such proceeding against the Company or the Property Company LLC, (d) making a general assignment of the property of the Company or the Property Company LLC for the benefit of creditors, (e) appointing, or acquiescing in the appointment of, a custodian or receiver, and (f) taking any actions with respect to any of the foregoing proceedings other than those which are routine and non-substantive. Notwithstanding the foregoing, if any Member or a member or partner in the Member is also the holder of any interest in any Loan secured by a mortgage on the Property, any such Member shall have no right to vote on any decision as to whether or not the Company or the Property Company LLC will take any of the foregoing bankruptcy-related actions unless such Member or member or partner in the Member, in its capacity as a holder of an interest in a Loan, has waived its right to vote on remedial actions to be taken by the holders of such Loan if the Company or the Property Company LLC takes any of the foregoing bankruptcy-related actions.

4. Admitting an additional Member or selling or issuing any additional membership interests in the Company or the Property Company LLC.

5. Approving of the terms of any Loan, including the pledge or encumbrance of any Company Assets in connection with any such Loan, the terms of any Loan Documents and of any non-ministerial amendment, modification, supplement, restatement, restructure or refinance thereof, other than any unsecured trade obligations of the Property Company LLC incurred in the ordinary course of business which do not exceed, in the aggregate $50,000 and responding to any notice of default under any Loan.

6. Approving the terms and conditions of any direct or indirect sale, transfer, exchange, mortgage, pledge, security interest, ground lease, master lease or other disposition of any kind of all or any part of the Property or the other assets of the Company or the Property Company LLC, except for (a) any lease or installment sales contract for personal property and equipment in the ordinary course of business provided for in the Annual Plan, or (b) any sale or disposition and/or replacement of personal property in the ordinary course of business.

7. Except as otherwise specifically provided in any Annual Plan or the Agreement, the making of Additional Capital Contributions.

8. Undertaking the development of the Property or improvements thereon not contemplated in the Annual Plan.

9. (a) Approving the Initial Annual Plan and each subsequent Annual Plan for the Company, all of which Annual Plans shall contain an Operating Budget and a Capital Budget,

which budgets shall include agreed upon line item tolerances (a specified maximum aggregate amount of which line item tolerances may be reallocated among the various line items by the Managing Member in its sole discretion) and an agreed upon general contingency line item, and (b) approving any modifications to any Annual Plan.

10. Approving of the terms of any Management Agreement and of any amendment, modification, supplement, restatement, or termination thereof, but not including the renewal or extension of a Management Agreement already in place.

11. Initiating or settling any litigation other than: (a) routine tenant dispossessory actions with tenants or other occupants in the ordinary course involving defaults of such tenants; (b) actions with service providers involving routine claims; and (c) matters covered by insurance where the claim is within the applicable deductible or not more than $100,000 over the applicable deductible.

12. Changing the Company's name, the Property Company LLC's name or the name under which the Company or the Property Company LLC conduct their respective businesses.

13. Regarding the financial affairs of the Company or the Property Company LLC, approving all accounting policies, including selecting depreciation schedules, accounting methods and making of all substantive decisions with respect to tax audits, approving the selection of the Company Accountants and any successor thereto, and approval of all changes (other than routine, non-substantive changes) to the foregoing accounting policies.

14. Except for (a) tenant improvements, and (b) capital improvements or renovations contained in any applicable Capital Budget, the decision to undertake any development, alteration, modification, improvement or renovation of the Property costing individually or, if in a series of related transactions, in the aggregate, in excess of $200,000.

15. Approving all material matters relating to: (a) casualties covered by insurance affecting the Property where the damage arising from any single casualty event or series of related casualty events where such claim in the aggregate is equal to or less than $100,000; and (b) any condemnation or eminent domain proceeding affecting the Property.

16. Approving the proposed response to any written default notice received from any lender under a Loan.

17. Approving the proposed settlement of any indemnity claim in excess of $100,000.

18. Approving reserves in excess of amounts set forth in the Annual Plan.

19. Approving any lease or license agreement in excess of 10,000 square feet.

20. Entry into any construction, development, service or other agreement by the Company or the Property Company LLC (other than a tenant lease or an Affiliate Agreement) which provides for a term of greater than three months or contemplates an aggregate amount to be spent in excess of $100,000; or any termination or material modification to any of the foregoing.

21. Obtaining any insurance policies not in conformity with Exhibit C to this Agreement.

22. Approving or disapproving any action to be taken by any Manager under the terms of any Management Agreement to the extent that such action would constitute a "Major Decision" hereunder.

23. With respect to any agreement applicable to the Company, the Property Company LLC or their respective assets, waiving any rights under or failing to enforce the provisions of any such agreement, except to the extent that any such action or inaction does not have a material adverse effect on the Property or on the business, assets, liabilities or operations of the Company or the Property Company LLC. The parties acknowledge and agree, however, that additional limitations apply to Affiliate Agreements under Section 4.4 and Section 4.13 hereof.

24. Approving any amendment, modification, supplement or termination of the Purchase and Sale Agreement or waiving any condition or covenant running in favor of the Property Company LLC under such Purchase and Sale Agreement.

Exhibit 23.3

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption “Experts” and to the use of our report dated September 13, 2010 with respect to the balance sheet of American Assets Trust, Inc. as of August 12, 2010; our report dated September 13, 2010 with respect to the combined financial statements of American Assets Trust, Inc. Predecessor at December 31, 2009 and 2008, and for each of the three years in the period ended December 31, 2009; our report dated September 13, 2010 with respect to the financial statements of Novato FF Venture, LLC at December 31, 2009 and 2008, and for each of the three years in the period ended December 31, 2009; our report dated September 13, 2010 with respect to the statements of revenues and certain operating expenses of The Landmark at One Market for the years ended December 31, 2009, 2008 and 2007; and our report dated September 13, 2010 with respect to the combined statements of revenues and certain operating expenses of Solana Beach Centre properties for the years ended December 31, 2009, 2008 and 2007, all included in the Registration Statement on Form S-11 and related Prospectus of American Assets Trust, Inc. for the registration of $500,000,000 of its common stock.

/s/ ERNST & YOUNG LLP

San Diego, California
September 13, 2010

Exhibit 23.4

Consent of Independent Registered Public Accounting Firm

We consent to the use in this Registration Statement on Form S-11 of American Assets Trust, Inc., of our report, dated March 31, 2010, relating to our audits of the financial statements of ABW Lewers LLC, appearing in the Prospectus, which is part of this Registration Statement.

We also consent to the reference to our firm under the caption "Experts" in the Prospectus.

/s/ ACCUITY LLP

Honolulu, Hawaii
September 13, 2010

Consent of Independent Registered Public Accounting Firm

We consent to the use in this Registration Statement on Form S-11 of American Assets Trust, Inc., of our report, dated April 21, 2010 (except as to Note 3 and Note 6 which are as of September 13, 2010), relating to our audits of the combined financial statements of Waikiki Beach Walk – Hotel, appearing in the Prospectus, which is part of this Registration Statement.

We also consent to the reference to our firm under the caption "Experts" in the Prospectus.

/s/ ACCUITY LLP

Honolulu, Hawaii
September 13, 2010

Exhibit 23.5

Consent of Rosen Consulting Group

We hereby consent to the (1) use of our name in the Registration Statement (including without limitation under the headings "Prospectus Summary," "Industry Background and Market Overview," "Business and Properties" and "Experts") to be filed by American Assets Trust, Inc., a Maryland corporation (the "Company"), on Form S-11 and the related prospectus and any amendments or supplements thereto (collectively, the "Registration Statement") with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "Securities Act"), (2) filing of the Rosen Consulting Group Market Study prepared for the Company (the "Market Study") as an exhibit to the Registration Statement, (3) references to and inclusion of the Market Study in, and making the Market Study part of, the Registration Statement, including without limitation under the headings "Prospectus Summary," "Industry Background and Market Overview," and "Business and Properties" and (4) filing of this consent as an exhibit to the Registration Statement.

Dated September 7, 2010

Rosen Consulting Group

By: /s/ Randall Sakamoto
Name: Randall Sakamoto
Title: Senior Vice President