

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
OFFICE OF FINANCIAL REGULATION,

CASE NO. 07-43672 CA 09

Plaintiff,

v.

BERMAN MORTGAGE CORPORATION
et al.,

Defendants,

and

DB ATLANTA, LLC, WATERSIDE ACQUISITIONS
LLC, et al.,

Relief Defendants.

MOTION OF BANK OF CORAL GABLES
FOR RELIEF FROM TEMPORARY INJUNCTION

Non-party Bank of Coral Gables ("Movant") moves the court for entry of an order granting it relief as to Dana Berman and the Receiver and states:

1. The Temporary Injunction and Agreed Order Appointing Receiver entered on or around December 11, 2007 in the above captioned proceeding enjoins all actions against defendants and relief defendants.

2. Movant is the mortgagee upon the following described property located in Brevard County, Florida:

Unit No. 2220 of EMERALD PARK, a Condominium, according to the Declaration of Condominium thereof recorded in Official Records Book 5509, Page 3487 of the Public Records of Brevard County, Florida; amended by that First Amendment to Declaration of Condominium of Emerald Park, a Condominium, dated December 6, 2005, recorded in Official Records Book 5575, Page 3127, of the same Brevard County Public Records.

Copies of the subject promissory note, real estate mortgage and security agreement and assignment of mortgage are appended as Exhibits "A," "B," and "C," respectively.

3. The mortgagors, Dana Berman and Darren Schwartz, failed to make the payment due for September, 2006, and all subsequent payments. The Receiver has failed to make a payment.

4. A receiver steps into the shoes of the corporation, individual or estate whose interests the receiver was appointed to protect and therefore, with respect to the subject property, a receiver takes the rights, causes and remedies associated therewith. *Hamilton v. Flowers*, 183 So. 811, 817 (1938); *Christian Broad Network, Inc. v. Starr*, 401 So.2d 1152, 1155 (Fla. 5th DCA 1981).

5. As of December 29, 2008 Dana Berman and Darren Schwartz owe Movant the principal amount of \$108,039.90, together with accrued and accruing interest, late fees, reasonable attorney's fees, costs and all other amounts due under the note and mortgage.

6. Movant seeks to take all appropriate action which includes, but is not limited to, filing of an action to foreclose its mortgage and claim under the note, add the receiver as a party defendant if necessary, complete the action through sale and including, but not limited to, issuance of a certificate of title by the Clerk of Court and dissolving the Court's Temporary Injunction and Agreed Order in limited part as requested herein.

7. Granting Movant the relief sought herein shall serve the interests of justice.

WHEREFORE, Movant respectfully requests that it be granted the relief sought herein.

CERTIFICATE OF SERVICE

I CERTIFY that on this 30th day of December, 2008, a copy of the foregoing was served via U.S. mail (and facsimile where indicated) to the parties appearing on the attached service list.

THE BARTHET FIRM

Attorneys for Plaintiff

200 South Biscayne Boulevard

Suite 1800

Miami, Florida 33131

Telephone Number (305) 347-5290

A handwritten signature in black ink, appearing to read 'P. Barthet', is written over a horizontal line.

PATRICK C. BARTHET

Florida Bar No: 294012

DANIEL MORMAN

Florida Bar No. 135038

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PROMISSORY NOTE

\$105,000.00

May 3, 2006

Miami, Florida

THIS NOTE (the "Note") is in the amount of One Hundred Five Thousand and No/100 Dollars (\$105,000.00) from DAREN SCHWARTZ, a married man, and DANA BERMAN, a married man ("Maker"), to WAYNE WITHERS ("Holder"), which Note is secured by a Mortgage and Security Agreement (the "Mortgage") of even date herewith executed by Maker in favor of Holder.

IN INSTALLMENTS and at the times hereinafter set forth, for value received, the undersigned Maker promises to pay to the order of WAYNE WITHERS, located at 10890 NW 29th St. Miami, Florida 33172, as Holder, the principal sum of One Hundred Five Thousand and No/100 Dollars (\$105,000.00). The interest rate under this Note shall be 6.625% per annum on the outstanding principal balance hereunder. The rate of interest to be applied and the amount of interest to be paid on the daily outstanding balance of principal evidenced hereby shall be calculated on an assumed year of three hundred sixty (360) days for the number of days actually elapsed.

Interest only on the outstanding principal under this Note shall be repaid in monthly installments, with the first such installment payment commencing July 1, 2006, and thereafter on the first (1st) day of each consecutive, successive month thereafter during the term of this Note to and including May 1, 2009. Payment of all outstanding principal under this Note plus all unpaid accrued interest thereon shall be due on May 2, 2009. Maker shall pay all amounts owing under this Note in full when due without set-off, counterclaim, or deduction for any reason whatsoever.

This Note is prepayable without penalty or premium in part or in whole.

All payments made on this Note shall first be applied to accrued interest and then to principal. After a default hereunder, payments may be applied in any order of priority determined by the Holder of this Note with interest accruing on the unpaid principal at the highest rate of interest permitted by applicable law. This Note shall be payable without offset or deduction by the Maker. Upon default in the payment of principal or interest due under this Note, the remaining unpaid balance at the option of the Holder shall forthwith become due and payable.

From time to time the maturity date of this Note may be extended, or this Note may be renewed, in whole or in part, or a new Note of different form may be substituted for this Note and/or the rate of interest may be changed, or changes may be made in consideration of loan

extensions, and the Holder, from time to time, may waive or surrender, either in whole or in part, rights, guarantees, security interests, or liens, given for the benefit of the Holder in connection with the payment and the securing of the payment of this Note but no such occurrence shall in any manner affect, limit, modify, or otherwise impair any rights, guarantees or security of the Holder not specifically waived, released, or surrendered in writing, nor shall the Maker or any guarantor or endorser or any other person who is or might be liable hereon, either primarily or secondarily, be released from such liability by reason of the occurrence of any such event. The Holder hereof, from time to time, shall have the unlimited right to release any person who is or might be liable hereon and such release shall not affect or discharge the liability of any other party who is or might be liable hereon. The Maker and such surety, endorser, and guarantor hereof (whether or not any such suretyship, endorsement, or guaranty or the execution thereto appears on this Note or is by separate instrument) hereby specifically consents and agrees to any renewal of this Note or to any extension, acceleration or postponement of the time of payment or any other indulgence, to any substitution, exchange, or release of any security given for the payment hereof and to the release of any party primarily or secondarily liable hereon without prejudice to the Holder and without notice to the Maker or any such endorser, guarantor, or surety, any such notice being hereby specifically waived.

The Maker and each surety, endorser, and guarantor hereof hereby jointly and severally waive presentment for payment, notice of non-payment, demand of payment, protest and notice of protest, notice of dishonor, and diligence in the collection of this Note and in filing suit hereon and in filing suit to enforce any security or collateral given for the payment hereof. The Holder hereof shall not be liable for failure to collect or lack of diligence in bringing suit in this Note or any renewal or extension hereof or upon or with respect to any security given for the payment hereof or for failure to diligently bring suit to enforce any security instrument or lien given as security for the payment hereof or for failure to make demand or presentment for payment or to protest or give notice of protest, dishonor, or nonpayment or any other notice, or generally for any act of omission or commission.

This Note and the indebtedness evidenced hereby are secured by a first mortgage of even date herewith from Maker to Holder. A default under the Mortgage shall constitute a default under this Note. Further, the Maker and each surety, endorser and guarantor hereof severally covenant and agree that time is specifically of the essence of each and every covenant and agreement contained in the security instruments given to secure the payment hereof and that in the event any payment required by this Note to be made is not paid when due, or if any default occurs under the provisions of any assignment, pledge, or other document or agreement which evidences or provides security for the indebtedness represented by this Note, or should any party primarily or secondarily liable hereon make an assignment for the benefit of creditors, or a receiver, custodian, liquidator, trustee, or like officer be appointed to take custody, possession or control over any property of any party primarily or secondarily liable hereon and shall not have been discharged within sixty (60) days after such appointment, or in the event proceedings be instituted by or against any party primarily or secondarily liable hereon under any Bankruptcy Act or amendment thereto and such bankruptcy proceedings remain undismissed for a period of sixty (60) days thereafter in the event of an involuntary petition, or should any party primarily or secondarily liable hereon admit in writing their inability to pay their debts generally as they become due or voluntarily consent to any bankruptcy or receivership proceedings, then, and in any of such events, the Holder hereof may, at its option, and without further notice or demand

(both of which are hereby expressly waived by all parties hereto) declare this Note in default and all indebtedness due and owing hereunder immediately due and payable. Any failure to exercise this option of acceleration shall not constitute a waiver of the right to exercise by the Holder hereof its aforesaid option of acceleration, at which time the entire unpaid balance of this Note shall be immediately due and payable together with interest from the date of default on such unpaid balance computed at a rate of interest equal to the highest rate of interest permitted by law.

If this Note is not paid promptly in accordance with its terms and is placed in the hands of an attorney for collection or if suit be instituted hereon or to enforce any security instrument given to secure the payment of this Note and as often as this Note is placed in the hands of an attorney for collection and as often as suit is filed to collect this Note or to enforce any such security instrument, the Maker and each surety, endorser, and guarantor hereof jointly and severally agree to pay in addition to the unpaid principal balance hereof all reasonable costs of collection of such unpaid Note balance, including without limitation reasonable attorneys' fees and court and investigatory costs.

In the event that the Maker does not pay any installment of principal or interest payable under the terms hereof within fifteen (15) days of the due date, a "late charge" of five percent (5%) of the payment due may also be charged by the Holder hereof on such delinquent installment payment; provided that only one (1) late charge shall be collected on any one (1) delinquent installment payment regardless of the period during which it remains in default. Such late charge may be assessed, however, on each delinquent installment payment.

If a law which applies to this loan and which sets maximum loan charges is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from the Maker which exceed permitted limits will be refunded to the Maker. The Holder may choose to make this refund by reducing the principal owed under this Note or by making a direct payment to the Maker. If a refund reduces principal, the reduction will be treated as a partial prepayment.

Florida documentary stamps in the amount required by law has been paid with respect to this Note and proper documentary stamps affixed to the mortgage securing the Note.

This Note is to be governed by and construed in accordance with the laws of the State of Florida. No invalid provision hereof shall affect or impair any other provision of this Note. The Maker hereof hereby acknowledges receipt of a completed copy of this Note.

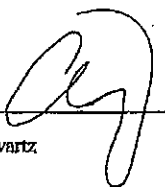
THE MAKER AND HOLDER HEREOF HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT ANY PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, ARISING OUT OF OR RELATED HERETO WHETHER, UNDER OR IN CONNECTION WITH THIS NOTE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THE MAKER AND


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FAX NO.

P. 14

HOLDER HEREOF ALSO AGREE THAT MIAMI-DADE COUNTY, FLORIDA, IS THE
PROPER VENUE FOR ANY AND ALL LEGAL PROCEEDINGS ARISING OUT OF THIS
NOTE.



Daren Schwartz

Dana Berman

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Record and Return to:
Baker Grönig Gassehner LLP.
307 Continental Plaza
3250 Mary Street
Coconut Grove FL 33133

THIS DOCUMENT PREPARED BY,
RECORD AND RETURN TO:

PAUL A. LESTER
FIELDSTONE LESTER SHEAR & DENBERG, LLP
201 Alhambra Circle, Suite 601
Coral Gables, Florida 33134

CFN 2006138209 05-09-2006 12:50 pm
OR Book/Page: 5642 / 7324

Scott Ellis
Clerk Of Courts, Brevard County
#Pgs: 20 #Names: 3
Trust: 10.50 Rec: 161.00 Serv: 0.00
Excise: 0.00
nt Tax: 210.00
Mtg: 367.50

(RESERVED FOR RECORDINGS OFFICIAL'S USE)

**FLORIDA REAL ESTATE MORTGAGE
AND SECURITY AGREEMENT**

This Mortgage and Security Agreement (the "Mortgage") is made and entered into as of the 3rdth day of May, 2006, by DAREN SCHWARTZ, a married person, and DANA BERMAN, a married person, whose address is 2220 Flower Tree Circle, Melbourne, Florida 32935 (the "Mortgagor"), and WAYNE WITHERS, whose address is 10890 NW 29th St. Miami, FL 33172 (the "Mortgagee" or the "Lender");

WITNESSETH:

WHEREAS, Mortgagor is justly and lawfully indebted to the Mortgagee in the sum of One Hundred Five Thousand and 00/100 Dollars (\$105,000.00) as evidenced by that certain Promissory Note executed by Mortgagor and payable to the order of Mortgagee, bearing the same date as this Mortgage and to be paid according to its terms (herein referred to as the "Loan" or the "Note"); and

WHEREAS, Mortgagor, and all other makers, endorsers, sureties, guarantors, accommodation parties and all persons liable or to become liable with respect to the Loan are each included in the term "Obligor" as used in this Mortgage;

NOW, THEREFORE, to secure the payment of the Loan and such future or additional advances as may be made by Mortgagee, at its option and for any purpose, to Mortgagor or Mortgagor's permitted successor(s) in title, provided that all those advances are to be made within twenty (20) years from the date of this Mortgage (the total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed twice the original principal amount of the Loan, plus interest and any disbursements made for the payment of taxes, levies or insurance on the Property covered by the lien of this Mortgage with interest on those disbursements), and to secure the full and faithful performance of the covenants and agreements contained in the Note,

THE SUBJECT PREMISES IS NOT THE HOMESTEAD OF MORTGAGOR.



EXHIBIT "B"

this Mortgage and all other instruments and documents executed in connection with the Loan by Mortgagor and/or any other Obligor (each a "Loan Document" and collectively the "Loan Documents"), Mortgagor hereby grants, bargains, sells, conveys, assigns, transfers, mortgages, pledges, delivers, sets over, warrants and confirms to Mortgagee, and grants Mortgagee a security interest in:

All of Mortgagor's right, title and interest in, to and under that certain lots, pieces, or parcels of land lying and being in said County and State (the "Property" or the "Premises") title to which Premises were obtained by Mortgagor from the proceeds of the said Promissory Note:

See Exhibit A attached hereto and made a part hereof by this reference.

TOGETHER WITH all and singular Mortgagor's right, title and interest in and to all buildings and improvements now or hereafter situated on the Property and all rights of Mortgagor to use and possess the same;

TOGETHER WITH all and singular the tenements, hereditaments, easements, riparian rights and other rights now or hereafter belonging or appurtenant to the Property, and the rights (if any) in all adjacent roads, ways, streams, alleys, strips and gores, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of Mortgagor of, in and to the same and every part and parcel thereof;

TOGETHER WITH any and all tangible property (collectively, the "Equipment") now or hereafter owned by Mortgagor and now or hereafter located at, affixed to, placed upon or used in connection with the Property or any present or future improvements thereon, including without limitation: all machinery, equipment, appliances, fixtures, conduits and systems for generating or distributing air, water, heat, air conditioning, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse, sewage or garbage, or for fire prevention or extinguishing; all elevators, escalators, lifts and dumb-waiters; all motors, engines, generators, compressors, pumps, lift stations, tanks, boilers, water heaters, furnaces and incinerators; all furniture, furnishings, fixtures, appliances, installations, partitions, shelving, cabinets, lockers, vaults and wall safes; all carpets, carpeting, rugs, underpadding, linoleum, tiles, mirrors, wall coverings, windows, storm doors, awnings, canopies, shades, screens, blinds, draperies and related hardware, chandeliers and light fixtures; all plumbing, sinks, basins, toilets, faucets, pipes, sprinklers, disposals, laundry appliances and equipment, and kitchen appliances and equipment; all alarm, safety, electronic, telephone, music, entertainment and communications equipment and systems; all janitorial, maintenance, cleaning, window washing, vacuuming, landscaping, pool and recreational equipment and supplies; and any other items of property, wherever kept or stored, if acquired by Mortgagor with the intent of incorporating them in and/or using them in connection with the Property or any improvements to the Property; together also with all additions thereto and replacements and proceeds thereof (Mortgagor hereby agreeing, with respect to all additions and replacements and proceeds, to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm their inclusion herein); all of which foregoing items described in this paragraph are hereby declared to be part of the real estate and encumbered by this Mortgage;



TOGETHER WITH (a) any and all awards or payments, including interest thereon and the right to receive the same, growing out of or resulting from any exercise of the power of eminent domain (including the taking of all or any part of the Property, as defined hereinafter), or any alteration of the grade of any street upon which the Property abuts, or any other injury to, taking of, or decrease in the value of the Property or any part thereof; (b) all rights of Mortgagor in and to any hazard, casualty, liability, or other insurance policy carried for the benefit of Mortgagor and/or Mortgagee with respect to the Property (as defined hereinafter), including without limitation any unearned premiums and all insurance proceeds or sums payable in lieu of or as compensation for any loss of or damage to all or any portion of the Property; (c) all rights of Mortgagor in and to all supplies and materials delivered to or located upon the Property or elsewhere and used or usable in connection with the construction or refurbishing of improvements on the Property; and (d) all rights of Mortgagor in, to, under, by virtue of, arising from or growing out of any and all present or future contracts, instruments, accounts, insurance policies, permits, licenses, trade names, plans, appraisals, reports, paid fees, choses-in-action, subdivision restrictions or declarations or other intangibles whatsoever now or hereafter dealing with, affecting or concerning the Property, the improvements thereto, or any portion thereof or interest therein, including but not limited to: (i) all contracts, plans and permits for or related to the Property or its development or the construction or refurbishing of improvements on the Property, (ii) any agreements for the provision of utilities to the Property, (iii) all payment; performance and/or other bonds, (iv) any contracts now existing or hereafter made for the sale by Mortgagor of all or any portion of the Property, including any deposits paid by any purchasers (howsoever such deposits may be held) and any proceeds of such sales contracts, including any purchase-money notes and mortgages made by such purchasers, and (v) any declaration of condominium, restrictions, covenants, easements or similar documents now or hereafter recorded against the title to all or any portion of the Property; and

TOGETHER WITH all of Mortgagor's rights to enter into any lease or sublease agreement regarding all or any part of the Property, and all of Mortgagor's rights to encumber the Property further for debt, Mortgagor hereby (a) representing as a special inducement to Mortgagee to make the Loan that, as of the date hereof, there are no encumbrances on the Property to secure debt prior to this Mortgage, and (b) covenanting that there are to be none as of the date when this Mortgage is recorded;

TOGETHER WITH those rights, if any, Mortgagor may have had or presently has as developer of the Property as a condominium or portion thereof;

TO HAVE AND TO HOLD the above-described Property, Equipment, property, appurtenances and rights (referred to collectively in this Mortgage as the "Property") unto Mortgagee.

PROVIDED, HOWEVER, that upon the conditions that if Mortgagor (a) shall pay or cause to be paid to Mortgagee the principal and all interest payable in respect of the Loan and any future advance made under this Mortgage and any other sums secured by this Mortgage, at the time and in the manner stipulated in the Note or this Mortgage or any other Loan Documents, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, (b) shall punctually perform, keep and observe all and singular the covenants and promises in the Note and any future advance agreement(s), in any renewals, extensions or modifications thereof, and in this Mortgage or any other Loan Document expressed to be performed, kept and observed by



and on the part of Mortgagor, and (c) shall not permit or suffer to occur any default under this Mortgage or any other Loan Document, then this Mortgage and all the interests and rights hereby granted, bargained, sold, conveyed, assigned, transferred, mortgaged, pledged, delivered, set over, warranted and confirmed shall cease, terminate and be void.

Mortgagor covenants with and warrants to Mortgagee: (a) that Mortgagor has good and marketable title to the Property, is lawfully seized and possessed of the Property and has good right to sell and convey the same; (b) that the Property is otherwise unencumbered by any mortgage prior to this Mortgage; and (c) that Mortgagor shall forever warrant and defend the Property against the lawful claims and demands of all persons whomsoever, and shall make such further assurances to perfect the title to the Property in Mortgagee as Mortgagee may reasonably require. Mortgagor further covenants and agrees with Mortgagee as follows:

1. Payment and Performance. Mortgagor shall pay all sums due Mortgagee at the time and in the manner provided in the Note, this Mortgage, any other Loan Document or any instrument evidencing a future advance, and Mortgagor shall otherwise perform, comply with and abide by each and every one of the stipulations, agreements, conditions and covenants contained in the Note, this Mortgage or any other Loan Document.

2. Taxes, Assessments and Charges. Subject to Paragraph 35 hereof, Mortgagor shall pay all taxes, assessments (whether general or special) and other charges whatsoever levied, assessed, placed or made against all or any part of the Property or any interest of Mortgagee therein, or against the Note, this Mortgage, any Loan Document or any obligation thereunder. Mortgagor shall make such payment in full (and shall deliver to Mortgagee the paid receipts) not later than thirty (30) days before the last day upon which the same may be paid without the imposition of interest (except interest on special assessments payable by law in installments, in which case Mortgagor shall pay each such installment when due) or other late charge or penalty. If Mortgagor shall fail, neglect or refuse to pay any such taxes, assessments or other charges as aforesaid, then Mortgagee at its option may pay the same, and any funds so advanced by Mortgagee shall bear interest, shall be paid and shall be secured as provided in paragraph 13.

3. Insurance. (a) Mortgagor shall maintain property insurance with a reputable and highly rated insurance company or companies licensed in Florida and reasonably acceptable to Mortgagee, and covering all buildings and improvements now or hereafter located on the Property and all the Equipment and all tangible personal property encumbered by this Mortgage, for an amount not less than their full insurable value on a replacement cost basis, without contribution or coinsurance (or with coinsurance and an agreed amount endorsement), for the benefit of Mortgagor and Mortgagee as their interests may appear, by policies on such terms, in such form and for such periods as Mortgagee shall require or approve from time to time, insuring with extended coverage and broad form coverage against loss or damage by fire, lightning, flood (if applicable), windstorm (if applicable), hail, aircraft, riot, vehicles, explosion, smoke, falling objects, weight of ice or snow or sleet, collapse, sudden tearing asunder, breakage of glass, freezing, electricity, sprinkler leakage, water damage, earthquake, vandalism and malicious mischief, theft, riot attending a strike, civil commotion, war risks (when and if war risk coverage is available), and when and to the extent required by Mortgagee, against any other risks. Regardless of the types or amounts of insurance required and approved by Mortgagee, Mortgagor shall assign and deliver to Mortgagee all policies of insurance which insure against any loss or damage to the Property or any part thereof, as collateral and further security for the



payment of the Loan, with loss payable to Mortgagee pursuant to a standard mortgagee clause acceptable to Mortgagee. Mortgagor shall deliver certificates of insurance to Mortgagee, together with the copies of each such policy. (b) If Mortgagor defaults in so insuring the Property or any part thereof or in so assigning and delivering the policies, at its option Mortgagee may effect such insurance from year to year and pay the premiums therefor, and any such sums advanced by Mortgagee shall bear interest, shall be paid and shall be secured as provided in paragraph 13. (c) If Mortgagee receives any money for loss or damage by reason of such insurance, then Mortgagee at its option may retain such proceeds and apply them toward the payment of the Loan (in any order of priority Mortgagee may deem appropriate in its sole discretion), or Mortgagee may disburse them to Mortgagor, under such safeguards as Mortgagee shall deem appropriate in its sole discretion, for the reconstruction or restoration or repair of the damaged Property, but Mortgagee shall not be obligated to see to the proper application by Mortgagor of any such disbursement; provided, however, that Mortgagee's right to apply such insurance proceeds toward payment of the Loan shall yield to the extent that any contrary provision of any lease requires that such insurance proceeds be applied to the reconstruction or restoration or repair of the damaged Property. (d) Mortgagor shall obtain and carry (i) flood insurance to the maximum amount legally obtainable, and (ii) general comprehensive liability insurance with a reputable and highly rated insurance company or companies licensed in Florida and reasonably acceptable to Mortgagee, which policy shall name both Mortgagor and Mortgagee as insureds, and at Mortgagee's election with initial limits of not less than Three Hundred Thousand and No/100 Dollars (\$300,000.00) as to personal injury or death, and not less than Three Hundred Thousand and No/100 Dollars (\$300,000.00) with respect to property damage (regardless of whether the outstanding principal balance of the Loan is a lesser amount), or in such greater or different limits which Mortgagee in its sole and absolute discretion reasonably may require from time to time and on such terms, in such form and for such periods as Mortgagee shall approve from time to time. (e) In the event of a foreclosure of this Mortgage, the purchaser of the Property shall succeed to all the rights of Mortgagor in and to all policies of insurance required under this Mortgage, including any right to unearned premiums. (f) Not less than thirty (30) days prior to the expiration date of each policy required under this Mortgage, Mortgagor shall deliver to Mortgagee a renewal certificate marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee, together with a true copy of any replacement policy. (g) Each policy of insurance required under this Mortgage shall be non-cancelable without at least thirty (30) days' advance written notice to Mortgagee.

4. Improvements and Development. Without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its reasonable discretion, no building or other improvements covered by the lien of this Mortgage shall be removed, demolished or materially altered or enlarged (except as required in the event of fire, other casualty or condemnation). Notwithstanding the foregoing, Mortgagor may demolish any and all improvements located on the Property as of the date of this Mortgage. Without the prior written consent of Mortgagee, which Mortgagee shall not unreasonably withhold or delay, Mortgagor shall not undertake any development of the Property, nor construct any new improvements thereon, nor initiate or join in or consent to any new (or any change in any existing) private restrictive covenant, zoning ordinance, master plan, site plan, easement, or other public or private restrictions limiting or defining the uses which may be made of the Property or any part thereof.



Mortgagor shall complete and pay for any permitted development and/or improvements undertaken on the Property within a reasonable time after commencing the same.

5. Maintenance and Repair. Mortgagor shall do everything necessary to secure the Property as reasonably appropriate to secure the Property, shall promptly pay any and all utility fees for services provided to the Property, and shall comply with (or cause compliance with) all applicable restrictive covenants. In the event of any fire or other casualty loss or damage to all or any part of the Property, Mortgagor shall notify Mortgagee within forty-eight (48) hours of such occurrence. Mortgagor shall promptly repair, restore, replace or rebuild any part of the Property which may be damaged or destroyed by any casualty whatsoever or which may be affected by any condemnation, alteration of grade, or other public or quasi-public taking or injury from insurance and/or condemnation proceeds (provided that Mortgagee makes the proceeds available therefor). If Mortgagor shall fail, neglect or refuse to repair or maintain the Property as aforesaid, then Mortgagee may at its option undertake such repairs or maintenance, and any funds advanced therefor by Mortgagee shall bear interest, shall be paid and shall be secured as provided in paragraph 13.

6. Assignment of Leases. As further security for the repayment of the Loan, Mortgagor hereby assigns and transfers to Mortgagee all leases, rents, income, issues and profits of the Property and all right, title and interest of Mortgagor in and under all subleases and tenancies and occupancy agreements of any nature whatsoever (and any extensions and renewals thereof) now or hereafter affecting the Property (the "Leases"). Upon any default of this Mortgage by Mortgagor, Mortgagor has hereby empowered Mortgagee, its agents or attorneys, to demand, collect, sue for, receive, settle, compromise and give acquittance for all of the rents that may become due under the Leases and to avail itself of and pursue all remedies for the enforcement of the Leases and Mortgagor's rights thereunder that Mortgagor could have pursued but for this assignment. Mortgagee is hereby vested with full power and authority to use all measures, legal and equitable, deemed necessary or proper by Mortgagee to enforce this assignment, to collect the rents so assigned, and/or to cure any default and perform any covenant of Mortgagor as the landlord under any of the Leases, including without limitation the right to enter upon all or any part of the Property and to take possession thereof to the extent necessary to exercise such powers. Mortgagee shall have the right (but not the obligation) to advance any sums necessary to exercise such powers, which sums shall bear interest, shall be paid and shall be secured as provided in paragraph 13. Mortgagor hereby empowers Mortgagee to use and apply all such rents and other income of the Property to the payment of the Loan and all interest thereon and any other indebtedness or liability of Mortgagor to Mortgagee, and to the payment of the costs of managing and operating the Property, including without limitation: (i) taxes, special assessments, insurance premiums, damage claims, and the costs of maintaining, repairing, rebuilding, restoring and making rentable the improvements on the Property; (ii) all sums advanced by Mortgagee (with interest thereon) for the payment of such costs or for any other reason permitted by this Mortgage or any other Loan Document; and (iii) all costs, expenses and attorney's fees incurred by Mortgagee in connection with the enforcement of this Mortgage and/or any Lease; all in such order of priority as Mortgagee may deem appropriate in its sole discretion.

7. Further Encumbrances. Mortgagor shall not grant any other lien or mortgage on all or any part of the Property or any interest therein without the prior written consent of



Mortgagee, which Mortgagee may grant or withhold in its sole discretion; any such unpermitted lien or mortgage by Mortgagor shall entitle Mortgagee to accelerate the maturity of the Loan and foreclose this Mortgage. Any such other lien or mortgage shall be junior to this Mortgage and to all permitted tenancies now or hereafter affecting the Property or any portion thereof and shall be subject to all renewals, extensions, modifications, releases, interest rate increases, future advances, changes or exchanges permitted by this Mortgage, all without the joinder or consent of such junior lienholder or mortgagee and without any obligation on Mortgagee's part to give notice of any kind thereto. Mortgagor shall maintain in good standing any other mortgage or encumbrance to secure debt affecting any part of the Property from time to time and shall not commit or permit or suffer to occur any default thereunder, nor shall Mortgagor accept any future advance under or modify the terms of any such mortgage or encumbrance which may then be superior to the lien of this Mortgage. Except for encumbrances permitted by Mortgagee, Mortgagor shall not commit or permit or suffer to occur any act or omission whereby any of the security represented by this Mortgage shall be impaired or threatened, or whereby any of the Property or any interest therein shall become subject to any attachment, judgment, lien, charge or other encumbrance whatsoever, and Mortgagor shall immediately cause any such attachment, judgment, lien, charge or other encumbrance to be discharged or otherwise bonded or transferred to other security. Mortgagor shall not directly or indirectly do anything or take any action which might prejudice any of the right, title or interest of Mortgagee in or to any of the Property or impose or create any direct or indirect obligation or liability on the part of Mortgagee with respect to any of the Property.

8. Prohibited Events. Without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion, Mortgagor shall not: (a) other than as is expressly permitted under this Mortgage, sell, assign, convey or transfer all or any portion of Mortgagor's right, title or interest in or to all or any portion of the Property or any interest therein in any manner whatsoever, either voluntarily or by operation of law; or (b) cause or permit or suffer to occur any transfer of any partnership or member interest in such owner in a manner resulting in a change in control of such owner; or (c) allow a transfer of its beneficial ownership, except a transfer to family members or a transfer from an estate of a beneficiary under any applicable Land Trust as a result of a conveyance of same.

9. Further Instruments. Mortgagor shall furnish to Mortgagee as to Mortgagor, as to each shareholder of Mortgagor, and as to each other Obligor under the Loan during the term of this Mortgage (i) an annual financial statement (certified in the case of Mortgagor by an authorized member of Mortgagor) and (ii) a copy of the respective Federal income tax return, and (iii) as to Mortgagor income and expense statements and a rent-roll, each prepared on an annual basis during the term of the Loan and each certified by Mortgagor's chief financial officer, and each in a form acceptable to Mortgagee each year during the term of this Mortgage and furnished to Mortgagee no later than February 1st of each year as to said financial statement and within fifteen (15) days of when filed as to said federal income tax returns. From time to time and on demand, Mortgagor shall also execute and deliver to Mortgagee (and pay the costs of preparing and recording) any further instruments required by Mortgagee to reaffirm, correct or perfect the evidence of the obligations secured hereby and the security interest of Mortgagee in all the property intended to be mortgaged hereby, including but not limited to mortgages,



security agreements, financing statements, assignments and renewal and substitution notes. On demand of Mortgagee, Mortgagor shall execute and deliver such instruments as Mortgagee may deem useful or required to permit Mortgagee to cure any default under any Loan Document or to take such other action as Mortgagee considers desirable to cure or remedy the matter in default and preserve the interest of Mortgagee in the Property.

10. Estoppel Letters and Information. Upon request made either personally or by mail, Mortgagor shall certify, by a duly acknowledged writing, to Mortgagee or to any proposed assignee of this Mortgage, to the best of Mortgagor's knowledge, the amount of principal and interest and other sums then owing on the Loan and whether any offsets or defenses exist against the payment of the Loan. Mortgagor shall provide such estoppel certificate within five (5) days in the case of a personal request and within ten (10) days after Mortgagor's receipt of a mailed request. If Mortgagor fails to respond to a request for an estoppel pursuant to (a) above, Mortgagor shall be deemed to have acquiesced in Mortgagee's determination of the sums then owing on the Loan and to have represented that no offsets or defenses exist against the payment of the Loan. Mortgagor shall promptly furnish to Mortgagee any financial or other information regarding Mortgagor or the Property required by any Loan Document or which Mortgagee may reasonably request from time to time.

11. Notices. Whenever Mortgagor or Mortgagee are obliged to give notice to the other, such notice shall be in writing and shall be given personally or by prepaid certified mail (return receipt requested), in which latter case notice shall be deemed effectively made when the receipt is signed or when the attempted initial delivery is refused or cannot be made because of a change of address of which the sending party has not been notified. Any notice to Mortgagee shall be addressed to the attention of a Corporate Lending officer. Until the designated addresses are changed by notice given in accordance with this paragraph, notice to either party shall be sent to the respective address set forth on the first page of this Mortgage.

12. Default. At Mortgagee's option, all of the principal and interest and other sums secured by this Mortgage shall immediately or at any time thereafter become due and payable without notice to any Obligor, and Mortgagee shall immediately have all the rights accorded Mortgagee by law and hereunder to foreclose this Mortgage or otherwise to enforce this Mortgage, the Note and any other Loan Document, upon the occurrence of any of the following defaults upon the expiration of applicable grace periods: (a) failure by Mortgagor to pay any sum due under the Note and the expiration of any grace period provided in the Note for such payment; or (b) failure by Mortgagor to repay any sum paid or advanced by Mortgagee under the terms of this Mortgage or any other Loan Document (with interest thereon), as provided in paragraph 13; or (c) failure by Mortgagor to comply with any other term, covenant, condition, or provision of this Mortgage or any Pledge and Security Agreement, between Mortgagor, as pledgor, and Mortgagee as pledgee, unless cured within fifteen (15) days of notice from Mortgagee of the breach thereof; or (d) any sale, transfer (whether voluntary or by operation of law), pledge, hypothecation or further encumbering of all or any part of the Property or any interest therein, or the additional assignment of all or any part of the rents, income or profits arising therefrom, in either case without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion; or (e) Mortgagor's failure to remove any



involuntary lien on the Property or any part thereof within thirty (30) days after its filing, or the filing of any suit against the Property upon any claim or lien other than this Mortgage (whether superior or inferior to this Mortgage) which remains undischarged for a period of thirty (30) days; or (f) Mortgagor's failure to comply within thirty (30) days with a requirement, order or notice of violation of a law, ordinance, or regulation issued or promulgated by any political subdivision or governmental department claiming jurisdiction over the Premises or any operation conducted by Mortgagor on the Property (or, if such order or notice provides a time period for compliance, Mortgagor's failure to comply within such period), or, in the case of a curable noncompliance requiring longer than the applicable time period for its cure, Mortgagor's failure to commence to comply with said order or notice within said period or failure thereafter to pursue such cure diligently to completion; or (g) the issuance of any order by the State of Florida, or any subdivision, instrumentality, administrative board or department thereof, declaring unlawful or suspending any operation conducted by Mortgagor on the Property, which order remains undischarged for a period of fifteen (15) days; or (h) the order of taking by the United States of America or any instrumentality thereof in any court of competent jurisdiction to acquire under the power of eminent domain any estate in the Property which would impair the operation of the Property for its intended purposes, or the recording by the State of Florida, any instrumentality thereof or any other person with eminent domain powers, of a notice of taking of any estate in the Property which would impair the operation of the Property for its intended purposes unless the proceeds of the condemnation are applied to the balance due under the Note; (i) if any material representation, warranty, affidavit, certificate or statement made or delivered to Mortgagee by or on behalf of any Obligor from time to time in connection with the Loan or this Mortgage or any other of the Loan Documents shall prove materially false, incorrect or misleading in any respect deemed material by Mortgagee; or (j) the dissolution or merger or consolidation or termination of existence of any Obligor, or the failure or cessation or liquidation of the business of any Obligor, or if the person(s) controlling any Obligor which is a business entity shall take any action authorizing or leading to the same; or (k) if any Obligor shall become insolvent or unable to pay such Obligor's debts as they become due; or (l) the disposition or transfer or exchange of all or substantially all of any Obligor's assets for less than fair market value, or the issuance of any levy, attachment, charging order, garnishment or other process in excess of Ten Thousand and No/100 Dollars (\$10,000.00) against any property of any Obligor, or the filing of any lien against any such property in excess of Ten Thousand and No/100 Dollars (\$10,000.00) which remains undischarged for a period of thirty (30) days; or (m) if any Mortgagor shall make an assignment for the benefit of creditors, file a petition in bankruptcy, apply to or petition any tribunal for the appointment of a custodian, receiver, intervenor or trustee for such Mortgagor or a substantial part of such Mortgagor's assets, or if any Mortgagor shall commence any proceeding under any bankruptcy, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if any Mortgagor shall by act or omission approve, consent to or acquiesce in the filing of any such petition or application against such Mortgagor or the appointment of any such custodian, receiver, intervenor or trustee or the commencement of any such proceeding against such Mortgagor or the entry of an order for relief with respect to such Mortgagor, or if any such petition or application shall have been filed or proceeding commenced against any Mortgagor which remains undismissed for sixty (60) days or more or in which an order for relief is entered, or if any Mortgagor shall suffer any such appointment of a custodian, receiver, intervenor or



trustee to continue undischarged for sixty (60) days or more; or (n) the existence of any uncured default under any other mortgage or encumbrance affecting any part of the Property then encumbered by this Mortgage (in the case of a default for which such mortgage or other encumbrance provides a grace period, if the default remains uncured after the expiration of that grace period); or (o) Mortgagee's election to accelerate the maturity of the Loan under the provisions of any other of the Loan Documents; or (p) any default in the observance or performance of any other covenant or agreement of Mortgagor or of any other signatory to any of the other Loan Documents, the occurrence of any other event prohibited by the terms of this Mortgage or any other Loan Document, or the violation of any other provision of this Mortgage or any other Loan Document or of any other loan agreement or document with Mortgagee, any of which shall remain uncured for a period of fifteen (15) days after receipt of written notice from Mortgagee except that if the default is such that it is not susceptible of cure within said fifteen (15) day period, Mortgagor shall have an additional fifteen (15) days to cure the default provided cure is commenced within the initial fifteen (15) day period and thereafter diligently prosecuted to completion. No consent or waiver expressed or implied by Mortgagee with respect to any default under this Mortgage shall be construed as a consent or waiver with respect to any further default of the same or a different nature; and no consent or waiver shall be deemed or construed to exist by reason of any curative action initiated by Mortgagee or any other course of conduct or in any other manner whatsoever except by a writing duly executed by Mortgagee, and then only for the single occasion to which such writing is addressed. In order to accelerate the maturity of the Loan because of Mortgagor's failure to pay any rent, additional rent, tax, assessment, insurance premium, charge, liability, obligation or encumbrance with respect to the Property as required by this Mortgage, or in order to accelerate because of any other default, Mortgagee shall not be required to pay the same or to advance funds to cure the default, notwithstanding Mortgagee's option under this Mortgage or any other Loan Document to do so; no such payment or advance by Mortgagee shall be deemed or construed a waiver of Mortgagee's right to accelerate the maturity of the Loan on account of such failure or other default.

13. Advances Hereunder. In the event of any default in the performance of any of Mortgagor's covenants or agreements contained in this Mortgage or any other Loan Document or the violation of any term thereof, Mortgagee shall have the right (but in no event the obligation) at its option to cure the default or take any other action Mortgagee deems necessary or desirable to protect its security (including without limitation the payment of any rent, additional rent, taxes, assessments, insurance premiums, charges, liens or encumbrances required of Mortgagor under this Mortgage), without thereby waiving any rights or remedies otherwise available to Mortgagee. If Mortgagee shall elect to advance at any time any sum(s) for the protection of its security or for any other reason permitted or provided by any of the terms of this Mortgage or any other Loan Document, then such sum(s) shall be deemed Loan funds, shall be secured by this Mortgage and shall bear interest until paid at the "Default Rate" provided in the Note commencing on the date they are advanced by Mortgagee. If advanced by Mortgagee before the (natural or accelerated) maturity date of the Loan, such sum(s) shall be due and payable by Mortgagor on such maturity date or ten (10) days after Mortgagor is first notified of the advance, whichever is earlier, but if advanced after the (natural or accelerated) maturity date, such sum(s) shall be due and payable immediately. Mortgagee's lien on the Property for such advances shall



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be superior to any right or title to, interest in, or claim upon all or any portion of the Property junior to the lien of this Mortgage.

14. Receiver. In any action to foreclose this Mortgage, or upon the actual or threatened waste to any part of the Property, Mortgagee shall have the right to apply without notice for the appointment of a receiver of the Property and the rents and profits thereof, and Mortgagee shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the Property as security for the amounts due Mortgagee or the solvency of any Mortgagor. To the extent permitted by law, Mortgagor hereby waives any right to object to the appointment of a receiver as aforesaid and expressly consents that such appointment shall be made as an admitted equity and as a matter of absolute right to Mortgagee.

15. Remedies. The rights and remedies of Mortgagee under this Mortgage or any other Loan Document or applicable law shall be cumulative and concurrent and may be pursued separately, successively or together against any Mortgagor(s), the Property, any other collateral for the Loan, or any one or more of the foregoing, all at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by law. Mortgagee's pursuit of any remedy shall not preclude pursuit of any other remedy until Mortgagee shall have recovered all sums due Mortgagee, together with the appropriate interest thereon and all costs of collection, including attorney's fees and appellate attorney's fees, with interest thereon. Neither Mortgagor nor anyone claiming through or under Mortgagor shall set up, claim or seek to take advantage of any appraisal, valuation, stay, moratorium, extension, exemption or redemption laws, now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the sale of the Property. To the maximum extent permitted by law, the Mortgagors, for themselves and all who may claim through or under any of them, hereby severally waive the benefit of all such laws and waive any and all rights to have the Property or any other collateral for the Loan marshaled upon any foreclosure of this Mortgage or any other instrument securing the Loan, and hereby severally agree that the Property and any such other collateral may be sold as an entirety or in such parcels, in such manner and in such order as Mortgagee in its sole discretion may elect.

16. Fees and Expenses. Mortgagor shall pay any and all costs, expenses and attorney's fees incurred by Mortgagee (regardless of whether in connection with any action, proceeding or appeal) to sustain the lien of this Mortgage or its priority, to protect or enforce any of Mortgagee's rights under this Mortgage or under any other Loan Document (including, without limitation, all environmental charges, fees, and costs), to recover any indebtedness secured hereby, to contest or collect any award or payment in connection with the taking or condemnation of all or any part of the Property, or for any title examination or abstract preparation or appraisal or title insurance policy relating to the Property, and all such sums shall bear interest, shall be paid and shall be secured as provided in paragraph 13.

17. Public Takings. Notwithstanding any taking by eminent domain, any alteration of the grade of any street, or any other injury to or decrease in value of the Property or any portion thereof caused by any public or quasi-public authority or person, Mortgagor shall continue to pay interest on the Loan and all other sum(s) secured hereby until Mortgagee shall have actually received the award or payment for such taking or alteration or injury and shall have applied the



same against the Loan. Mortgagee at its option may retain any such award or payment and apply all or part of the same toward payment of the Loan (in any order of priority Mortgagee may deem appropriate in its sole discretion), or Mortgagee may disburse all or part of such award or payment to Mortgagor for the purpose of altering, restoring or rebuilding any part of the Property which may have been altered, damaged or destroyed as a result of any such taking or alteration or injury, or for any other purpose or object satisfactory to Mortgagee in its sole discretion; provided, however, that Mortgagee's right to apply such condemnation proceeds toward payment of the Loan shall yield to the extent that any contrary provision of any tenant lease requires that such proceeds be applied to the repair or restoration of the damaged portion of the Property. If all of the Property is so taken but the award or payment therefor received by Mortgagee is insufficient to pay in full all sums then secured by this Mortgage, then at Mortgagee's option the unpaid balance shall be immediately due and payable.

18. Documentary Stamps and Intangible Taxes. If at any time the State of Florida shall determine that the intangible tax paid in connection with this Mortgage is insufficient or that the documentary stamps affixed hereto are insufficient, and that additional intangible tax should be paid or that additional stamps should be affixed, then Mortgagor shall pay for the same, together with any interest or penalties imposed in connection with such determination, and Mortgagor hereby agrees to indemnify and hold Mortgagee harmless therefrom. If any such sums shall be advanced by Mortgagee, they shall bear interest, shall be paid and shall be secured as provided in paragraph 13.

19. No Shift of Taxes. If any federal, state or local law shall hereafter be enacted which (a) for the purpose of ad valorem taxation shall deduct the amount of any lien from the value of real property, or (b) shall impose on Mortgagee the payment of all or any part of the taxes or assessments or charges required to be paid hereunder by Mortgagor, or (c) shall change in any way the laws for the taxation of mortgages or debts secured thereby or Mortgagee's interest in the Property, or shall change the manner of collecting such taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then upon demand Mortgagee shall pay such taxes or assessments or charges imposed on Mortgagee or shall reimburse Mortgagee therefor; provided, however, that if in the opinion of Mortgagee's counsel the requirement that Mortgagor make such payments might be unlawful or might result in the imposition of interest in excess of the maximum lawful rate, then Mortgagee shall have the right to declare the Loan and all other sums secured hereby to be due and payable fifteen (15) days after notice thereof to Mortgagor.

20. Uniform Commercial Code. This Mortgage is a "security agreement" and creates a "security interest" in favor of Mortgagee as a "secured party" with respect to all property included in the Property which is covered by the Uniform Commercial Code. Upon default under the Note, this Mortgage or any other Loan Document, Mortgagee may at its option pursue any and all rights and remedies available to a secured party with respect to any portion of the Property so covered by the Uniform Commercial Code, or Mortgagee may at its option proceed as to all or any part of the Property in accordance with Mortgagee's rights and remedies in respect of real property. Mortgagor and Mortgagee agree that the mention of any portion of the Property in a financing statement filed in the records normally pertaining to personal property



shall never derogate from or impair in any way their declared intention that all items of collateral described in this Mortgage are part of the real estate encumbered hereby to the fullest extent permitted by law, regardless of whether any such item is physically attached to the improvements or whether serial numbers are used for the better identification of certain items of Equipment. Specifically, the mention in any such financing statement of (a) the rights in or the proceeds of any insurance policy, (b) any award in eminent domain proceedings for a taking or for loss of value, (c) Mortgagor's interest as lessor in any present or future lease or right to income growing out of the use or occupancy of the Property or improvements thereto, whether pursuant to lease or otherwise, or (d) any other item included in the definition of the Property, shall never be construed to alter any of the rights of Mortgagee as determined by this Mortgage or to impugn the priority of Mortgagee's lien and security interest with respect to the Property; such mention in a financing statement is declared to be for the protection of Mortgagee in the event any court shall hold that notice of Mortgagee's priority of interest with respect to any such portion of the Property must be filed in the Uniform Commercial Code records in order to be effective against or to take priority over any particular class of persons, including but not limited to the federal government and any subdivision or instrumentality of the federal government. This Mortgage or a carbon, photographic copy or other reproduction hereof or of any financing statement shall be sufficient as a financing statement.

21. Payments to Mortgagee. Any payment made in accordance with the terms of the Note or this Mortgage by any person at any time liable for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage, by any subsequent owner of the Property, or by any other person whose interest in the Property might be prejudiced in the event of a failure to make such payment (or by any partner, stockholder, officer or director of any such person), shall be deemed, as between Mortgagee and all such persons who at any time may be so liable or may have an interest in the Property, to have been made on behalf of all such persons. Mortgagee's acceptance of any payment which is less than full payment of all amounts then due and payable to Mortgagee, even if made by one other than the person liable therefor, shall not constitute a waiver of any rights or remedies of Mortgagee.

22. Consent to Changes. Mortgagor consents and agrees that, at any time and from time to time without notice, (a) Mortgagee and the owner(s) of any collateral then securing the Loan may agree to release, increase, change, substitute or exchange all or any part of such collateral, and (b) Mortgagor and any person(s) then primarily liable for the Loan, upon proper partnership and/or corporate authorization, may agree to renew, extend or compromise the Loan in whole or in part or to modify the terms of the Loan, in any respect whatsoever. Mortgagor agrees that no such release, increase, change, substitution, exchange, renewal, extension, compromise or modification, no sale of the Property or any part thereof, no forbearance on the part of Mortgagee, nor any other indulgence given by Mortgagee (whether with or without consideration) shall relieve or diminish in any manner the liability of any Mortgagor, nor adversely affect the priority of this Mortgage, nor limit or prejudice or impair any right or remedy of Mortgagee. All Mortgagors and all those claiming by, through or under any of them hereby jointly and severally waive any and all right to prior notice of, and any and all defenses or claims based upon, any such release, increase, change, substitution, exchange, renewal, extension, compromise, modification, sale, forbearance or indulgence.



23. Governing Law. This Mortgage shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, excepting only that federal law shall govern to the extent it may permit Mortgagee to charge, from time to time, interest on the Loan at a rate higher than may be permissible under applicable Florida law.

24. No Usury. In no event shall any agreed to or actual exaction charged, reserved or taken as an advance or forbearance by Mortgagee as consideration for the Loan exceed the limits (if any) imposed or provided by the law applicable from time to time to the Loan for the use or detention of money or for forbearance in seeking its collection; Mortgagee hereby waives any right to demand any such excess. In the event that the interest provisions of the Note or any exactions provided for in the Note, this Mortgage or any other Loan Document shall result at any time or for any reason in an effective rate of interest that transcends the maximum interest rate permitted by applicable law (if any), then without further agreement or notice the obligation to be fulfilled shall automatically be reduced to such limit and all sums received by Mortgagee in excess of those lawfully collectible as interest shall be applied against the principal of the Loan immediately upon Mortgagee's receipt thereof, with the same force and effect as though the payor had specifically designated such extra sums to be so applied to principal and Mortgagee had agreed to accept such extra payment(s) as a premium-free prepayment or prepayments.

25. Severability. Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

26. Inspection and Watchmen. Mortgagee and any persons authorized by Mortgagee shall have the right, from time to time at the discretion of Mortgagee, to enter and inspect the Property during any reasonable business hours. At any time after default under the terms of the Note, this Mortgage or any other Loan Document, which remains uncured after any grace period if any of the buildings, improvements or Equipment now or hereafter located on or in the Property shall be unprotected or unguarded, or if any improved portion of the Property shall be allowed to remain vacant or deserted, then at its option Mortgagee may employ watchmen for the Property and expend any monies deemed necessary by Mortgagee to protect the Property and the buildings, improvements and Equipment thereon from waste, vandalism and other hazards, depredation or injury, and any sums expended by Mortgagee for such purpose shall bear interest, shall be paid and shall be secured as provided in paragraph 13.

27. Indemnity. In the event Mortgagee shall be named as a party to any lawsuit brought at any time against Mortgagor or with respect to the Property or this Mortgage or the Loan, then regardless of the merits of such lawsuit Mortgagor shall defend Mortgagee and indemnify and hold Mortgagee fully harmless from any and all claims, demands, damages, liabilities, judgments, losses, costs, expenses and attorney's fees arising out of or resulting from any such lawsuit or any appeal in connection therewith.

28. Subrogation. Mortgagee is hereby subrogated (a) to the lien(s) of each and every mortgage, lien or other encumbrance on all or any part of the Property which is fully or partially paid or satisfied out of the proceeds of the Loan, and (b) to the rights of the owner(s) and



holder(s) of any such mortgage, lien or other encumbrance. The respective rights under and priorities of all such mortgages, liens or other encumbrances shall be preserved and shall pass to and be held by Mortgagee as security for the Loan, to the same extent as if they had been duly assigned by separate instrument of assignment and notwithstanding that the same may have been canceled satisfied of record.

29. Representations and Warranties. In order to induce Mortgagee to make the Loan, Mortgagor represents and warrants that: (a) except as previously or concurrently disclosed in writing to Mortgagee, there are no actions, suits or proceedings pending or threatened against or affecting any guarantor or any Obligor or to the best of Mortgagor's knowledge any portion of the Premises or involving the validity or enforceability of this Mortgage or the priority of its lien, before any court of law or equity or any tribunal, administrative board or governmental authority, and no Obligor is in default under any other indebtedness or with respect to any order, writ, injunction, decree, judgment or demand of any court or any governmental authority; (b) the execution and delivery of the Note, this Mortgage and all other Loan Documents do not and shall not violate any provisions of any law, rule, regulation, order, writ, judgment or demand of any court or any governmental authority; (b) the execution and delivery of the Note, this Mortgage and all other Loan Documents do not and shall not (i) violate any provisions of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award applicable to any Obligor, nor (ii) result in a breach of, or constitute a default under any indenture, bond, mortgage, lease, instrument, credit agreement, undertaking, contract or other agreement to which any Obligor is a party or by which any of them or their respective properties may be bound or affected; (c) the Note, this Mortgage and all other Loan Documents have been lawfully executed and delivered in conformity with any lease affecting the Property and constitute valid and binding obligations of the Obligor(s) executing the same, enforceable against such Obligor(s) in accordance with their respective terms; (d) all financial statements of the Obligors previously delivered to Mortgagee have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the correct respective financial conditions of the Obligors as of their respective dates, and the foregoing shall be true with respect to all financial statements of the Obligors delivered to Mortgagee hereafter; (e) there is no fact that the Obligors have not disclosed to Mortgagee in writing that could materially adversely affect their respective properties, businesses, or financial conditions, or the Premises or any other collateral for the Loan; (f) the Obligors have duly obtained all permits, licenses, approvals and consents from, and made all filings with, any governmental authority (and the same have not lapsed nor been rescinded or revoked) which are necessary in connection with the execution or delivery or enforcement of this Mortgage or any of the other Loan Documents or the performance of any Obligor's obligations thereunder; and (g) Mortgagor shall, during the term of this Mortgage use Mortgagee as the depository bank for any deposits received from Purchaser under a reservation or condominium sales program with respect to this Property. Mortgagor acknowledges and agrees that Mortgagee is relying on the representations and warranties in this Mortgage and all other Loan Documents as a precondition to making the Loan, and that all such representations and warranties shall survive the closing of the Loan and any bankruptcy proceedings.

30. Interpretation. Whenever the context of any provision of this Mortgage shall so require, words in the singular shall include the plural, words in the plural shall include the



singular, and pronouns of any gender shall include the other genders. Captions and headings in this Mortgage are for convenience only and shall not affect its interpretation. All references in this Mortgage to Exhibits, Schedules, paragraphs and subparagraphs refer to the respective subdivisions of this Mortgage, unless the reference expressly identifies another document. Wherever used in this Mortgage, unless the context clearly indicates a contrary intention or unless this Mortgage specifically provides otherwise: (a) the term "Mortgagor" shall mean "Mortgagor or any subsequent owner or owners of the Property"; (b) the term "Mortgagee" shall mean "Mortgagee or any subsequent holder(s) of this Mortgage"; (c) the term "Note" shall mean "the Note, any renewal notes and any additional notes hereafter to be issued and secured by this Mortgage pursuant to the future advance provision hereof"; (d) the term "Loan" shall mean "the Loan and any future or additional advances made by Mortgagee from time to time for any reason permitted or provided by the terms of this Mortgage or any other Loan Document"; and (e) the term "person" shall mean "an individual, corporation, partnership, limited partnership, unincorporated association, joint stock corporation, joint venture or other legal entity".

31. Miscellaneous. Time is of the essence of all provisions of this Mortgage. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several, and wherever the term "Mortgagor" is used it shall be deemed to refer to such persons jointly and severally. This Mortgage shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns, and it shall inure to the benefit of Mortgagee and its successors and assigns and to the benefit of Mortgagor and Mortgagor's heirs, personal representatives and permitted successors and assigns. This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

32. Environmental. Mortgagor shall not cause or permit any hazardous material to be brought upon, kept or used in or about the Property by Mortgagor, its agents, employees, contractors or invitees, without the prior written consent of Mortgagee (which Mortgagee shall not unreasonably withhold as long as Mortgagor demonstrates to Mortgagee's reasonable satisfaction, that such hazardous material is necessary or useful to Mortgagor's business and will be used, kept and stored in a manner that complies with all laws regulating any such hazardous material so brought upon or used or kept in or about the Property). If Mortgagor breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the Property caused or permitted by Mortgagor results in contamination of the Property, or if contamination of the Property by hazardous materials otherwise occurs for which Mortgagor is legally liable to Mortgagee for damage resulting therefrom, any such event shall constitute a default under this Mortgage, and the Mortgagor shall indemnify, defend and hold Mortgagee harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Property, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise as a result of such contamination. This indemnification of Mortgagee by Mortgagor includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivi-



sion because of hazardous material present in the soil or ground water on or under the Property. Further, without limiting any of the foregoing, if the presence of any hazardous material on the Property caused or permitted by Mortgagor results in any contamination of the Property, Mortgagor shall promptly take all actions at its sole expense as are necessary to return the Property to the condition existing prior to the introduction of any such hazardous material to the Property; provided that Mortgagee's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Property.

As used herein, the term "hazardous material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Florida, or the United States Government. The term "hazardous material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste", under Section 403.703(21), Florida Statutes (1987, as amended); (ii) defined as a "hazardous substance" under Section 403.703(29) Florida Statutes (1987, as amended); (iii) defined as a "toxic or otherwise hazardous substance" under Section 403.771(2)(c), Florida Statutes (1987, as amended); (iv) defined as a "toxic substance" under Section 442.102(21), Florida Statutes (1987 as amended); (v) petroleum; (vi) asbestos; (vii) defined as a "hazardous substance" under Section 501.065(5), Florida Statutes (1987); (viii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317); (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 6903); or (x) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601). Mortgagee may require that all violations of law with respect to same be corrected and that Mortgagor obtain all necessary environmental permits before Mortgagee shall fund any initial or subsequent advance under the Loan at Mortgagee's sole option.

33. WAIVER OF TRIAL BY JURY. MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION BASED HEREON OR ARISING HEREUNDER, OR PROCEEDING OR COUNTERCLAIM BASED ON THIS MORTGAGE, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE OR THE NOTE OR ANY OTHER OF THE LOAN DOCUMENTS EXECUTED IN CONNECTION WITH THIS MORTGAGE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO OR TO THE MORTGAGE OR TO ANY OTHER LOAN DOCUMENT EXECUTED IN CONNECTION WITH THIS MORTGAGE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGOR AND MORTGAGEE ENTERING INTO THE SUBJECT LOAN TRANSACTION. THE MORTGAGOR AND THE MORTGAGEE ALSO AGREE THAT MIAMI-DADE COUNTY, FLORIDA, IS THE PROPER VENUE FOR ANY AND ALL LEGAL PROCEEDINGS ARISING OUT OF THIS MORTGAGE.



34. Financial Statements. Mortgagor agrees to provide to Mortgagee Mortgagor's and the guarantors' financial statements, as further set forth in paragraph 9 hercof.

35. Escrow Requirements. In order to more fully protect the security of this Mortgage, Mortgagor together with and in addition to the regular monthly payments due under the terms of the Note secured hereby, Mortgagor at Mortgagee's direction shall pay to the Mortgagee each month until the said Note is fully paid a sum equal to one-twelfth (1/12) of the amount of the real estate taxes that will become due upon the Property. Such sums due shall be estimated by the Mortgagee, but less all amounts then already paid therefor to the end that the Mortgagee will have in hand, at least one month prior to the date when such real estate taxes will become due, sufficient funds paid under the terms hereof with which to pay the same. Such sums shall be held by the Mortgagee in trust without interest or dividends for such purposes. Any deficiency in the amount of such aggregate payments necessary to pay for such real estate taxes shall, unless paid by the Mortgagor prior to the due date thereof, constitute an event of default under this Mortgage. If the payments made by Mortgagor under the terms hereof shall not be sufficient to pay such real estate taxes, when the same shall become due and payable, then the Mortgagor shall pay to the Mortgagee immediately upon its request any amount necessary to cure such deficiency on or before the date when payment of such real estate taxes shall become due. This paragraph shall control over any other conflicting paragraph in this Mortgage.

WITNESS the due execution hereof as of the date first above written.

Witness Name:

Print Name: OMAR FIGUERAS

Witness Name:

Print Name: Daren Schwartz

Daren Schwartz

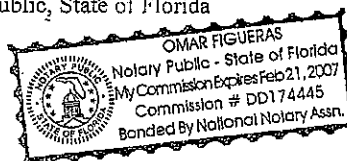
Dana Bermiani

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 3 day of May, 2006, by Daren Schwartz, a married person, who are personally known to me or has produced Florida driver's license as identification and did take an oath.

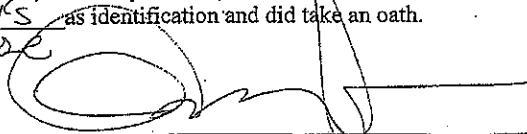
Notary Seal:

Notary Public, State of Florida

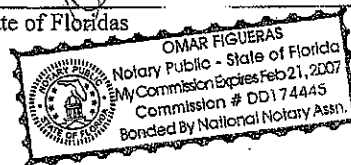


STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 3 day of May, 2006, by
Dana Berman, a married person, who are personally known to me or have produced
a Florida driver's license as identification and did take an oath.


Notary Public, State of Florida

Notary Seal:



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CFN 2006138209
OR Book/Page: 5642 / 7342



EXHIBIT A

Legal Description of the Mortgaged Property

Unit No. 2220 of EMERALD PARK, a Condominium, according to the Declaration of Condominium thereof recorded in Official Records Book 5509, Page 3487 of the Public Records of Brevard County, Florida; amended by that First Amendment to Declaration of Condominium of Emerald Park, a Condominium, dated December 6, 2005, recorded in Official Records Book 5575, Page 3127, of the same Brevard County Public Records.



3-5

This instrument prepared by
Rebecca Lopez
95 Merrick Way, Suite 106
Coral Gables, Florida 33134

ASSIGNMENT OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS that Wayne Withers ("Assignor"), in consideration of the sum of Ten and 00/100 (\$10.00) Dollars, and other valuable consideration, received from or on behalf of BANK OF CORAL GABLES, LLC, a Florida Limited Liability Corporation, ("Assignee"), at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over without recourse unto the Assignee a certain mortgage bearing date the 3rd day of May, 2006, made by DAREN SCHWARTZ, a married person, and DANA BERMAN, a married person, recorded in Official Records Book 5642, Page 7342 of the Public Records of Brevard County, Florida, which mortgage encumbers the following described real property:

Unit No. 2220 of EMERALD PARK, a Condominium, according to the Declaration of Condominium thereof recorded in Official Records Book 5509, Page 3487 of the Public Records of Brevard County, Florida; amended by that First Amendment to Declaration of Condominium of Emerald Park, a Condominium, dated December 6, 2005, recorded in Official Records Book 5575, of the same Brevard County Public Records.

Together with the note or obligation described in said mortgage, as modified, and the monies due and to become due thereon with interest from the 8th day of June, 2006.

TO HAVE AND TO HOLD the same unto the said Assignee, his heirs, legal representatives, successors and assigns forever.

IN WITNESS WHEREOF, this Assignment of Mortgage has been executed as of the 8th day of June, 2006.

Signed, sealed and delivered
In the presence of:

By: Wayne Withers

Witness Signature

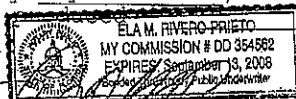
Print Witness Name

Witness Signature

Print Witness Name

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing Assignment of Mortgage was acknowledged before me this 8th day of June, 2006, by Wayne Withers, who is personally known to me or who has identification.



Notary Public
Commission Expires:

EXHIBIT "C"