

UNSECURED ENVIRONMENTAL INDEMNITY AGREEMENT

(_____)

This UNSECURED ENVIRONMENTAL INDEMNITY (“**Indemnity**”) is made and entered into as of _____, 20____, by _____, a _____ (“**Indemnitor**”), in favor of _____, a _____ and _____, a _____ (collectively referred to herein as “**Lender**”), and each of its successors, assigns and participants, and its and their respective directors, officers, agents, attorneys and employees (collectively, “**Indemnified Parties**”), with reference to the following:

RECITALS

A. Lender has made a loan to _____, a _____ (“**Borrower**”) in the principal amount of _____ Dollars (\$_____) (“**Loan**”), pursuant to the provisions and conditions of that certain Promissory Note, dated _____, 20____, made by Borrower to Lender (“**Note**”). The Loan is secured by, among other Loan Documents (as defined in that certain Loan Agreement between Borrower and Lender dated _____, 20____ (the “**Loan Agreement**”), that certain [INSERT TYPE OF DEED OF TRUST: i.e. – “**Deed of Trust with Assignment of Rents as Additional Security**”] _____, of even date herewith, made by Borrower, as trustor, in favor of Lender, as beneficiary (“**Deed of Trust**”), which encumbers that certain real property, located in _____ County, California, commonly known as [STREET ADDRESS] _____ and more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference (“**Land**”) and the improvements to be situated thereon (“**Improvements**”; referred to collectively with the Land as the “**Property**”).

B. It is a condition of Lender’s making the Loan that this Indemnity be executed and delivered by Indemnitor. Lender made the Loan in reliance upon this Indemnity.

C. Any initially capitalized term not otherwise defined herein shall have the meaning given such term in the Credit Agreement, unless the context requires otherwise.

D. Indemnitor has a direct or indirect ownership interest in Borrower and thus will derive substantial benefit from the Loan. Indemnitor enters into this Agreement to induce Lender to make the Loan.

NOW, THEREFORE, as a material inducement to Lender’s entering into the Note and the other Loan Documents, and making the Loan, Indemnitor promises and agrees in favor of Lender as follows:

1. Definitions. As used in this Indemnity, the following terms shall have the following meanings:

(a) “**Environmental Laws**” means any and all present and future federal, state and local laws, ordinances, regulations, permits, orders, rules, approvals, guidance

documents, policies, and any other requirements of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states, and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to health, safety, the environment or to any Hazardous Substances or Hazardous Substances Activity, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”), the Resource Conservation Recovery Act (“**RCRA**”), the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Clean Water Act, the Endangered Species Act, the Clean Air Act, the Occupational Health and Safety Act and the applicable provisions of federal and Nevada laws, codes, rules, regulations and/or guidance documents promulgated or published thereunder.

(b) “**Environmental Losses**” means Losses suffered or incurred at any time by any of the Indemnified Parties arising out of or as a result of:

(i) any Hazardous Substance Activity that occurs or is alleged to have occurred in whole or in part on the Property or surrounding property;

(ii) any violation of any applicable Environmental Laws relating to the Property or to the ownership, use, occupancy or operation thereof;

(iii) any demand, requirement, investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity that occurs or is alleged to have occurred in whole or in part on the Property or surrounding property;

(iv) any investigation, monitoring and(or) clean-up activities conducted at any time by Indemnitor upon the Property as part of its efforts to clean up any Hazardous Substance relating to or arising from any Hazardous Substance Activity that occurs or is alleged to have occurred in whole or in part on the Property or surrounding property;

(v) personal injury or injury to property or natural resources occurring upon or off of the Property, including, without limitation, lost profits, the cost of demolition and rebuilding of any improvements on real property, relating to or arising from any Hazardous Substance Activity that occurs or is alleged to have occurred in whole or in part on the Property or surrounding property;

(vi) the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work in connection with any Hazardous Substance Activity that occurs or is alleged to have occurred in whole or in part on the Property or surrounding property and is required by any federal, state, or local Government Agency or political subdivision, or reasonably necessary to make full economic use of the Property or any other property;

(vii) Property being sold for a price to an independent third party unaffiliated with Lender for a gross sales price (before commissions, closing costs and prorations) of less than the Loan Amount relating to or arising from any Hazardous Substance Activity that occurs or is alleged to have occurred in whole or in part on the Property or surrounding property; or

(viii) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any of the Indemnified Parties which directly or indirectly relates to, arises from or is based on any of the matters described in clause (i), (ii), (iii), (iv), (v), (vi), or (vii) or any allegation of any such matters.

Environmental Losses shall include Losses suffered or incurred by any of the Indemnified Parties arising out of or as a result of any of the matters described in clauses (i), (ii), (iii), (iv), (v), (vi), (vii), or (viii) or any allegation of any such matters, including, without limitation, Environmental Losses incurred by any of the Indemnified Parties arising out of or as a result of (a) the introduction or release of a Hazardous Substance which is discovered or released at the Property or any surrounding property, and (b) the continuing migration or release of any Hazardous Substance introduced in, on or under the Land or surrounding property; provided that Environmental Losses shall not include Losses arising from the gross negligence or willful misconduct of an Indemnified Party.

(c) **“Hazardous Substance”** means:

(i) any substance the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy, or common law;

(ii) any chemical, compound, material, mixture or substance that is now, or at any time in the future becomes, defined or listed in, or otherwise classified pursuant to any Environmental Laws as a “hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “acutely hazardous waste,” “radioactive waste,” “infectious waste,” “biohazardous waste,” “toxic substance,” “pollutant,” “toxic pollutant,” “contaminant,” or “waste,” including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) or any applicable state laws;

(iii) any substance, chemical, compound, material, mixture or formulation which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is, or at any time in the future becomes, regulated by any Government Agency, department, commission, board, or instrumentality of the United States, the State of Nevada, or any political subdivision thereof;

(iv) any substance the presence of which on the Property causes or threatens to cause a nuisance, trespass, or waste upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Property;

(v) without limitation any substance which contains petroleum, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

(vi) asbestos in any form;

(vii) without limitation any substance which contains ureal formaldehyde foam insulation, polychlorinated biphenyls (PCBs), radon gas; and

(viii) any other chemical, material or substance that, because of its quantity, concentration or physical or chemical characteristics, is controlled or regulated for health and safety reasons by any Government Agency, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace, atmosphere, soil, surface waters, or groundwater.

(d) **“Hazardous Substance Activity”** means any actual, proposed or threatened use, storage, holding, existence, release (including any spilling, leaking, pumping, pouring, emitting, emptying, dumping, disposing into the environment, and the continuing migration into or through soil, surface water or groundwater), emission, discharge, generation, processing, abatement, removal, disposition, handling, or transportation to or from the Property of any Hazardous Substances from, under, in, into or on the Property or surrounding property, including, without limitation, the movement or migration of any Hazardous Substance from surrounding property or groundwater in, into, onto or under the Property or from the Property to surrounding property or groundwater.

(e) **“Losses”** means any and all losses, liabilities (including strict liability), damages (whether actual, consequential, punitive or otherwise denominated), demands, claims, actions, judgments, good faith settlements, causes of action, assessments, penalties, fines, interest, encumbrances, liens, expenses of investigation, assessment or remediation, and any other costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses, expert and consultant fees, laboratory fees and disbursements), of any and every kind or character, foreseeable or unforeseeable, liquidated and contingent, proximate and remote, including, without limitation, any of the foregoing caused by the negligence of any Indemnified Party.

(f) **“Government Agency”** means any governmental entity, agency, office, authority, body, department, commission, board or instrumentality of the United States, the State of Nevada, the County of Clark and(or) the city or any political subdivision thereof.

2. **Indemnification.** Indemnitor shall indemnify, hold harmless, protect and defend the Indemnified Parties, and each of them, from and against any and all Environmental Losses; provided, however, Indemnitor shall not be required to indemnify or hold harmless Lender from and against any Environmental Losses that arise out of Lender’s gross negligence or willful misconduct. Indemnitor acknowledges and agrees that its liability under this Indemnity is primary and that Lender may elect, in its sole and absolute discretion, not to rely upon any other Unsecured Environmental Indemnity Agreement executed and delivered to Lender by Borrower and(or) any other indemnitor.

3. **Defense of Indemnified Parties.**

(a) If any Indemnified Party notifies Indemnitor of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Paragraph 2 applies, Indemnitor shall, upon demand by the

Indemnified Party, assume on behalf of the Indemnified Party and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel and other professional consultants selected by the Indemnified Party.

(b) If any claim, action, proceeding or investigation arises as to which the indemnity provided for in Paragraph 2 applies, and Indemnitor fails to assume promptly (and in any event within _____ (____) days after being notified of the claim, action, proceeding or investigation) the defense of the Indemnified Party, then the Indemnified Party may contest and settle the claim, action, proceeding or investigation at Indemnitor's expense using counsel selected by the Indemnified Party; provided, however, that after any such failure by Indemnitor, no such contest need be made by the Indemnified Party and settlement or full payment of any claim may be made by the Indemnified Party without Indemnitor's consent and without releasing Indemnitor from any obligations to the Indemnified Party under Paragraph 2.

4. Clean-Up. Indemnitor agrees, at its sole cost and expense and upon the demand of the Indemnified Parties, to promptly take all actions to remediate the Property, as validly required by any federal, state, or local government agency, which remediation is necessitated from the presence upon or beneath the Property of Hazardous Substances. Such actions shall include, but not be limited to, the investigation of Hazardous Substances on, about, or under the Property, the preparation of any feasibility studies, reports, or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring, or restoration work, whether on or off the Property relating to said Hazardous Substances. Indemnitor shall promptly provide to the Indemnified Parties copies of all testing results and reports that are generated in connection with the above activities. Promptly upon completion of such investigation and/or remediation, Indemnitor shall permanently seal, cap, or properly abandon all monitoring wells and test holes to industrial standards in compliance with applicable federal, state, and local laws and regulations, remove all associated equipment, and restore the Property to the maximum extent possible, which shall include, without limitation, the repair of any surface damage, including paving, caused by such investigation and/or remediation provided hereunder.

5. Limited Scope of Indemnity. This Indemnity is given solely to protect Lender and the other Indemnified Parties against Environmental Losses, and not as additional security for, or as a means of repayment of, the Loan. This Indemnity is not secured by the Deed of Trust or by any of the other Loan Documents. The obligations of Indemnitor under this Indemnity are independent of and shall not be measured or affected by: (i) any amounts at any time owing under the Loan or the Note, or secured by the Deed of Trust or any other security instrument; (ii) the sufficiency or insufficiency of any collateral (including, without limitation, the Property) given to Lender to secure repayment of the Loan; (iii) the consideration given by Lender or any other party in order to acquire the Property, or any portion thereof; (iv) the modification, expiration or termination of the Deed of Trust or any other document or instrument relating to the Loan; or (v) the discharge or repayment in full of the Loan (including, without limitation, by amounts paid or credit bid at a foreclosure sale or by discharge in connection with a deed in lieu of foreclosure).

6. Indemnity to Survive Transfer of Property. Indemnitor's obligations hereunder shall survive the sale or other transfer of the Property by Indemnitor prior to foreclosure or other

transfer of the Property. The rights of each of the Indemnified Parties under this Indemnity shall be in addition to any other rights and remedies of such Indemnified Party against Indemnitor under any other document or instrument now or hereafter executed by Indemnitor, or at law or in equity (including, without limitation, any right of reimbursement or contribution pursuant to CERCLA), and shall not in any way be deemed a waiver of any of such rights. Indemnitor agrees that it shall have no right of contribution (including, without limitation, any right of contribution under CERCLA) or subrogation against any other person or entity, including, but not limited to, any other indemnitor, including Borrower unless and until all obligations of Indemnitor have been satisfied.

7. Payment by Indemnitor. All obligations of Indemnitor hereunder shall be payable on demand, and any amount due and payable hereunder to any of the Indemnified Parties by Indemnitor which is not paid within _____ (____) days after written demand therefor from any of the Indemnified Parties, accompanied by an explanation of the amounts demanded, shall bear interest from the date of such demand at the default rate provided for under the Note.

8. Costs and Expenses. Indemnitor agrees to pay to each of the Indemnified Parties all costs and expenses (including, without limitation, each Indemnified Party's reasonable attorneys' fees and costs) incurred by such Indemnified Party in connection with the enforcement of this Indemnity or the enforcement hereof.

9. Inurement. This Indemnity shall be binding upon Indemnitor, and each of Indemnitor's respective heirs, representatives, administrators, executors, successors and assigns, and shall inure to the benefit of and shall be enforceable by each of the Indemnified Parties, its successors, endorsees and assigns (including, without limitation, any entity to which Lender assigns, sells or participates all or any portion of its interest in the Loan).

10. Governing Law. This Indemnity shall be governed and construed in accordance with the laws of the State of California.

11. Severability. Every provision of this Indemnity is intended to be severable. If any provision of this Indemnity or the application of any provision hereof to any party or circumstance is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity shall not affect the balance of the terms and provisions hereof or the application of the provision in question to any other party or circumstance, all of which shall continue in full force and effect.

12. No Waiver. No failure or delay on the part of any of the Indemnified Parties to exercise any power, right or privilege under this Indemnity shall impair any such power, right or privilege, or be construed to be a waiver of any default or an acquiescence therein, nor shall any single or partial exercise of such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No provision of this Indemnity may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

13. Successive Actions. Separate and successive actions may be brought under this Indemnity to enforce any of the provisions of this Indemnity at any time and from time to time.

No action under this Indemnity shall preclude any subsequent action, and Indemnitor hereby waives and covenants not to assert any defense in the nature of splitting of causes of action or merger of judgments.

14. Captions. The captions by which the paragraphs of this Indemnity are designated are for convenience of reference only and do not define, describe or limit the scope or the intent of this Indemnity.

15. Counterpart Execution. This Indemnity may be executed in counterparts each of which shall be deemed an original and all of which shall constitute one and the same Indemnity with the same effect as if all parties had signed the same signature page. Any signature page of this Indemnity may be detached from any other counterpart of this Indemnity and reattached to any other counterpart of this Indemnity identical in form hereto but having attached to it one or more additional signature pages.

16. Effect. The provisions of this Indemnity are intended to be “environmental provisions” pursuant to applicable federal, state or local law.

17. WAIVER OF RIGHT OF TRIAL BY JURY. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, INDEMNITOR HEREBY VOLUNTARILY, KNOWINGLY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE (INCLUDING BY WAY OF JURY TRIAL) IN RESOLVING ANY DISPUTE OR LITIGATION (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN INDEMNITOR AND THE INDEMNIFIED PARTIES ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT AND THE SUBJECT MATTER HEREOF. THIS PROVISION AND THE WAIVER SET FORTH HEREIN ARE MATERIAL INDUCEMENTS TO LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN AND IN THE LOAN DOCUMENTS.

18. Suretyship Waivers.

(a) Rights of Lender. Indemnitor authorizes Lender at any time in its sole discretion to take any of the following actions on such terms and conditions as Lender may elect, without giving notice to Indemnitor or any other person or obtaining the consent of Indemnitor or any other person and without affecting Indemnitor’s obligations hereunder:

(i) alter any of the terms and (or) documentation of any of the obligations hereunder or under the Loan Documents (as defined in the Loan Agreement), including renewing, amending, releasing, waiving, compromising, extending or accelerating, or otherwise changing the time for payment of, or increasing or decreasing the obligations hereunder or the rate of interest on the obligations hereunder;

(ii) accept new or additional documents, instruments or agreements relative to the obligations hereunder or under the Loan Documents;

(iii) consent to the change, restructure or termination of the individual, partnership, limited liability company, corporate or other organizational structure or existence of

Borrower, Indemnitor or any other person or any affiliate of Borrower, Indemnitor or any other person, and correspondingly restructure the obligations hereunder;

(iv) accept partial payments on the obligations hereunder or under the Loan Documents;

(v) take and hold any security or additional guaranties for the obligations hereunder or under the Loan Documents and amend, alter, exchange, substitute, transfer, enforce, perfect or fail to perfect, waive subordinate, terminate, compromise, or release any such security or guaranties;

(vi) apply any security, and direct the order and manner of sale thereof as Lender in its sole discretion may determine;

(vii) settle, release on terms satisfactory to Lender or by operation of law or otherwise, compound, compromise, collect or otherwise liquidate the obligations hereunder or under the Loan Documents and(or) the security or any guaranty therefor in any manner;

(viii) release Borrower, Indemnitor or any other person of its liability for all or any of the obligations hereunder or under the Loan Documents;

(ix) participate in any settlement offered by Borrower, Indemnitor, any guarantor or any other person, whether in liquidation, reorganization, receivership, bankruptcy, assignment for the benefit of creditors or other debtor-relief proceeding or otherwise;

(x) exercise or not exercise rights available to it in any liquidation, reorganization receivership, bankruptcy, assignment for benefit of creditors or other debtor-relief proceeding, including voting or not voting to accept a plan and filing or not filing a proof of claim;

(xi) release, substitute or add any one or more guarantors or endorsers;
and

(xii) assign its rights hereunder in whole or in part.

(b) Independent Obligations. Indemnitor shall pay to (in immediately available funds) and perform for the benefit of Lender, when due, on demand of Lender, all obligations hereunder. Indemnitor's obligations under this document are independent of those of Borrower or Indemnitor and those of any other guarantor or other person. Lender may bring a separate action against Indemnitor without proceeding against Borrower, Indemnitor or any other guarantor or other person or any security held by Lender and without pursuing any other remedy.

(c) Waiver of Defense. Indemnitor waives and agrees not to assert or take advantage of:

(i) any right to require Lender to proceed against Borrower, Indemnitor any other guarantor or any other person or any security now or hereafter held by

Lender or to pursue any other remedy whatsoever, including any such right or any other right set forth in or arising out of Sections 2845, 2848, 2849, 2850, 2899 or 3433 of the California Civil Code;

(ii) any defense based upon any legal disability of Borrower, Indemnitor or any guarantor or other person, or any discharge or limitation of the liability of Borrower, Indemnitor or any guarantor or other person to Lender (except on satisfaction of all of Borrower's obligations with respect to the Loan Documents), or any restraint or stay applicable to actions against Borrower, Indemnitor or any guarantor or other person, whether such disability, discharge, limitation, restraint or stay is consensual, or arising by order of a court or other governmental authority, or arising by operation of law or any liquidation, reorganization, insolvency, receivership, bankruptcy, assignment for the benefit of creditors or other debtor-relief proceeding, whether or not Lender consents to such treatment in such proceeding, or from any other cause, including any defense to the payment of interest, attorneys' fees and costs, and other charges that otherwise would accrue or become payable in respect to the obligations hereunder after the commencement of any such proceeding;

(iii) setoff, counterclaim, presentment, demand, protest, notice of protest, notice of nonpayment, or other notice of any kind;

(iv) any defense based upon the modification, renewal, extension or other alteration of any of the obligations hereunder, or of the documents executed in connection therewith;

(v) any defense based upon the negligence of Lender, including the failure to record an interest under a deed of trust, the failure to perfect any security interest, or the failure to file a claim in any bankruptcy of Borrower, Indemnitor or any guarantor or other person;

(vi) any defense based upon a statute of limitations to the fullest extent permitted by law and any defense based upon Lender's delay in enforcing this Indemnity or any other agreement;

(vii) all rights of subrogation, reimbursement, indemnity and contribution, all rights to enforce any remedy that Lender may have against Borrower, Indemnitor or other person, and all rights to participate in any security held by Lender for the obligations hereunder, including any such right or any other right set forth in Sections 2848 or 2849 of the California Civil Code, until the obligations hereunder have been paid and performed in full, and any defense based upon the impairment of any subrogation, reimbursement, indemnity or contribution rights that Indemnitor might have, including any defense or right based upon the acceptance by Lender or an affiliate of Lender of a deed in lieu of foreclosure without extinguishing the obligations hereunder, even if such acceptance destroys, alters or otherwise impairs subrogation rights of Indemnitor, the right of Indemnitor to proceed against Borrower, Indemnitor or any other person for reimbursement, or both;

(viii) any defense based upon or arising out of any defense which Borrower or any other guarantor or other person may have to the performance of any part of the obligations hereunder;

(ix) any defense to recovery by Lender of a deficiency after non-judicial foreclosure sale of real or personal property; any defense based upon unavailability to Lender of a deficiency judgment after nonjudicial sale of real or personal property; and any defense based upon or arising out of any of Sections 580a (which might limit the amount of any deficiency judgment which might be recoverable following the occurrence of a trustee's sale under a deed of trust), 580b and 580d (which may limit the right to recover a deficiency judgment with respect to purchase money obligations and after a non-judicial foreclosure sale, respectively), or 726 (which, among other things, may require the exhaustion of security before a personal judgment may be obtained for a deficiency) of the California Code of Civil Procedure (including but not limited to any fair value limitations under Sections 580a or 726 of such Code) or based upon or arising out of Divisions 8 or 9 or other applicable divisions of the California Uniform Commercial Code;

(x) any defense based upon the death, incapacity, lack of authority or termination of existence of, or purported revocation or rescission of this Indemnity or any of the obligations hereunder by, any person, or the substitution of any party hereto or thereto;

(xi) any defense based upon or related to Indemnitor's lack of knowledge as to Borrower's financial condition;

(xii) any right to revoke this Indemnity or obligations hereunder and all rights and benefits of Section 2815 of the California Civil Code;

(xiii) any right to designate the application of any sums or property received by Lender, and in connection therewith, Indemnitor agrees that any amounts or sums received by Lender from any source on account of the obligations hereunder may be applied by Lender toward payment thereof in such order of application as Lender may from time to time elect, notwithstanding any contrary designation by Borrower, Indemnitor or any other person;

(xiv) any defense based upon any action taken or omitted by Lender in any bankruptcy or other insolvency proceeding involving Borrower, Indemnitor or any other person, including any election to have Lender's claim allowed as secured, partially secured or unsecured, any extension of credit by Lender to Borrower in any such proceeding, and the taking and holding by Lender of any security for any such extension of credit; and

(xv) any right or defense that is or may become available to Indemnitor by reason of California Civil Code Sections 2787 to and including 2855, 2899 and 3433.

(d) Borrower's Financial Condition. Indemnitor acknowledges that it is relying upon its own knowledge of and is fully informed with respect to Borrower's financial condition. Indemnitor assumes full responsibility for keeping fully informed of Borrower's financial condition and all other circumstances affecting Borrower's or Indemnitor's ability to perform the obligations hereunder or under the Loan Documents, and agrees that Lender will have no duty to report to Indemnitor any information which Lender receives about Borrower's or

Indemnitor's financial condition or any circumstances bearing on Borrower's ability to perform all or any portion of its obligations hereunder or under the Loan Documents, regardless of whether Lender has reason to believe that any such facts materially increase the risk beyond that which Indemnitor intends to assume or has reason to believe that such facts are unknown to Indemnitor or has a reasonable opportunity to communicate such facts to Indemnitor.

(e) Impairment of Subrogation Rights.

(i) Upon an Event of Default, Lender may elect to foreclose nonjudicially or judicially against any real or personal property security it holds for any of the obligations hereunder, exercise any other remedy against Borrower or any security or any guarantor or other person, and (or) take a deed or assignment of security in lieu of foreclosure. No such action by Lender will release or limit the liability of Indemnitor, even if the effect of that action is to deprive Indemnitor of the right or ability to collect reimbursement from or assert subrogation, indemnity or contribution rights against Borrower, Indemnitor or any other guarantor or other person for any sums paid to Lender, or to obtain reimbursement by means of any security held by Lender for the obligations hereunder or pursuant to the Loan Documents.

(ii) Indemnitor acknowledges that if Lender elects to foreclose nonjudicially against any real property security it holds for the obligations hereunder or any part thereof, if applicable, Indemnitor may have subrogation rights that might be destroyed by virtue of application of Section 580d of the California Code of Civil Procedure and will or may have a defense to its liability under this Indemnity. Without in any way limiting any other waiver, consent or acknowledgment contained in this Indemnity and in addition thereto, Indemnitor hereby waives and agrees not to assert or take advantage of any defense based upon such Section 580d of the California Code of Civil Procedure or any loss or impairment of subrogation or other rights against Borrower, Indemnitor or any other person or entity, and no such nonjudicial foreclosure by Lender shall release or limit the liability of Indemnitor hereunder.

(iii) Indemnitor waives all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as nonjudicial foreclosure with respect to security for the obligations hereunder or under the Loan Documents, as applicable, has destroyed Indemnitor's rights of subrogation and (or) reimbursement against Borrower or other person by the operation of Section 580d of the California Code of Civil Procedure or otherwise.

(iv) Indemnitor waives all rights and defenses arising out of the operation of Section 580a of the California Code of Civil Procedure, and further waives its right to a fair value hearing under such Section 580a to determine the size of a deficiency judgment following any foreclosure sale on encumbered real property.

(f) Bankruptcy.

(i) The obligations of Indemnitor hereunder shall not be altered, limited, or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of Borrower or Indemnitor,

or by any defense Borrower or Indemnitor may have by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding.

(ii) Indemnitor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims that Indemnitor may have against Borrower or Indemnitor relating to any indebtedness of Borrower or Indemnitor to Indemnitor, and will assign to Lender all rights of Indemnitor thereunder. If Indemnitor does not file any such claim at least _____ (____) days prior to any deadline thereof, then to the extent allowed by law Lender, as attorney-in-fact for Indemnitor, is hereby authorized to do so in the name of Indemnitor or, in Lender's discretion, to assign the claim to a nominee, and to cause such proof of claim to be filed in the name of Lender's nominee. The foregoing power of attorney is coupled with an interest and is irrevocable until after the indefeasible payment and performance in full of all of the obligations hereunder. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to Lender the amount payable on such claim. Indemnitor hereby assigns to Lender all of Indemnitor's rights to any such payments or distributions to which Indemnitor would otherwise be entitled; provided, however, that Indemnitor's obligations hereunder shall not be satisfied except to the extent that Lender receives cash by reason of any such payment or distribution. If Lender receives anything hereunder other than cash, the same shall be held as collateral for amounts due hereunder.

(g) Continuance of Indemnity. The liability of Indemnitor hereunder shall continue in effect notwithstanding any payment or performance of the obligations hereunder by Borrower, such that, if any such payment or performance is avoided or recovered from Lender or Lender is otherwise required to restore or return any such payment or performance in connection with the bankruptcy, insolvency or reorganization of Indemnitor or Borrower or otherwise, Indemnitor shall remain liable hereunder as though such payment or performance had not occurred. The determination as to whether any such payment or performance must be restored or returned may be made by Lender in its sole discretion; provided, however, that if Lender chooses in its discretion to contest any such matter, Indemnitor agrees to indemnify, defend and hold harmless Lender from all costs and expenses (including, without limitation, legal fees and disbursements) of such litigation. Lender shall be under no obligation to return or deliver this Indemnity to Indemnitor, notwithstanding the payment or performance of the obligations hereunder. If this Indemnity is nevertheless returned to Indemnitor or is otherwise released, then the provisions herein shall survive such return or release, and the liability of Indemnitor under this Indemnity shall survive such return or release, and Indemnitor shall remain liable under this Indemnity under the circumstances provided herein notwithstanding such return or release.

(h) Subordination.

(i) All existing and future obligations of Indemnitor or Borrower to Indemnitor (including, without limitation, any obligations arising by reason of any payment by Indemnitor hereunder) are hereby subordinated to the full and indefeasible payment and performance of the obligations hereunder and under the Loan Documents.

(ii) Upon any default under any of the obligations hereunder or under the Loan Documents, all obligations of Indemnitor or Borrower to Indemnitor shall be collected,

enforced and received by Indemnitor as trustee for Lender, and all amounts received shall be paid over to Lender, for application to the obligations hereunder. In the event of a bankruptcy case against Borrower, Lender shall, at its option, be entitled to file a proof of claim on behalf of Indemnitor under the Bankruptcy Rule 3001. Lender shall be entitled to all voting rights and distributions on account of such claim until full and complete performance of the obligations hereunder.

IN WITNESS WHEREOF, Indemnitor has executed and delivered this Indemnity as of the date first written above.

INDEMNITORS:

_____, a

By: _____

Name: _____

Its: _____

EXHIBIT A

Legal Description