

**THE ROLE OF BORROWER'S ATTORNEY ON
COMMERCIAL LOAN DEFEASANCES***

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1. INTRODUCTION. In a conduit mortgage loan, a Borrower is prohibited from prepaying the loan, but may have the right to conduct a "defeasance" of the mortgage loan, whereby the real estate collateral is replaced by United States government obligations. The goal of a defeasance is to cause the release of the underlying real estate collateral and thus enable the Borrower to refinance the loan or to sell the underlying real estate collateral unencumbered by an unattractive mortgage. When the defeasance is completed, there is, with limited exceptions, a contemporaneous release of liability of the Borrower and its principals from all liability on the loan that first occurs after the defeasance. The Lender is represented in the transaction by the Servicer and the Servicer's counsel

This paper will explore the responsibilities of the Borrower's attorney on a defeasance, with attention given to many of the specific provisions in the loan and defeasance documents that will be encountered. It is assumed that any reading of this paper will be made after reviewing *Conduit Loan Defeasance Training* presented by Joshua Cohen of Commercial Defeasance, LLC. An overall background and explanation of a commercial loan defeasance is explained in Mr. Cohen's presentation.

2. ORIGINAL LOAN PROVISIONS.

- A. Promissory Note. A promissory note on a conduit loan will prohibit prepayment of the loan, thus ensuring a constant rate of return throughout the term of the loan. Most securitized loans are held in a real estate mortgage investment conduit, or a REMIC, enabling the ultimate investor in the loan to receive pass-through tax treatment of the income, so long as the REMIC only invests in qualified mortgages. The Internal Revenue Code and its regulations on the subject permit a defeasance to be done in connection with a sale or refinancing of the mortgaged property; in a defeasance, United States government obligations are substituted in lieu of the real estate collateral, and the pass-through tax treatment is preserved. The applicable provisions in the promissory note establishing a Borrower's right to defease are set forth on Attachment 1. These provisions include the following
 - (i) At least thirty (30) days notice of intent to defease must be given to the Lender.
 - (ii) The Lender must be paid a Defeasance Deposit in an amount equal to the unpaid principal amount of the loan, a yield maintenance premium, accrued interest and the costs to purchase the United States Obligations.
 - (iii) The Lender must be delivered a security agreement creating a first lien on the United States Obligations that are being purchased.
 - (iv) The Lender must be provided the form of a release of the mortgage.
 - (v) The Lender must be provided an opinion of a certified public accountant that the Defeasance Deposit is adequate to match the remaining payments due on the note.

(vi) The Lender must be provided such other certificates, documents or instruments as the Lender may reasonably request.

B. Single Purpose Entity Requirements. As part of the underwriting of a conduit loan, the Borrower is required, among other things, to limit its purpose, including its ability to incur other debt. These so-called SPE requirement serve as a safeguard to prevent the Borrower from having other creditors that could make a business failure more likely and could also serve as an obstacle to the Lender's position in the Borrower's bankruptcy. An example of SPE provisions that are required to be placed in the Borrower's organizational documents is set forth on Attachment 2. The deed of trust on a conduit loan will typically provide for the Borrower to covenant to similarly limit its use and not amend its organizational documents without the lender's consent. An example of these typical covenants is set forth on Attachment 3. In addition, a principal in the Borrower will often be required to guaranty non-recourse carveouts, with the loan becoming fully recourse to the Borrower and any Guarantor if the SPE provisions in the deed of trust are violated.

3. DUE DILIGENCE. Counsel for the Borrower is charged with specified due diligence tasks associated with a defeasance. A typical checklist for a defeasance is set forth on Attachment 4. Borrower's counsel can anticipate needing to provide the following: (i) a draft of the proposed release of the mortgage and other liens on the real estate; (ii) the proposed UCC-3 termination statement; (iii) organizational documents on the Borrower and its general partner, if applicable, including certificates of existence and good standing, appropriate resolutions and consents; and (iv) an updated title report.

Borrower's counsel should endeavor to deliver its assigned due diligence documents as soon as possible, so that counsel for the Lender (i.e., the Servicer's counsel) can finalize the defeasance documents. It should also be kept in mind that the release of the mortgage is a release of the liens on the real estate collateral and should not recite that the loan is being paid, but merely that the Borrower is entitled to a release of the liens.

4. THE DEFEASANCE CLOSING DOCUMENTS. The defeasance documents themselves consist of (i) a Defeasance Pledge and Security Agreement, (ii) a Defeasance Account Agreement, (iii) a Defeasance Assignment, Assumption and Release Agreement, (iv) a Defeasance Waiver and Consent Agreement, and (v) a Defeasance Certificate. Each of these documents should be carefully reviewed for their description of the transaction, the identification of the parties and the obligations to be performed by the Borrower and the other parties thereto. A brief description of the purpose behind each of these documents is discussed in Joshua Cohen's *Conduit Loan Defense Defeasance Training* materials. In this paper, focus will be made on the two defeasance documents that are inherently related to the underlying real estate.

A. Defeasance Assignment, Assumption and Release Agreement. The Defeasance Assignment, Assumption and Release Agreement describes the overall transaction starting with the existence of the mortgage loan, the providing of substitute collateral, the transfer of the Borrower's obligations to the Successor Borrower,

the corresponding transfer of the substitute collateral to the Successor Borrower and the release of the Borrower and its principals from continuing liability under the loan. A form of Defeasance Assignment, Assumption and Release Agreement is on Attachment 5. The highlighted provisions shown on Attachment 5 set forth the background and purpose of the document, including the transfers and assumptions between the Borrower and the Successor Borrower, and the release of the Borrower and any Guarantor from continuing liability. Consideration should be given to qualifying the representations and warranties made by the Borrower in Section 7. It should be noted that in Section 7(a)(viii) of the attached form the Borrower is being asked to confirm that it has no indebtedness other than as permitted by the underlying loan, but it is contemplated that there is additional indebtedness involved with refinancing of the loan. Such refinancing costs would possibly otherwise not be permitted by the loan documents.

- B. Defeasance Waiver and Consent Agreement. In virtually all defeasances, there are one or more defeasance requirements (set forth in the original loan documents) that will be waived. Accordingly, a typical defeasance document includes the Defeasance Waiver and Consent Agreement, whereby the Lender waives or consents to a departure from some of the conditions of the defeasance contained in the promissory note. For example, the Lender may waive the requirement for thirty (30) days prior written notice, the requirement that the accounting report be from a particular firm (such as a "Big Six" independent certified public accounting firm), or the requirement that all conditions to the defeasance have been met being certified by an applicable rating agency. Whether a waiver can be obtained may depend on the particular requirements of the Servicer, and is likely dependent on the Pooling and Servicing Agreement that governs the Servicer's responsibilities. The amount of the loan, including its relative size in the applicable mortgage pool within the REMIC, may also be a factor in determining whether a defeasance condition will be waived. The most common waived defeasance requirement is that the loan actually be defeased on a regularly scheduled payment date on the note. Counsel for the Lender/Servicer will all in all likelihood take the initiative in preparing the various requirements to be covered in the Defeasance Waiver and Consent Agreement, although the actual defeasance requirement should be reviewed by the Borrower's attorney to confirm that all requirements have either been met or waived.
5. LEGAL OPINIONS. As noted in Section 2 of the attached defeasance closing checklist, a number of legal opinions are required in connection with a defeasance. At the very least, the Borrower's counsel will have the responsibility for providing an opinion on the organization, good standing, and power and authority of the Borrower to enter into the defeasance documents, as well as on the enforceability of the defeasance documents. Because most counsel for the Borrower are real estate attorneys, the Servicer's counsel may not require a perfection and enforceability opinion from the Borrower's counsel on the Defeasance Pledge and Security Agreement and the Defeasance Account Agreement, both of which cover the United States Obligations and are usually governed by New York law. The Borrower's attorney should determine whether a corporate or banking attorney in the same firm is qualified to review the applicable provisions governing the security

interest in the United States Obligations and render the perfection and enforceability opinions. Depending on the availability of that counsel, as well as the additional costs associated therewith, the Borrower's attorney may permit the Servicer's Counsel (at the Borrower's expense) to author the perfection and enforceability opinion. The other opinions described in Paragraph 2 of the attached defeasance closing checklist are typically given by the Servicer's Counsel or counsel for the Successor Borrower. Depending on the size of the loan, a bankruptcy non-consolidation opinion may also be required from the Successor Borrower's counsel.

6. DEFEASANCE IN CONNECTION WITH A REFINANCING. A defeasance may occur because the Borrower is refinancing the existing loan. In such circumstances, the Borrower's attorney may need to revise the Borrower's organizational documents to meet the SPE requirements, if any, of the new lender, and simultaneously negotiate the terms of the defeasance and the terms of the new loan. Timing is critical for such a refinancing because the proceeds of the new loan will need to be available when the United States Obligations are ordered (or "circled") and certainly by the time the defeasance closing is consummated, the signed release of the mortgage is delivered for recordation to the title company, and the new deed of trust is recorded. To accommodate this timing, the Borrower will need to execute the new loan documents and sign the papers amending its organizational documents and authorizing the new loan, at a time when the existing loan still prohibits such an undertaking. It is important that the Borrower's attorney, in drafting the applicable consents and amendments to the organizational documents of the Borrower, prepare them with an effective date (to be completed later) that will match the date that the defeasance is consummated and the new loan funded to the Borrower. The authorization documents for the new loan and any amendments to the organizational documents for the Borrower, should ratify and confirm all actions previously taken by the Borrower, including the execution and delivery of the new loan documents. As a practical matter, the effective date of the consents and amendments will coincide with the last day of the defeasance closing.
7. DEFEASANCE IN CONNECTION WITH A SALE. A defeasance may also occur because the Borrower is selling the real estate collateral and the existing mortgage is an impediment either because it is unassumable, the equity is far greater than a buyer desires to make as a cash downpayment, or for other reasons. Similar to a defeasance with a refinancing, the Borrower's attorney will need to consider certain provisions in the Purchase and Sale Agreement that will interact with a defeasance. On Attachment 6 is a Purchase and Sale Agreement containing appropriate provisions to allow for the Seller (i.e., the Borrower) to defease the property with assurances that the entire purchase price is held by the title company to pay for the property and fund the defeasance, without any significant risk that the transaction will not close. The provisions unique for a defeasance are highlighted in the attached Purchase and Sale Agreement. In Section 3 of the attached Purchase and Sale Agreement, it should be noted that the closing is scheduled to occur four (4) business days after the Seller has notified the Buyer that the defeasance is imminent. Three (3) business days before the Closing Date is referred to as the Documents Delivery Date, which, in addition to establishing the deadline for delivering the closing documents to the title company handling the purchase and sale, establishes the benchmark for the expiration of various conditions precedent. Any conditions precedent

for estoppel letters, new litigation, changes in zoning classification and the like, should be linked to the Documents Delivery Date, so that there are issues other than possibly a casualty or condemnation that would prevent the closing from occurring. With respect to the documents to be delivered at closing, the relevant deadline should be the Documents Delivery Date (with recognition given to the fact that the closing statement may be updated on the morning of the actual closing). The Buyer's funds are to be delivered one day before the Closing Date, and early enough in the morning to assure that the funds are in fact at the title company when the United States Obligations are ordered. The specific relationship of the defeasance to the closing is set forth in Section 8.5 of the attached Purchase and Sale Agreement and contains a general obligation on the part of the Buyer to cooperate with the defeasance. As a practical matter, it is common for the Buyer's attorney to confirm, at least verbally, that all conditions to the closing have occurred, other than (a) any unknown default of the Seller and (b) satisfaction of the typical conditions in an escrow letter for (i) obtaining originals of the conveyance documents, (ii) funding in accordance with the closing statement, and (iii) the issuance of a title policy promptly after closing. In preparing the documents authorizing the defeasance, the Borrower's attorney, where there is a contemporaneous sale, should include the sales aspects in separate documents so that those documents are not burdened by any requirements of the Lender's counsel.

8. CONCLUSION. Conduit mortgage loans have been with us for many years, but only within the past four or five years has the real estate market appreciated in value to the point that the costs associated with the defeasance justify their widespread use. Understanding the purpose of the defeasance and its components will assist the Borrower's attorney not only in handling the representation effectively, but also in explaining the process to the client. Hopefully, this paper has removed some of the mystery associated with a defeasance.

ATTACHMENT 1

RIGHT TO DEFEASE (IN THE PROMISSORY NOTE)

(c) (i) Notwithstanding any provision of this Section 7 to the contrary, at any time after the earlier of (1) the date which is two years after the "startup day," within the meaning of Section 860G(a)(9) of the Internal Revenue Code of 1986, as amended from time to time or any successor statute (the "Code"), of a "real estate mortgage investment conduit," within the meaning of Section 860D of the Code, that holds this Note, and (2) a regularly scheduled payment date on or after that date which is four (4) years after the date of the first monthly payment due under Section 1(b), and provided no Event of Default (or any event which with the passage of time or the giving of notice, or both, could become an Event of Default) has occurred under the Security Instrument or under any of the Loan Documents, Borrower may cause the release of the Property (in whole but not in part) from the lien of the Security Instrument and the other Loan Documents upon the satisfaction of the following conditions precedent:

(A) not less than 30 days prior written notice to Lender specifying a regularly scheduled payment date ("Release Date") on which the Defeasance Deposit (hereinafter defined) is to be made;

(B) the payment to Lender of interest accrued and unpaid on the principal balance of this Note to and including the Release Date;

(C) the payment to Lender of all other sums, not including scheduled interest or principal payments, due under this Note, the Security Instrument and the other Loan Documents;

(D) the payment to Lender of the Defeasance Deposit; and

(E) the delivery to Lender of:

(1) a security agreement, in form and substance satisfactory to Lender, creating a first priority lien on the Defeasance Deposit and the U.S. Obligations (hereinafter defined) purchased on behalf of Borrower with the Defeasance Deposit in accordance with this subparagraph (the "Security Agreement");

(2) a release of the Property from the lien of the Security Instrument (for execution by Lender) in a form appropriate for the jurisdiction in which the Property is located;

(3) an officer's certificate of Borrower certifying that the requirements set forth in this subparagraph (i) have been satisfied;

(4) an opinion of a certified public accountant acceptable to Lender to the effect that the Defeasance Deposit is adequate to provide payment on or prior to, but as close as possible to, all successive scheduled payment dates after the Release Date upon which interest and principal payments are required under this Note (including the amounts due on the Maturity Date) and in amounts equal to the scheduled payments due on such dates under this Note;

(5) payment of all of Lender's expenses incurred in connection with the defeasance including, without limitation, reasonable attorneys fees; and

(6) such other certificates, documents or instruments as Lender may reasonably request.

In connection with the conditions set forth in subsection (c)(i)(E) above, Borrower hereby appoints Lender as its agent and attorney-in-fact for the purpose of using the Defeasance Deposit to purchase U.S. Obligations which provide payment on or prior to, but as close as possible to, all successive scheduled payment dates after the Release Date upon which interest and principal payments are required under this Note (including the amounts due on the Maturity Date) and in amounts equal to the scheduled payments due on such dates under this Note (the "Scheduled Defeasance Payments"). Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to Lender and applied to satisfy the obligations of the Borrower under this Note.

(ii) Upon compliance with this subsection (c), the Property shall be released from the Security Instrument and the pledged U.S. Obligations shall be the sole collateral securing this Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by subparagraph (c)(i) above and satisfy the Borrower's obligations under this subsection (c) shall be remitted to the Borrower with the release of the Property from the Security Instrument.

(iii) For purposes of this subsection (c), the following terms shall have the following meanings:

(A) The term "Defeasance Deposit" shall mean an amount equal to 100% of the remaining principal amount of this Note, the Yield Maintenance Premium, any costs and expenses incurred or to be incurred in the purchase of the U.S. Obligations necessary to meet the Scheduled Defeasance Payments and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of this Note or otherwise required to accomplish the agreements of this subsection;

(B) The term "Yield Maintenance Premium" shall mean the amount (if any) which, when added to the remaining principal amount of this Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments; and

(C) The term "U.S. Obligations" shall mean direct non-callable obligations of the United States of America.

(iv) Upon the release of the Property in accordance with this subsection (c), Borrower shall, at Lender's request, assign all its obligations and rights under this Note, together with the pledged Defeasance Deposit, to a successor special purpose entity designated by Borrower and approved by Lender in its sole discretion. Such successor entity shall execute an assumption agreement in form and substance satisfactory to Lender in its sole discretion pursuant to which it shall assume Borrower's obligations under this Note and the Security Agreement. In connection with such assignment and assumption, Borrower shall (x) deliver to Lender an opinion of counsel in form and substance and delivered by counsel satisfactory to Lender in its sole discretion stating, among other things, that such assumption agreement is enforceable against Borrower and such successor entity in accordance with its terms and that this Note, the Security Agreement and the other Loan Documents, as so assumed, are enforceable against such successor entity in accordance with their respective terms, and (y) pay all costs and expenses incurred by Lender or its agents in connection with such assignment and assumption (including, without limitation, the review of the proposed transferee and the preparation of the assumption agreement and related documentation). In connection with such assignment and assumption, Borrower and any Guarantor may be released of personal liability under the Note and the other Loan Documents, but only as to acts or events occurring after the closing of such assignment and assumption.

(v) Upon the release of the Property in accordance with this subsection (c), Borrower shall have no further right to prepay this Note pursuant to the other provisions of this Section 7 or otherwise.

ATTACHMENT 2

SAMPLE SPE PROVISIONS

Notwithstanding any other provisions of these Articles and so long as any obligations secured by a first priority mortgage, deed of trust or deed to secure debt incurred in connection with any financing of the Property (a "Security Instrument") remain outstanding and not discharged in full, without the consent of all partners, the Partnership shall have no authority on behalf of the Partnership to:

- (i) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than obligations secured by the Security Instrument, except unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Property in such amounts as are normal and reasonable under the circumstances, provided that such debt is not evidenced by a note and is paid when due and provided in any event the outstanding principal balance of such debt shall not exceed at any one time one percent (1%) of the outstanding obligations secured by the Security Instrument;
- (ii) seek the dissolution or winding up, in whole or in part, of the Partnership;
- (iii) merge into or consolidate with any person or entity or dissolve, terminate or liquidate, in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;
- (iv) file a voluntary petition or otherwise initiate proceedings to have the Partnership adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Partnership, or file a petition seeking or consenting to reorganization or relief of the Partnership as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Partnership; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Partnership or of all or any substantial part of the properties and assets of the Partnership, or make any general assignment for the benefit of creditors of the Partnership, or admit in writing the inability of the Partnership to pay its debts generally as they become due or declare or effect a moratorium on the Partnership debt or take any action in furtherance of any such action; or
- (v) amend, modify or alter Articles One, Two, Three, Four, Five or Six of these Articles.

Notwithstanding the foregoing and so long as any obligation secured by the Security Instrument remains outstanding and not discharged in full, the Partnership shall have no authority to take any action in items (i) through (iii) and (v) without the written consent of the holder of the Security Instrument.

ATTACHMENT 3

ADDING TEETH TO THE SPE PROVISIONS

Covenants in the Deed of Trust

Section 4.3 Single Purpose Entity. Borrower covenants that it has not and shall not:

- (a) engage in any business or activity other than the acquisition, ownership, operation and maintenance of the Property, and activities incidental thereto;
- (b) acquire or own any material asset other than (i) the Property, and (ii) such incidental Personal Property as may be necessary for the operation of the Property;
- (c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Lender's consent;
- (d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Borrower's Partnership Agreement, Articles or Certificate of Incorporation, Articles of Organization, Operating Agreement or similar organizational documents, as the case may be.

ATTACHMENT 4

**DEFEASANCE CLOSING CHECKLIST
DEFEASANCE OF LOAN NO. _____**

LEGEND:

- S: Servicer
- SC: Servicer's Counsel
- SB: Successor Borrower
- SBC: Successor Borrower's Counsel
- B: Borrower
- BC: Borrower's Counsel
- A: Accountant
- T: Trustee
- SI: Securities Intermediary
- TC: Title Company
- C: Custodian
- E: Escrow Agent
- BDC: Borrower's Defeasance Consultant

Requirements	Parties					Responsibility	Status
	B	SI/C	T	S	SB		
1. Defeasance Documents							
a. Defeasance Pledge and Security Agreement	X	X	X			SC	Delivered
b. Defeasance Account Agreement	X	X	X	X		SC	Delivered
c. Defeasance Assignment, Assumption and Release Agreement	X	X	X	X	X	SC	Delivered
d. Defeasance Certificate	X					SC	Delivered
e. Defeasance Waiver and Consent Agreement	X			X		SC	Delivered
f. UCC-1 Financing Statements (state of SB's incorporation/ SB's principal place of business/ location of pledged collateral account)					X	SC	Delivered

REQUIREMENTS	RESPONSIBILITY	STATUS
2. Opinions		
a. Borrower: First Priority Perfected Security Interest (Perfection Opinion)	SC	
b. REMIC Opinion	SC	
c. Borrower: Organization/Authorization/Enforceability (Form to be provided)	BC	
d. Successor Borrower: Organization/Authorization/Enforceability	SBC	
e. Successor Borrower: Non-consolidation Report	SBC	
f. Independent Accountant's Math Verification	A	
3. Release Documents		
a. Reconveyance Deed/Mortgage/ALR/Release	B / BC	
b. UCC termination statement(s)	B / BC	
c. Return of Escrow Balances (Post-Closing)	S	Post-Closing
4. Borrower Organizational documents		
a. Good Standing Certificates (Each Borrower and Constituent GP/Manager - States of formation and situs of property)	B	Deliver ASAP
b. Corporate, partnership or member resolutions; incumbency certificates (Each Borrower and Constituent GP/Manager)	B	Deliver ASAP
c. Certified copy of formation documents (Each Borrower and Constituent GP/Manager)	B	Deliver ASAP
5. Successor Borrower Organizational Documents		
a. Good Standing Certificates (Successor Borrower and Constituent GP/Manager – States of formation and principal place of business)	SB	
b. Corporate, partnership or member resolutions; incumbency certificates (Successor Borrower and Constituent GP/Manager)	SB	

REQUIREMENTS	RESPONSIBILITY	STATUS
c. Certified copy of formation documents (Successor Borrower and Constituent GP/Manager)	SB	
6. Other Items		
a. Borrower Notice to Lender Regarding Proposed Defeasance	B	Done
b. Confirmation that Original Loan Documents were assigned to REMIC		Deliver Title Report
c. Provisions for Defeasance in Original Loan Documents and Pooling and Servicing Agreement	S/SC	Done
d. Proposed List of Defeasance Securities	B	
e. Opening of Custodial Account (Provide Account # to SC)	B/C	
f. Purchase of Defeasance Securities and Delivery to Securities Intermediary/Custodian	B	
g. Initial cash deposit (if shown in Independent Accountant's Report)	B	
h. No-Downgrade Letters from Rating Agencies (S&P, Fitch and Moody's)	S	
i. S&P Servicer Certification		
j. Updated Title Report	TC	
k. Escrow Closing Instructions	SC	
l. Closing Statement	E	

ATTACHMENT 5

DEFEASANCE ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT

THIS DEFEASANCE ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT, dated as of _____, 2007, (this "**Agreement**") is made by and among _____, a _____ limited partnership ("**Borrower**"), _____, a Delaware limited liability company ("**Successor Borrower**"), _____, as Trustee for the Registered Holders of _____ Commercial Mortgage Securities, Inc., Mortgage Pass-Through Certificates, Series 1999-C2, as secured party (said Trustee and its successors and assigns, "**Lender**"), _____, a _____ corporation, as master servicer on behalf of the Trustee under the Pooling and Servicing Agreement (defined in the Pledge Agreement, as defined herein) ("**Servicer**"), and, for the sole purpose of acknowledging the transactions effected by this Agreement, _____, N.A., as securities intermediary and custodian ("**Intermediary**").

RECITALS:

A. _____, a _____ corporation ("**Original Lender**"), made a loan in the amount of \$_____ (the "**Mortgage Loan**") to Borrower. The Mortgage Loan is evidenced by a Promissory Note dated _____ from Borrower payable to Original Lender ("**Note**").

B. The Mortgage Loan and Note are secured by, among other things, that certain Deed of Trust and Security Agreement, dated _____, from Borrower to Original Lender (the "**Security Instrument**") which grants to Original Lender a lien on the real and personal property described in the Security Instrument (the "**Mortgaged Property**"). The Mortgage Loan is further evidenced or secured by various other documents executed by Borrower in favor of Original Lender (together with the Note and Security Instrument, the "**Mortgage Loan Documents**").

C. Lender is the current holder of the Note and the other Mortgage Loan Documents.

D. Pursuant to the Mortgage Loan Documents, Borrower has directed Lender to release the Mortgaged Property from the liens and security interests of the Security Instrument, to release any other collateral or security previously given by Borrower as security for the Mortgage Loan, and to remove any cross-default provisions in any other documents securing the Mortgage Loan upon Borrower's defeasance of the Mortgage Loan (the "**Defeasance**").

E. Borrower is the legal and beneficial owner of the Securities (defined below). Pursuant to the Mortgage Loan Documents, and as a condition precedent to Lender's obligation to release the Mortgaged Property from the liens and security interests of the Security Instrument and to remove said cross-default provisions, Borrower has granted to Lender, a security interest in the Pledged Collateral (defined below) in accordance with the terms and conditions of the Defeasance Pledge and Security Agreement of even date herewith among Borrower, Lender, and Intermediary (the "**Pledge Agreement**").

F. In connection with the Pledge Agreement, Borrower, Lender, Intermediary, and Servicer, have entered into the Defeasance Account Agreement of even date herewith (the "**Account Agreement**"), pursuant to which Intermediary has established and will maintain an account to hold the interests of Borrower and Successor Borrower in the Pledged Collateral.

G. Pursuant to the Mortgage Loan Documents, Borrower is required or permitted to transfer and assign all of its obligations, rights and duties under and to the Note and the other Defeasance Documents (as defined in the Pledge Agreement), together with its right, title and interest in the Pledged Collateral, to a successor entity established or designated in accordance with the Mortgage Loan Documents.

H. Successor Borrower has been established or designated as a Single Purpose Entity (as defined in the Pledge Agreement) that will assume Borrower's rights and obligations under the Defeasance Documents.

I. Borrower desires to (i) obtain the release of the Mortgaged Property from the lien of the Security Instrument and the other Mortgage Loan Documents and to remove said cross-default provisions, (ii) transfer and assign its rights and obligations under the Note and the other Defeasance Documents to Successor Borrower, and (iii) obtain a release of the Borrower's rights and obligations under the Note, the Mortgage Loan Documents, and the other Defeasance Documents to the extent provided herein. Successor Borrower desires to assume Borrower's rights and obligations under the Note and the Defeasance Documents to the extent provided herein, and acquire Borrower's right, title and interest in and to the Pledged Collateral.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties hereto and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions.

Each capitalized term used and not defined in this Agreement shall have the meaning assigned to such term in the Pledge Agreement or the Account Agreement. The following terms shall have the following meanings when used in this Agreement.

"**Entity**" means a limited partnership.

"**Entity State**" means the State of _____.

"**Servicer Address**" means: _____

Attn: Servicing Loan No. _____

"**Successor Borrower Address**" means:

"**Successor Borrower Organization Name**" means _____.

"**Successor Borrower Organization State**" means the State of Delaware.

"**Successor Borrower Organizational Number**" means _____.

"Successor Borrower Tax Identification Number" means _____.

Section 2. Assignment of Secured Obligations and Securities.

Effective as of the date hereof, Borrower hereby sells, transfers and assigns to Successor Borrower, (a) the Secured Obligations, and all obligations, rights and duties in, to and under, and subject to the terms of the Defeasance Documents, and (b) all of Borrower's right, title and interest in and to the Pledged Collateral, subject to the terms of the Defeasance Documents and to the rights of the Lender and the obligations of the Intermediary pursuant to the Pledge Agreement and the Account Agreement.

Section 3. Assumption of Mortgage Loan Obligations.

(a) Successor Borrower, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, hereby assumes, and agrees to be bound by and to perform and/or be deemed to have made, as applicable, each of the Secured Obligations and all other covenants, agreements, representations and warranties of Borrower under the Note, the Pledge Agreement, and the Account Agreement first arising or accruing on or after the date of the transfer of the Pledged Collateral to Successor Borrower; provided, however, Successor Borrower shall not assume any obligations (i) under Section 4 of the Pledge Agreement (with respect to the Securities transferred to Successor Borrower on the date hereof), (ii) that arise as a result of Borrower's failure to effect the initial perfection of Lender's interest in the Pledged Collateral prior to the transfer of the Pledged Collateral to Successor Borrower, (iii) that arise as a result of any misrepresentation or misstatement made by Borrower in any of the Defeasance Documents or otherwise made by Borrower in connection with the Defeasance, or (iv) that specifically relate to the use or operation of the Mortgaged Property to the extent that provisions of the Mortgage Loan Documents have been incorporated into the Note, including, without limitation, any real-property related events of default set forth in the Mortgage Loan Documents.

(b) Except as set forth in Section 3(c) below, Lender shall have no recourse against, and Lender shall not enforce any monetary judgment with respect to the Secured Obligations against, assets of Successor Borrower other than the Pledged Collateral.

(c) Notwithstanding the provisions of Section 3(b) above, Successor Borrower (but not its members or managers) shall be personally liable for all claims, demands, liabilities, deficiencies, losses, damages, judgments, costs, and expenses, including without limitation reasonable attorneys fees and costs of collection incurred, suffered or paid by Lender as a result of:

(i) any representation, warranty or certification made by or on behalf of Successor Borrower for the benefit of Lender in any of the Defeasance Documents (or in any modification or supplement thereto), or in any certificate, report, financial statement or other item furnished to Lender by or on behalf of Successor Borrower in connection with the Defeasance having been false or misleading in any material respect as of the time made or furnished;

(ii) the Pledged Collateral or any part thereof or interest therein becoming subject to any security interest, pledge, covenant, lien, or other encumbrance whether junior or senior to the interest of Lender as a result of actions of Successor Borrower or circumstances relating to Successor Borrower;

(iii) the Pledged Collateral or any part thereof or interest therein being sold, assigned, transferred, conveyed or otherwise disposed of, or becoming the subject of any attempted sale, assignment, transfer or conveyance, by Successor Borrower, subject to the terms of Section 4(e) of the Account Agreement following payment of the Mortgage Loan;

(iv) any of the Events of Default described in subsections (iv) through (xii) of Section 9(a) of the Pledge Agreement shall occur as a result of actions of Successor Borrower or circumstances relating to Successor Borrower; or

(v) Successor Borrower's failure to immediately deposit into the Pledged Collateral Account an amount sufficient to pay any shortfall if, at any time, funds available in the Pledged Collateral Account (without taking into account reinvestment income) are insufficient to satisfy all obligations then due under the Note or under any of the other Defeasance Documents, including payment of the Mortgage Loan in full on the Maturity Date, other than any insufficiency resulting from the failure of an Obligor to make timely payments with respect to the Securities.

(d) Successor Borrower's assumption of the obligations of Borrower under the Defeasance Documents as set forth above is limited to those obligations arising on and after the date hereof, except that Successor Borrower expressly assumes (i) liability under the Note for unpaid principal and interest accruing on the Mortgage Loan from and after the first day of the first full interest accrual period following the date in which the Defeasance occurs, which amount shall be deposited by Borrower in the Pledged Collateral Account on or before the date hereof and paid in accordance with the provisions of the Account Agreement from the Pledged Collateral Account, and (ii) any liability that may arise if the Securities are insufficient to make timely payments in accordance with the Account Agreement (other than any insufficiency resulting from the failure of an Obligor to make timely payments with respect to the Securities).

(e) Within thirty (30) days after written request from Lender, Successor Borrower shall deliver to Lender a certification signed by an officer or manager of Successor Borrower, certifying that such Person is familiar with the activities and operations of Successor Borrower and Successor Borrower's affiliates and all transactions entered into by Successor Borrower during the preceding twelve months, and that, to such Person's knowledge, Successor Borrower has (i) conducted itself as a Single Purpose Entity during such period, (ii) filed all tax returns required to be filed during such period, and (iii) paid all taxes due and payable during such period. If requested by Lender, each such certification shall be accompanied by an original certificate of existence or good standing issued by the Secretary of State of the Successor Borrower Organization State dated not more than thirty (30) days prior to the date of such certification.

(f) In addition to the Lender's rights under the Mortgage Loan Documents, Successor Borrower hereby grants to Lender and Servicer a power of attorney to file any franchise or other administrative filings that may be required to maintain Successor Borrower's good standing and legal existence in the event Successor Borrower fails to do so (and such failure continues for 30 days after Successor Borrower's receipt of written notice of such failure). The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term of this Agreement. Any and all losses, expenses and costs of any nature or kind whatsoever that may be paid or incurred by the Lender or Servicer as a result of the Successor Borrower's failure to maintain its good standing and legal existence are specifically included within the Secured Obligations for which the Securities and any proceeds thereof are pledged.

(g) In addition to any other remedies that the Lender may have under the Defeasance Documents, in the event of the failure of the Successor Borrower to maintain its status as a Single Purpose Entity in good standing, the Successor Borrower's failure to file all required tax returns and pay all taxes which it owes, or the Successor Borrower's failure to file all forms and documents required to maintain its separate legal existence (in each case, which failure shall continue for 60 days after Successor Borrower's receipt of written notice of such failure), Successor Borrower hereby agrees to the assumption of the Mortgage Loan by, and the transfer of the Pledged Collateral to, a Single Purpose Entity designated

by Lender and hereby appoints Lender and Servicer as attorneys in fact with power of attorney to effect such transfer and assumption. The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term of this Agreement.

(h) Borrower acknowledges that Successor Borrower is (i) assuming the Secured Obligations and the obligation to pay all fees and amounts due under the Defeasance Documents first arising on or after the date hereof, including, but not limited to, all fees and costs first arising on or after the date hereof under **Section 9** of the Account Agreement, (ii) assuming any rights and requirements, if any, in the Defeasance Documents related to the prepayment of the Mortgage Loan prior to the Maturity Date, and (iii) the owner of all proceeds, if any, from the Pledged Collateral in excess of amounts due under the Defeasance Documents.

Section 4. Acknowledgment of Lender.

Subject to (a) the satisfaction or waiver of all conditions to the Defeasance set forth in the Mortgage Loan Documents, and (b) the Defeasance Documents, Lender hereby recognizes and consents to Borrower's transfer and assignment to Successor Borrower of Borrower's rights in the Pledged Collateral and its rights and obligations under the Defeasance Documents in accordance with **Section 2** above, and the assumption by Successor Borrower of Borrower's rights in the Pledged Collateral and its rights and obligations under the Defeasance Documents in accordance with **Section 3** above.

Section 5. Release of Borrower.

(a) In reliance upon the representations and warranties of Borrower set forth in the Defeasance Documents, Lender (1) shall promptly release and discharge the Mortgaged Property (and other interests subject to the lien of the Mortgage Loan Documents) from the liens and security interest of the Security Instrument and the other Mortgage Loan Documents, (2) authorizes Borrower to terminate any UCC financing statements filed in connection with the Mortgage Loan naming Borrower as debtor, and listing all or any portion of the Mortgaged Property as collateral therein, and (3) hereby releases and discharges Borrower and Guarantor from all claims, liabilities and obligations under the Mortgage Loan Documents and the Defeasance Documents related to events first occurring or arising after the transfer of the Pledged Collateral to Successor Borrower (including, without limitation, a release and discharge of all obligations under Section 24 of the Pledge Agreement, without regard for the date such obligations may have first occurred or arisen); provided, however, the Borrower and Guarantor shall not be released from liability for any loss or damages suffered, or expenses incurred, by Lender, Successor Borrower, or Intermediary as a result of or established pursuant to a claim, liability or obligation;

(i) arising from Borrower's obligations under Section 4 of the Pledge Agreement that have not been expressly assumed by Successor Borrower under this Agreement;

(ii) with respect to any representation, warranty or certification of Borrower or Guarantor under the Defeasance Documents or the Mortgage Loan Documents or in any certificate, report, financial statement or other item delivered by or on behalf of Borrower in connection therewith (other than any certification set forth in the Accountant's Report delivered by or on behalf of Borrower) that was false or misleading in any material respect when made;

(iii) arising as a result of the transfer of, or the creation and perfection of the first priority lien on the Pledged Collateral being deemed void or voidable for any reason whatsoever, or arising as a result of any other payment made by Borrower or Guarantor in respect of amounts due under the Mortgage Loan Documents on or prior to the date hereof being recovered from the Lender by Borrower, its creditors, or any other Person for any reason whatsoever claiming by or through Borrower;

(iv) for any other failure by Borrower to pledge the Pledged Collateral to Lender or take or authorize any action necessary to effect the first priority perfection of Lender's lien and security interest therein on or before the date hereof or to effectively transfer the Pledged Collateral to Successor Borrower in accordance with the Defeasance Documents;

(v) arising under any environmental or hazardous materials indemnity agreement or any other indemnity obligation or other obligation set forth in the Mortgage Loan Documents that, by its terms, survive the release of the lien of the Security Instrument; or

(vi) arising as a result of an Event of Default under the Pledge Agreement that results from circumstances relating to Borrower, or actions of Borrower, included in subsections (iii) through (viii), (xi) or (xii) of Section 9(a) of the Pledge Agreement.

(b) Without limiting any other remedies Lender may have, upon the occurrence of any Event of Default arising under the Mortgage Loan Documents or the Defeasance Documents from any breach, act or omission of Borrower or Guarantor prior to the date hereof, Lender shall be entitled to enforce all of its remedies set forth in the Mortgage Loan Documents and the Defeasance Documents against Borrower and Guarantor (but not against the Mortgaged Property), but only to the extent of any actual losses or damages incurred by Lender. Except as expressly set forth in this Section 5, Lender hereby releases Borrower and Guarantor from their respective obligations under the Mortgage Loan Documents and the Defeasance Documents.

Section 6. Release of Lender and Servicer.

Borrower hereby covenants and agrees that: (i) from and after the date hereof, Lender and Servicer may deal solely with Successor Borrower in all matters relating to the Mortgage Loan (except in the case of matters in which liability is to be asserted against Borrower or Guarantor); (ii) Lender and Servicer have no further duty or obligation of any nature relating to the Mortgage Loan or the Mortgage Loan Documents to Borrower (except that the Servicer agrees to return to Borrower promptly following the date hereof any escrows or reserves that it holds pursuant to the Mortgage Loan Documents); and (iii) Borrower hereby releases Lender and Servicer, and each of their predecessors-in-interest, together with all officers, directors, employees and agents of each of the foregoing, from all claims, causes of action and liabilities relating directly or indirectly to the Mortgage Loan, the Mortgaged Property, the Mortgage Loan Documents and the Defeasance arising on or prior to the date hereof, including any and all claims arising from or relating to negotiations, demands, requests or exercise of remedies in connection with the Mortgage Loan and the Defeasance.

Section 7. Representations and Warranties.

(a) Borrower represents and warrants to the other parties hereto that, as of the date hereof:

(i) Borrower is an Entity duly organized, validly existing in good standing and in full force and effect under the laws of the Entity State;

(ii) Borrower has full power, authority and legal right to enter into the Defeasance Documents and to pledge and grant to Lender a lien on, and security interest in, the Pledged Collateral pursuant to the Pledge Agreement. The Defeasance Documents have been duly authorized, executed and delivered by Borrower and constitute the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with their terms except as may be limited by bankruptcy, insolvency, and similar laws affecting the rights of creditors generally;

(iii) the execution and delivery of the Defeasance Documents by Borrower, the consummation of the Defeasance by Borrower, and the compliance by Borrower with the terms and provisions of the Defeasance Documents will not conflict with or result in a breach of, the organizational documents of Borrower, any applicable law or regulation, or any order, writ, injunction or decree of any court or Governmental Authority applicable to Borrower, or any agreement or instrument to which Borrower is a party or by which Borrower is bound or to which any of the Pledged Collateral is subject, or result in the creation or imposition of any lien upon any earnings or assets of Borrower pursuant to the terms of any such agreement or instrument;

(iv) no authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration or registration with, any court, Governmental Authority, or with any securities exchange or any other Person is required in connection with (i) the due execution, delivery or performance by Borrower of the Defeasance Documents, (ii) the assignment of, and the grant of a lien on (including the priority thereof), the Pledged Collateral by Borrower in the manner and for the purpose contemplated by the Defeasance Documents, or (iii) the exercise of the rights and remedies of Lender created hereby except those that have been obtained or made prior to or concurrently with the execution hereof;

(v) except as set forth in the Waiver and Consent, all principal, interest and other amounts due and payable on or before the date hereof under the Defeasance Documents and the Mortgage Loan Documents have been paid;

(vi) no non-monetary default has occurred and is continuing under any of the Mortgage Loan Documents beyond any applicable grace or notice period;

(vii) the fair market value of the Mortgaged Property is greater than the fair market value of the Securities. Borrower has received reasonably equivalent value in exchange for the transfers contemplated by the Defeasance Documents;

(viii) Borrower has not incurred any indebtedness other than (A) the Mortgage Loan, (B) indebtedness expressly permitted by the Mortgage Loan Documents, and (C) indebtedness, if any, associated with the refinancing of the Mortgage Loan in connection with the Defeasance;

(ix) the pledge of the Securities to Lender and transfer of the Securities to Successor Borrower are not done in contemplation of insolvency or bankruptcy or with an intent to hinder, delay or defraud any of Borrower's creditors;

(x) Borrower is not insolvent immediately prior to its execution of this Agreement and is not being rendered insolvent by the pledge of the Securities to Lender and transfer of the Securities to Successor Borrower;

(xi) the assets owned by Borrower, immediately after giving effect to the pledge of the Securities to Lender and transfer of the Securities to Successor Borrower, represent an amount of capital that is not unreasonably small for the business in which Borrower is engaged, and Borrower does not intend to engage in any other business for which such capital would be unreasonably small;

(xii) at the time of the pledge of the Securities to Lender and transfer of the Securities to Successor Borrower, Borrower does not intend to, or believe that it will, incur debts that would be beyond its ability to pay as such debts mature;

(xiii) the Mortgage Loan Documents do not contain provisions requiring Borrower to make any scheduled payments that by their terms would be payable on or after the date of the closing of the Defeasance, other than scheduled payments of principal and interest under the Note, including annual surveillance fees of rating agencies, servicing and trustees fees with respect to securitization of the Mortgage Loan, except such payments as have been specifically identified by Borrower and either (a) expressly assumed by Successor Borrower under the Defeasance Documents, or (b) paid in full in advance by Borrower in connection with the closing of the Defeasance; and

(xiv) Borrower's purpose in entering into the Defeasance is to facilitate a refinance of the Mortgaged Property or other customary commercial transaction and not as part of an arrangement to collateralize the REMIC pool evidenced by the Certificates with obligations that are not real estate mortgages.

(b) Successor Borrower represents, warrants and covenants to the other parties hereto that:

(i) Successor Borrower is a limited liability company, duly organized, validly existing and in good standing under the laws of the Successor Borrower Organization State. The name of the Successor Borrower indicated in the public records of the Successor Borrower Organization State is the Successor Borrower Organization Name. Successor Borrower has all requisite power and authority to carry on its business as now conducted and as proposed to be conducted, and to enter into and perform its obligations under this Agreement and the other Defeasance Documents;

(ii) the execution and delivery of this Agreement, the assumption of the Borrower's rights and obligations under the Pledge Agreement and the Account Agreement, and performance of all of Successor Borrower's rights and obligations thereunder, have been duly authorized by all necessary and appropriate action of Successor Borrower;

(iii) no consent or approval of any person, entity, or Governmental Authority is required with respect to the execution and delivery of this Agreement by Successor Borrower or the consummation by Successor Borrower of the transactions contemplated thereby or the performance by Successor Borrower of its obligations under this Agreement and the other Defeasance Documents, except such consents or approvals as have already been obtained;

(iv) this Agreement, the Pledge Agreement and the Account Agreement are the legal, valid and binding obligations of the Successor Borrower, enforceable against the Successor Borrower in accordance with their respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws of general applicability affecting the enforcement of creditors' rights;

(v) the state of organization of Successor Borrower is the Successor Borrower Organization State, Successor Borrower's taxpayer identification number is Successor Borrower Tax Identification Number, and Successor Borrower's organizational identification number is Successor Borrower Organizational Number;

(vi) since its formation, Successor Borrower has not changed its jurisdiction of organization. Successor Borrower shall not change the Successor Borrower Organization Name as it appears in the organizational documents on file in the Successor Borrower Organization State, or change the Successor Borrower Organization State until (A) it has given Lender not less than 30 days' prior written notice of its intention to do so, clearly describing the new name or jurisdiction, and (B) it has provided Lender with any information regarding the new name or jurisdiction as Lender may request; and

if Successor Borrower intends to change the Successor Borrower Organization Name or change the Successor Borrower Organization State, Successor Borrower shall cooperate with Lender in taking all action required by Lender to maintain perfection, priority and validity of the lien of Lender in the Pledged Collateral granted by the Pledge Agreement;

(vii) Successor Borrower has no notice or knowledge of any adverse claim, lien or encumbrance with respect to the Pledged Collateral;

(viii) Successor Borrower is, has been since the date of its formation, and shall at all times continue to be, a Single Purpose Entity in good standing under the laws of the Successor Borrower Organization State;

(ix) the proceeds of the Securities (without regard to reinvestment income) will be sufficient to make all regularly scheduled principal and interest payments required under the Defeasance Documents, assuming timely payments by each Obligor with respect to the Securities;

(x) Successor Borrower is not insolvent immediately prior to its execution of this Agreement and is not being rendered insolvent by the assumption of the Defeasance Documents;

(xi) the assets owned by Successor Borrower immediately after giving effect to the assumption of the Defeasance Documents represent an amount of capital that is not unreasonably small for the business in which Successor Borrower is engaged, and Successor Borrower does not intend to engage in any other business for which such capital would be unreasonably small;

(xii) at the time of the assumption of the Defeasance Documents, Successor Borrower does not intend to, or believe that it will, incur debts that would be beyond its ability to pay as such debts mature; and

(xiii) Successor Borrower shall advance funds to cover any shortfall if at any time the funds available in the Pledged Collateral Account are insufficient to pay amounts then due with respect to the Secured Obligations, other than any shortfall resulting from the failure of an Obligor to make timely payments with respect to the Securities.

(c) Intermediary acknowledges and confirms that any fees related to investments in Default Permitted Investments or to wire transfers to the Collection Account from the Pledged Collateral Account or to Successor Borrower are included in fees that have already been paid to Intermediary.

Section 8. Conditions to Defeasance.

Except as set forth on **Schedule 1** of the Waiver and Consent, Borrower represents, warrants and covenants that it has satisfied the conditions set forth in the Mortgage Loan Documents required to effectuate the release of the Mortgaged Property from the lien of the Security Instrument and the closing of the Defeasance of the Mortgage Loan on the date hereof. Borrower has delivered the Defeasance Certificate to Lender on the date hereof, and Borrower acknowledges that Successor Borrower is relying upon such Defeasance Certificate, and on the representations set forth herein, as a condition to entering into this Agreement. Borrower further acknowledges and agrees that all proceeds from the Pledged Collateral in excess of amounts due under the Defeasance Documents will be used to pay the expenses of Successor Borrower in making certain payments under the Defeasance Documents, and that any remainder is the sole property of Successor Borrower.

Section 9. Modifications.

This Agreement, and any provisions hereof, may not be modified, amended, waived, extended or changed (collectively, hereinafter a "**Modification**"), orally or by an act or failure to act on the part of any party to this Agreement, but only by an agreement in writing and signed by all of the parties to this Agreement. Any Modification to this Agreement shall be effective only in the specific instance and for the specific purpose for which made or given. Notwithstanding the foregoing, from and after the date hereof, any new agreement pertaining to the Mortgage Loan or Modification of the Defeasance Documents may be made solely by Successor Borrower and Lender, and shall not require the consent or execution of Borrower, provided no such changes shall increase Borrower's obligations or liabilities under the Mortgage Loan Documents or the Defeasance Documents.

Section 10. Approvals.

As to itself, each of Borrower and Successor Borrower hereby represents and warrants to Lender that such entity has obtained any and all third-party approvals and consents required to be obtained in connection with the execution and delivery of this Agreement and the performance of such entity's obligations hereunder.

Section 11. Successors and Assigns.

This Agreement applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, and permitted successors and assigns.

Section 12. Headings, Recitals; Exhibits.

The Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement, but the Recitals herein and the Exhibits attached hereto are hereby incorporated into and made a part of this Agreement.

Section 13. GOVERNING LAW; VENUE.

THIS AGREEMENT AND ALL RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE, INCLUDING THE CODE AND INCLUDING NEW YORK GENERAL OBLIGATIONS LAW SECTIONS 5-1401 AND 5-1402 BUT OTHERWISE WITHOUT REGARD TO LAWS OF THE STATE CONCERNING CONFLICTS OF LAWS OR CHOICE OF FORUM.

BORROWER, LENDER, SUCCESSOR BORROWER, SERVICER AND INTERMEDIARY HEREBY IRREVOCABLY SUBMIT TO PERSONAL JURISDICTION IN THE STATE AND TO THE NON-EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN THE CITY OF NEW YORK OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS AGREEMENT OR ANY OF THE OTHER DEFEASANCE DOCUMENTS OR ANY ACTION RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY OR THE RELATIONSHIPS CREATED BY OR UNDER THE DEFEASANCE DOCUMENTS ("**ACTION**") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE STATE. BORROWER, LENDER, SUCCESSOR

BORROWER, SERVICER AND INTERMEDIARY HEREBY CONSENT AND SUBMIT TO THE PERSONAL JURISDICTION OF THE COURTS OF THE STATE AND OF FEDERAL COURTS LOCATED IN THE STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVE ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN THE STATE FOR PURPOSES OF ANY ACTION. BORROWER, LENDER, SUCCESSOR BORROWER, SERVICER AND INTERMEDIARY HEREBY WAIVE AND AGREE NOT TO ASSERT, AS A DEFENSE TO ANY ACTION OR A MOTION TO TRANSFER VENUE OF ANY ACTION, (I) ANY CLAIM THAT IT IS NOT SUBJECT TO SUCH JURISDICTION; (II) ANY CLAIM THAT ANY ACTION MAY NOT BE BROUGHT AGAINST IT OR IS NOT MAINTAINABLE IN THOSE COURTS OR THAT THIS AGREEMENT MAY NOT BE ENFORCED IN OR BY THOSE COURTS, OR THAT IT IS EXEMPT OR IMMUNE FROM EXECUTION; (III) THAT THE ACTION IS BROUGHT IN AN INCONVENIENT FORUM; OR (IV) THAT THE VENUE FOR THE ACTION IS IN ANY WAY IMPROPER.

INTERMEDIARY AGREES THAT FOR ALL PURPOSES, INCLUDING SECTION 8 110(E) OF THE CODE AND THE APPLICABLE FEDERAL BOOK-ENTRY REGULATIONS, THE STATE SHALL BE THE "SECURITIES INTERMEDIARY'S JURISDICTION" (AS DEFINED IN THE CODE).

Section 14. Entire Agreement.

This Agreement, together with the other agreements referenced herein, constitutes the entire agreement and understanding of the parties to this Agreement with respect to the matters and transactions contemplated by this Agreement and supersedes all other prior or concurrent oral or written letters, agreements or understandings with respect to the matters set forth in this Agreement.

Section 15. Full Force and Effect.

Except as modified by this Agreement and the other Defeasance Documents, the Mortgage Loan Documents shall remain unchanged and in full force and effect.

Section 16. Counterparts.

This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts shall constitute one and the same Agreement.

Section 17. WAIVER OF TRIAL BY JURY.

BORROWER, LENDER, SUCCESSOR BORROWER, SERVICER AND INTERMEDIARY EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER MAY EXIST WITH REGARD TO THIS AGREEMENT OR ANY DOCUMENT RELATED THERETO, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, LENDER, SUCCESSOR BORROWER, SERVICER AND INTERMEDIARY AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH A RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER, LENDER, SUCCESSOR BORROWER, SERVICER AND INTERMEDIARY EACH IS HEREBY AUTHORIZED TO FILE A

COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH OTHER.

Section 18. Notices.

All notices or other communications given hereunder by any party to any other party hereto shall be given in accordance with Section 14 of the Pledge Agreement. All notices and other communications to Successor Borrower shall be sent to the Successor Borrower at the Successor Borrower Address. All notices and other communications to Servicer shall be sent to the Servicer at the Servicer Address.

[Signature Pages Omitted]

ATTACHMENT 6

PURCHASE AND SALE AGREEMENT (With Defeasance Provisions)

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is executed as of the ____ day of _____, 2007, by _____ ("Seller"), and _____ ("Buyer").

1. **SALE.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, on the terms set forth in this Agreement, the Property (defined below), including that certain multi-tenant property known as _____ (the "**Project**"), located at _____ in Houston, Texas, and improved with three (3) buildings (referred to herein individually and collectively as the "**Building**"). The term, "**Property**" shall mean collectively:

1.1. **Land.** The land described in **Exhibit A** attached hereto (the "**Land**"), together with all rights, easements and interests appurtenant thereto.

1.2. **Improvements.** Seller's interest in all improvements located on the Land, including the Building, and all other structures and systems associated with, and utilized by Seller in, the operation of the Building (being collectively referred to as the "**Improvements**").

1.3. **Personal Property.** Any personal property owned by Seller, located at the Project, and used in connection with the operation of the Project (the "**Personal Property**").

1.4. **Intangible Property.** To the extent transferable, all, (i) guaranties and warranties issued to Seller with respect to the Improvements; and (ii) third party reports, studies and surveys of the Land and/or the Improvements (collectively, the "**Intangibles**").

1.5. **Contracts.** Those of the operating contracts, service contracts, management agreements and other comparable agreements described on **Exhibit B** attached hereto (the "**Contracts**") that Buyer expressly elects to assume pursuant to **Section 7.4** hereof.

1.6. **Leases.** Seller's right, title and interest in all leases at the Project that are in effect on the Effective Date (defined below) or into which Seller enters prior to Closing (defined below) pursuant to the terms of this Agreement (collectively, the "**Leases**").

2. **PURCHASE PRICE.**

2.1. **Purchase Price.** The total purchase price to be paid to Seller by Buyer for the Property shall be \$_____ (the "**Purchase Price**"). Provided that all conditions precedent to Buyer's obligations to close as set forth in this Agreement ("**Conditions Precedent**") have been satisfied, or waived in writing by Buyer or deemed so waived by the provisions hereof, the Purchase Price shall be paid to Seller at Closing, plus or minus prorations and other adjustments hereunder, by federal wire transfer of immediately available funds.

2.2. **Earnest Money.** No later than two (2) business days after the complete execution and delivery of this Agreement (the date upon which this Agreement has been fully executed and delivered to both parties, the "**Effective Date**"), Buyer shall deposit the sum of \$_____ as

earnest money ("**Earnest Money**") in escrow with _____ Title Company, _____ ("**Title Company**"). The Earnest Money, together with all interest earned thereon, is hereinafter referred to as the "**Deposit**". The Deposit shall be applied against the Purchase Price. Buyer's failure to pay the Deposit when due shall constitute a default by Buyer under this Agreement. Notwithstanding anything set forth in this Agreement to the contrary, \$100.00 of the Deposit shall in all events be payable to Seller at the same time that Buyer is entitled to receipt thereof.

3. CLOSING. The purchase and sale contemplated herein shall be consummated at a closing ("**Closing**") to take place through the Title Company. **Closing on the Property shall occur on or before four (4) business days after the date Seller has notified Buyer that the Defeasance (defined below) is imminent, or at such other time as the parties may agree upon in writing (the "Closing Date").** The third (3rd) business day before the Closing Date shall be referred to in this Agreement as the "**Documents Delivery Date**". Closing shall be effective as of 12:01 A.M. on the Closing Date.

4. PROPERTY INSPECTION.

4.1. Basic Property Inspection. Not later than two (2) days after the Effective Date, Seller shall deliver to Buyer, to the extent they are in its possession or reasonable control, all of the documents, reports and other items described in **Exhibit D** attached hereto (the "**Documents**"). Any of the Documents furnished by Seller that were prepared by third parties shall be delivered without warranty, express or implied, as to the accuracy of the substance contained therein. At all times prior to Closing, including times following the "**Review Period Expiration Date**" (which Review Period Expiration Date is defined to be the date that is thirty (30) days after the Effective Date), Buyer and its agents shall be entitled to conduct a "**Due Diligence Inspection**," which includes the rights to: (i) enter upon the Land and Improvements, on reasonable Notice to Seller, to perform inspections and tests thereof; (ii) upon not less than two (2) business days Notice, examine and copy, at Buyer's sole cost, any and all books, records, and financial data maintained by Seller (the "**Records**"), and relating to receipts and expenditures from the Property for the three most recent full calendar years and the current calendar year; (iii) make investigations on zoning, environmental and other legal requirements; (iv) conduct market studies; and (v) interview tenants at the Project (each, a "**Tenant**," and collectively, the "**Tenants**"). If, at any time prior to the Review Period Expiration Date, Buyer, in its sole discretion, determines that the results of any inspection or test do not meet Buyer's criteria for the purchase of the Property, or if Buyer, in its sole discretion, otherwise determines that the Property is unsatisfactory to it, then Buyer may terminate this Agreement by Notice to Seller, with a copy to the Title Company, given not later than 6:00 P.M. (Houston time) on the Review Period Expiration Date, whereupon the provisions of **Section 19.7** governing a permitted termination by Buyer of the entire Agreement shall apply.

4.2. Indemnification. Buyer shall cause all studies, investigations and inspections performed at the Property pursuant to this **Section 4** to be performed in a manner that does not unreasonably disturb the Tenants or the operations at the Project. If Buyer's Due Diligence Inspection causes any damage to the Property, then Buyer shall promptly repair such damage at Buyer's sole cost and expense. Buyer hereby indemnifies, defends and holds Seller harmless from and against any and all losses, claims, causes of action, judgments, damages, costs and expenses (including reasonable fees of attorneys) (collectively, "**Losses**") that Seller actually incurs as a result of (i) a breach of Buyer's agreements set forth in this **Section 4** or (ii) physical damage to the Property or bodily injury caused by any act of Buyer or its agents in connection with the rights granted under this **Section 4**. The terms of this **Section 4.2** shall survive the Closing or any termination of this Agreement.

5. TITLE AND SURVEY MATTERS.

5.1. Conveyance of Title. At Closing, Seller shall deliver to Buyer a Special Warranty Deed (the "**Deed**"), in recordable form, conveying the Land and the Improvements to Buyer, free and clear of all liens and encumbrances except for the Permitted Exceptions (defined below). Seller shall obtain, at Seller's sole cost, and deliver to Buyer a commitment ("**Title Commitment**") issued by Title Company, for an owner's title insurance policy ("**Title Policy**"), in the amount of the Purchase Price. It shall be a Condition Precedent to Buyer's obligation to proceed to Closing that, at Closing, the Title Company shall be in a position to issue the Title Policy to Buyer insuring Buyer as the owner of the Property for the amount of the Purchase Price, which Title Policy shall provide for the following endorsements: (i) an owner's comprehensive endorsement (Form T.19.1); and (ii) an access endorsement (Form T.23) (collectively, "**Endorsements**"). If the Title Company has not committed to issue either or both of the Endorsements by the Review Period Expiration Date, Buyer shall be deemed to have waived any Condition Precedent relating to such Endorsement by not terminating this Agreement prior to the Review Period Expiration Date.

5.2. Survey. Buyer may, at Buyer's sole cost, order and deliver an ALTA, as-built survey of the Land and the Improvements located thereon (the "**Survey**").

5.3. Defects and Cure. If the Title Commitment, the Survey or any update to either of the foregoing ("**Title Evidence**") discloses matters not permitted by this Agreement ("**Defects**"), said Defects shall be cured and removed by Seller from the Title Evidence prior to Closing in accordance with this **Section 5.3**. Notwithstanding the preceding sentence, any Defect arising out of a matter reflected on the Survey or any update thereto shall not require any curative action by Seller (and shall be deemed a Permitted Exception) if Buyer fails to object before the Title Objection Deadline (defined below).

5.3.1. Mandatory Cure Items. By Closing, Seller shall be unconditionally obligated to cure or remove the following Defects (the "**Liquidated Defects**"), whether described in the Title Commitment, or first arising or first disclosed by the Title Company to Buyer after the date of the Title Commitment, and whether or not raised in a Title Objection Notice (defined below): (a) liens securing a mortgage or deed of trust evidencing an indebtedness of Seller; (b) judgment liens against Seller; (c) delinquent tax liens; (d) broker's liens based on the written agreement of Seller; and (e) any mechanics liens that are based upon a written agreement between either (x) the claimant (a "**Contract Claimant**") and Seller, or (y) the Contract Claimant and any other contractor with which Seller has a written agreement. Notwithstanding anything to the contrary set forth herein, if, prior to Closing, Seller fails to so cure or remove all Liquidated Defects, then Buyer may either (A) terminate this Agreement by Notice to Seller, in which event the provisions of **Section 19.7** governing a permitted termination by Buyer under the Agreement shall apply; or (B) proceed to close with title to the Property as it then is, with the right to deduct from the Purchase Price a sum equal to the aggregate amount necessary to cure (by endorsement or otherwise, as reasonably determined by Buyer) the Liquidated Defects.

5.3.2. Other Defects. Buyer may deliver one or more Notices (each a "**Title Objection Notice**") to Seller specifying any lien, encumbrance, restriction, covenant, exception to title or other matter disclosed by the Title Evidence, that is not a Liquidated Defect ("**Other Defects**"): (a) that is evidenced by the Title Evidence or (b) that first arises, or is first disclosed to Buyer, subsequent to the delivery of the applicable item of Title Evidence to Buyer, and that renders title unacceptable to Buyer. Except for Liquidated Defects, Buyer must deliver a Title Objection Notice by no later than ten (10) days after the Effective Date (the "**Title Objection Deadline**") or the Defect shall be deemed waived and constitute a Permitted Exception. Seller shall be obligated to advise Buyer in writing ("**Seller's Cure Notice**") within three (3) business days after Buyer delivers any Title Objection Notice, which (if any) of the Other Defects specified in the applicable of Title Objection Notice Seller is willing to cure (the "**Seller's Cure Items**"). If Seller delivers a Seller's Cure Notice, and identifies any Seller's Cure Items, Seller shall be unconditionally obligated to cure or remove the Seller's Cure Items prior to Closing. In the

event that Seller fails to timely deliver a Seller's Cure Notice, or in the event that Seller's Cure Notice (specifying Seller's Cure Items) does not include each and every Other Defect specified in each Title Objection Notice, then Buyer may either (i) elect to terminate this Agreement by Notice to Seller, in which event the provisions of **Section 19.7** governing a permitted termination by Buyer of the entire Agreement shall apply, or (ii) proceed to close, accepting title to the Property subject to those Other Defects not included in Seller's Cure Notice. If Buyer fails to terminate this Agreement prior to end of the Review Period Expiration Date, then Buyer shall be deemed to have elected option (ii) of the preceding sentence. For purposes of this Agreement, the term, "**Permitted Exceptions**," shall mean both (A) the standard printed exceptions and all liens, claims, encumbrances, restrictions, covenants, conditions, matters or exceptions to title (other than Liquidated Defects) that are set forth in the Title Evidence, but not objected to by Buyer in a Title Objection Notice; and (B) any Other Defects that Seller elects, or is deemed to have elected, not to cure, but despite which, pursuant to (ii) above, Buyer nevertheless elects or is deemed to have elected to close.

6. SELLER'S REPRESENTATIONS AND WARRANTIES. Seller represents and warrants to Buyer that the following matters are true as of the Effective Date and, where applicable, shall be true as of the Closing Date:

6.1. Seller's Representations.

6.1.1. Documents. To Seller's actual knowledge, Seller has delivered to Buyer true and complete copies of the Documents in its possession or reasonable control.

6.1.2. Contracts. There are no contracts relating to the management, leasing, operation, maintenance or repair of the Property by Seller, except those "**Contracts**" listed on **Exhibit B**, all of which are terminable, without penalty, on no more than thirty (30) days' Notice. Seller has not received any written notice alleging that it has failed to timely perform the obligations required to be performed by it, nor alleging that Seller is otherwise in default under, any of such Contracts.

6.1.3. Environmental Matters. Except as set forth in the Documents, Seller has not received any written notice of any pending or threatened claim, complaint, notices or request for information with respect to any violation or alleged violation of any Environmental Law, any release of Hazardous Substances (defined below) or with respect to any corrective or remedial action for, or cleanup of, the Property. "**Environmental Laws**" shall mean: all past, present or future federal, state and local laws, regulations, rules, policies, court orders, and the common law, which pertain to environmental matters or contamination of any type, as such have been amended, modified or supplemented from time to time. "**Hazardous Substances**" shall mean: any chemical, pollutant, contaminant, petroleum or petroleum product or byproduct, radioactive substance, solid waste, toxic waste, substance, chemical or material regulated, listed, limited or prohibited under any Environmental Law.

6.1.4. Compliance with Laws and Codes. To Seller's knowledge, Seller has not received any written notice alleging that, and Seller has no knowledge that, the Property, and the use thereof, are not in compliance with all applicable governmental laws (including Environmental Laws).

6.1.5. Litigation. There are no pending, or, to Seller's knowledge, threatened, judicial or administrative proceedings affecting the Property, or in which Seller is or will be a party by reason of Seller's ownership or operation of the Property, including, without limitation, proceedings involving collections, condemnation, eminent domain, building code or environmental or zoning violations, or personal injuries or property damage alleged to have occurred on the Property or by reason of the condition, use of, or operations on, the Property.

6.1.6. Authority. The execution and delivery of this Agreement by Seller, and the performance of this Agreement by Seller, have been duly authorized by Seller. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby will (i) result in a breach of any agreement to which Seller is a party or by which Seller or the Property are bound; or (ii) violate any court order, agreement or other legal obligation to which Seller and/or the Property is subject.

6.1.7. Lease Matters. Copies of all Leases in effect as of the Effective Date (the "**Existing Leases**"), and all amendments thereto, if any, have been furnished by Seller to Buyer and the copies so provided are true and complete. The Existing Leases have not been amended or terminated (except for any amendments delivered to Buyer pursuant to the preceding sentence). To Seller's knowledge, on the Effective Date, (i) except as shown on the Rent Roll delivered as part of the Documents or any updates thereof, the Existing Leases are in full force and effect without any material default thereunder by the applicable Tenant; (ii) except as shown on the Rent Roll delivered as part of the Documents or any updates thereof, no Tenant has prepaid rent more than thirty (30) days in advance; (iii) any tenant improvements that Seller is obligated to complete, prior to the date hereof and pursuant to any Existing Lease, has been completed; and (iv) except as shown on the Rent Roll delivered as part of the Documents or any updates thereof, no Tenant has notified Seller, as landlord, in writing, of any default by Seller pursuant to an Existing Lease that remains uncured.

6.1.8. United States Person. Seller is a "United States Person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

6.2. "As-Is" Conveyance. EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES ABOVE (THE "**SELLER REPRESENTATIONS**"), SELLER IS NOT MAKING AND HAS NOT MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY RELATED MATTER, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MARKETABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN SELLER'S WARRANTIES OF TITLE TO BE SET FORTH IN THE DEED), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, GOVERNMENTAL APPROVALS, OR ANY OTHER MATTER REGARDING THE PROPERTY. BUYER ACKNOWLEDGES THAT EXCEPT FOR THE SELLER REPRESENTATIONS AND THE WARRANTIES OF TITLE TO BE SET FORTH IN THE DEED, UPON CLOSING, SELLER SHALL CONVEY TO BUYER, AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, AND WITH ALL FAULTS."

EXCEPT FOR THE SELLER REPRESENTATIONS (A) BUYER ACKNOWLEDGES THAT IT IS FULLY RELYING ON BUYER'S (OR BUYER'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND NOT UPON ANY STATEMENTS (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY SELLER OR SELLER'S AGENTS, AND (B) BUYER REPRESENTS AND WARRANTS TO SELLER THAT PRIOR TO CLOSING BUYER OR BUYER'S REPRESENTATIVES WILL HAVE INVESTIGATED THE PROPERTY AND BUYER WILL RELY SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY TO DETERMINE THE CONDITION THEREOF, AND NOT ON ANY INFORMATION PROVIDED BY SELLER OR ITS AGENTS.

The provisions of this Section 6.2 shall survive Closing or any termination of this Agreement.

6.3. Other Matters Concerning Seller's Representations and Warranties. As used in Section 6.1, "**to Seller's knowledge**" shall mean the actual, conscious knowledge of

_____ and shall not refer to any documents in the possession of Seller or any of its agents, unless the contents thereof are actually known to _____.

6.4. Limitations. The Seller Representations shall survive the Closing Date and the delivery of the Deed for a period of one (1) year. No claim for a breach of any Seller Representation shall be actionable or payable unless (i) the breach in question results from, or is based on, a condition, state of facts or other matter which was not actually known by Buyer prior to Closing, (ii) Notice containing a description of the specific nature of such breach shall have been delivered by Buyer to Seller prior to the expiration of said one (1) year survival period, and (iii) an action with respect to such breach(es) shall have been commenced by Buyer against Seller within two (2) years after Closing.

7. COVENANTS OF SELLER. From and after the Effective Date, Seller hereby covenants with Buyer as follows:

7.1. Leasing Activities. Seller shall not enter into any new lease, license or occupancy agreement for all or some portion of the Land and the Improvements, including, without limitation, any amendment, renewal, expansion, or termination of, any Existing Lease (all of the foregoing, a "New Lease"), unless (i) required to evidence a renewal or expansion right set forth in an Existing Lease, or (ii) Seller obtains Buyer's prior written consent to such New Lease, which consent shall not be unreasonably withheld prior to the Review Period Expiration Date and may be withheld in Buyer's sole discretion after the Review Period Expiration Date. Buyer's failure to respond within three (3) business days of a written request for a consent to a New Lease shall be deemed Buyer's consent thereto.

7.2. Leasing Expenses. At Closing, Buyer shall reimburse Seller for all New Lease Expenses (defined below) to the extent that the same have been paid by Seller prior to Closing. In addition, at Closing, Buyer shall expressly assume and accept, in writing, Seller's obligations to pay when due any New Lease Expenses unpaid as of Closing. "New Lease Expenses" shall mean, collectively, any and all commissions and fees or costs and expenses (including tenant improvement costs) arising out of either or both of (i) any extension, renewal or expansion of any Existing Lease exercised between the Effective Date and the Closing Date and (ii) any New Lease. Commissions of leasing agents and tenant improvement allowances for any Existing Leases relating to the base lease term or any renewal term that is elected or with respect to which an option is exercised, as the case may be, prior to the Effective Date shall be paid in full at or prior to Closing by Seller, without contribution or proration from Buyer (any such commissions or tenant improvements allowances, "Seller's Commissions"). Commissions of leasing and rental agents and tenant improvement allowances for (a) any renewals (other than renewals elected or with respect to which an option is exercised prior to the Effective Date) or expansions of any Existing Lease, and (b) any New Leases shall be the sole responsibility of Buyer, without contribution or proration from Seller (any such commissions or tenant improvements allowances, "Buyer's Commissions"). Seller hereby indemnifies, defends and holds Buyer, and its successors and assigns (the "Buyer's Indemnified Parties"), harmless from and against any and all Losses that any or all of the Buyer's Indemnified Parties actually incurs as a result of the failure by Seller to timely pay any of the Seller's Commissions. Buyer hereby indemnifies, defends and holds Seller and its successors and assigns (the "Seller's Indemnified Parties") harmless from and against all Losses that any or all of the Seller's Indemnified Parties actually incurs as a result of the failure by Buyer to timely pay any of the Buyer's Commissions or any New Lease Expenses. The terms of this **Section 7.2** shall survive Closing.

7.3. Estoppel Certificates. It shall be a Condition Precedent to Buyer's obligation to close hereunder that, by the Documents Delivery Date, Seller delivers to Buyer estoppel certificates from Tenants at the Building who in the aggregate lease not less than ninety percent (90%) of the total square footage leased at the Building as of the date of this Agreement, each tenant estoppel to be dated not more

than forty-five (45) days prior to Closing, and which estoppel certificates shall be without material adverse modification to the form of estoppel certificate attached hereto as **Exhibit F** (each estoppel certificate satisfying such criteria, a "**Conforming Estoppel**") unless it is consistent with the initial Rent Roll. If Seller fails to timely deliver to Buyer Conforming Estoppels from each of the required Tenants, Buyer may either (i) proceed to Closing and waive such Condition Precedent, or (ii) terminate this Agreement by delivery of Notice to Seller on or before the Documents Delivery Date, in which event the Deposit shall be returned to Buyer, and neither party shall have any further liabilities or obligations hereunder except those liabilities and obligations that expressly survive a termination of this Agreement.

7.4. New Contracts. Seller shall not amend any existing Contract or enter into any new contract with respect to the ownership and operation of the Property that will survive Closing, or that would otherwise affect the use, operation or enjoyment of the Property after Closing, without Buyer's prior written approval (which approval shall not be unreasonably withheld). Unless otherwise notified by Buyer, in writing, on or prior to the Review Period Expiration Date, Seller shall, at Seller's sole cost, terminate all Contracts by Closing. If a Contract is terminated at Closing, but termination is not effective until up to two (2) months after Closing, Buyer shall pay Seller at Closing for the charge by the Contract vendor for services that will continue to be delivered to the Property after Closing.

7.5. Insurance. Unless replaced by substantially comparable coverage, Seller shall maintain its existing insurance policies on the Project continuously in force through the Closing Date.

7.6. Operation of Property. From and after the Effective Date and up to the Closing, Seller shall operate and manage the Property in the same manner in which it is being operated on the Effective Date, and shall perform, when due, all of Seller's obligations under the Contracts, and the Leases. Except as otherwise specifically provided herein, at Closing, Seller shall deliver the Property in substantially the same condition as exists on the Effective Date, reasonable wear and tear and Casualty Damage, and Eminent Domain (as defined in **Section 13** hereof) excepted.

7.7. No Assignment. After the Effective Date and prior to Closing, Seller shall not assign, encumber or otherwise transfer all or any part of the Property or any interest therein. Without limitation of the foregoing, Seller shall not grant any easement, right of way, restriction, covenant or other comparable right affecting the Land or the Improvements without obtaining Buyer's prior written consent, which consent shall not be unreasonably withheld.

7.8. Change in Conditions. Seller shall, to the extent Seller obtains knowledge thereof, promptly notify Buyer of any change in any condition with respect to the Property, or of the occurrence of any event or circumstance, that makes any representation or warranty of Seller under this Agreement untrue.

All covenants made in this Agreement by Seller shall survive Closing and shall not be merged into any instrument of conveyance delivered at Closing; provided, however, no claim for a breach shall be actionable or payable unless (i) Notice containing a description of the specific nature of such breach shall have been delivered by Buyer to Seller prior to the expiration of one (1) year after Closing, and (ii) an action with respect to such breach(es) shall have been commenced by Buyer against Seller within two (2) years after Closing.

8. ADDITIONAL CONDITIONS PRECEDENT TO CLOSING. In addition to the other conditions enumerated in this Agreement, the following shall be additional Conditions Precedent to Buyer's obligation to close hereunder:

8.1. Physical Condition. The physical condition of the Land and the Improvements shall be substantially the same on the Documents Delivery Date as on the Effective Date, reasonable wear and tear excepted, unless the alteration of said physical condition is the result of Casualty Damage or Eminent Domain.

8.2. Pending Actions. As of the Documents Delivery Date, there shall be no administrative agency, litigation or governmental proceeding of any kind whatsoever, pending or threatened, that, after Closing, would, in Buyer's reasonable judgment, materially and adversely affect the value or marketability of the Property, or the ability of Buyer to operate the Property in the manner it is being operated on the Effective Date.

8.3. Zoning. On the Documents Delivery Date, no proceedings shall be pending or threatened that could involve a modification of the zoning classifications of the Property.

8.4. Representations and Warranties. On the Closing Date, the representations and warranties made by Seller on the Effective Date shall be true, accurate and correct in all material respects.

8.5. Defeasance of Existing Loan. Reference is made to that certain loan originally made by GMAC Commercial Mortgage Corporation ("GMAC") to Seller in the original principal amount of \$ _____ (the "GMAC Loan"), which encumbers the Property on the Effective Date. Prior to the recordation of the Deed, the Property must be defeased pursuant to the requirements set forth in the GMAC Loan documents (the "Defeasance Requirements"). The Defeasance Requirements provide for the substitution of the Property (and the release of the liens securing the GMAC Loan on the Property) with U.S. government obligations purchased by or for Seller. Because of the Defeasance Requirements, Buyer's cooperation will be necessary, and Buyer hereby agrees to (i) deposit all documents required by Buyer hereunder to be delivered at the Closing, which documents shall be fully executed, and where required acknowledged, with the Title Company no later than the Documents Delivery Date, at which time all conditions to Buyer's obligations to close hereunder other than those set forth in **Section 8.4 and 13** and in the penultimate sentence in **Section 5.1** shall be deemed satisfied, and (ii) deposit the Purchase Price, together with any additional sums due hereunder, with the Title Company no later than 10:30 A.M. (Houston time) on that date which is one (1) business day prior to the Closing Date. Upon the occurrence of the Review Period Expiration Date, and provided Buyer has not terminated this Agreement under **Section 4.1**, Seller shall use good faith, diligent efforts to cause on or prior to Closing (i) the holder of the GMAC Loan to release or irrevocably commit to release its liens encumbering the Property and accept as collateral for the GMAC Loan other replacement collateral, and (ii) the GMAC Loan documents and the lien of the mortgage or deed of trust encumbering the Property, and any other encumbrances related to the GMAC Loan affecting the Property, be removed as exceptions to Buyer's Title Policy (collectively, the "Defeasance"). It shall be a condition precedent to the obligation of each party to proceed with the transaction contemplated under this Agreement that Seller shall have completed the Defeasance contemporaneous with Closing and on or before _____, 2007. Buyer shall cooperate with Seller's performing of the Defeasance at no cost or expense to Buyer. If Seller has not completed the Defeasance on or before the deadline set forth in the preceding sentence, either party may elect, in its sole discretion and as its sole remedy hereunder unless the cause is a default by a party hereto, to terminate this Agreement by delivering Notice to the other party after such date and prior to the completion of the Defeasance, whereupon (i) the Deposit shall be returned to Buyer, (ii) neither party shall have any further obligations hereunder except for those obligations that expressly survive a termination of this Agreement, and (iii) Seller shall reimburse Buyer for the actual out-of-pocket costs incurred by Buyer to conduct its Basic Property Inspection, in an amount not to exceed the sum of \$ _____, within thirty (30) days after Seller's receipt of invoices evidencing such costs.

9. SELLER'S CLOSING DELIVERIES. On the Documents Delivery Date, Seller shall deliver or cause to be delivered to Buyer through the Title Company the following:

9.1. Deed. The Deed for the Land, executed by Seller, in recordable form conveying the Land and the Improvements to Buyer free and clear of all liens and encumbrances, except for the Permitted Exceptions.

9.2. Bill of Sale. A warranty assignment and Bill of Sale, executed by Seller, assigning and warranting to Buyer title to the Personal Property and the Intangibles, free and clear of all liens and encumbrances, other than the Permitted Exceptions.

9.3. Assignment of Contracts. Two (2) executed counterparts of an assignment, executed by Seller, to Buyer of those of the Contracts that Buyer may elect (in its sole discretion) in writing to assume on or prior to the Review Period Expiration Date (the "**Contract Assignment**"). Seller shall also assign, in accordance with the terms of such warranties and at Buyer's expense, all warranties given to Seller that have not expired, in connection with the construction of the Property.

9.4. Assignment of Leases. Two (2) executed counterparts of an Assignment and Assumption of Leases ("**Assignment of Leases**") in the form attached hereto as **Exhibit I**.

9.5. Notices to Tenants. Notices ("**Tenant Notices**") to each of the Tenants under the Leases, notifying them of the sale of the Project and directing them to pay future rent as Buyer may direct and meeting the requirements of Texas Property Code Section 92.105(b).

9.6. Keys. If in Seller's control, keys to all locks located to the Improvements.

9.7. Affidavit. An Owner's Affidavit executed by Seller and in form and substance acceptable to the Title Company.

9.8. Original Documents. To the extent not previously delivered to Buyer, originals of the Leases, the assigned Contracts and applicable licenses and permits.

9.9. Closing Statement. A closing statement conforming to the proration and other relevant provisions of this Agreement (which closing statement may be slightly revised and updated as of the Closing Date).

9.10. Plans and Specifications. If not previously provided Buyer, all plans and specifications related to the Property in Seller's control.

9.11. Entity Transfer Certificate. Entity Transfer Certification confirming that Seller is a "United States Person" within the meaning of Section 1445 of the Internal Revenue Code of 1986.

9.12. Other. Such other documents as may reasonably be required by Buyer or the Title Company and that may be reasonably necessary to consummate this transaction and to otherwise effect the agreements of the parties hereto or required by law.

10. CLOSING DELIVERIES. Buyer shall cause the following to be delivered to Seller through the Title Company:

10.1. Purchase Price. One (1) business day before Closing, the Purchase Price, plus or minus prorations, shall be delivered to the Title Company in escrow for disbursement to Seller.

10.2. Assignment of Leases. On the Documents Delivery Date, two (2) Assignment of Leases executed in counterpart by Buyer.

10.3. Contract Assignment. On the Documents Delivery Date, two (2) Contract Assignments executed in counterpart by Buyer.

10.4. Closing Statement. On the Documents Delivery Date, a closing statement conforming to the proration and other relevant portions of this Agreement (which closing statement may be slightly revised and updated as of the Closing Date).

10.5. Other. On the Documents Delivery Date, the Tenant Notices and such other documents as may reasonably be required by Seller or the Title Company and that may be reasonably necessary or appropriate to consummate this transaction and to otherwise effect the agreements of the parties hereto or required by law.

11. PRORATIONS AND ADJUSTMENTS. The following shall be prorated and adjusted between Seller and Buyer as of the Closing Date, except as otherwise specified:

11.1. Security Deposits. The amount of all security deposits required to be held by Seller under the Leases shall be credited to Buyer.

11.2. Utilities and Operating Expenses. Water, electricity, sewer, gas, telephone and other utility charges based, to the extent practicable, on final meter readings and final invoices, shall be prorated at Closing. Any operating expenses that are not paid by the Tenants as Additional Rent or otherwise shall be prorated between Buyer and Seller, with Seller receiving a credit for any operating expenses paid by Seller and relating to the period from and after Closing.

11.3. Contracts. Amounts paid or payable under the Contracts assumed by Buyer shall be prorated.

11.4. Assessments. All assessments, general or special, shall be prorated as of the Closing Date, with Seller being responsible for any assessments that are due and payable prior to the Closing Date and Buyer being responsible for any assessments that are due and payable on or after the Closing Date.

11.5. Base Rent. Buyer will receive a credit at Closing for the prorated amount of all base or fixed rent payable pursuant to the Leases and all Additional Rents (collectively, "**Rent**") previously paid to, or collected by, Seller and attributable to any period following the Closing Date. Rents are "Delinquent" when they were due prior to the Closing Date, and payment thereof has not been made on or before the Closing Date. Delinquent Rent shall not be prorated at Closing. All Rent collected by Buyer or Seller from each Tenant from and after Closing will be applied as follows: (i) first, to Delinquent Rent owed for the month in which the Closing Date occurs (the "**Closing Month**"), (ii) second, to any accrued Rents owing to Buyer, and (iii) third, to Delinquent Rents owing to Seller for periods prior to Closing. Any Rent collected by Buyer and due Seller will be promptly remitted to Seller. Any Rent collected by Seller and due Buyer shall be promptly remitted to Buyer. Buyer shall use reasonable efforts to collect Delinquent Rents owed to Seller in the ordinary course of its business. "**Additional Rents**" shall mean any and all amounts due from Tenants for operating expenses, common

area maintenance charges, taxes, management fees, insurance costs, other comparable expenses. The provisions of this **Section 11.5** shall survive Closing and the delivery of any conveyance documentation.

11.6. Taxes. All ad valorem real estate and personal property taxes with respect to the Land and the Improvements shall be prorated as of the Closing Date, based on the most currently available final tax information for the calendar year in which Closing occurs, such that Seller shall pay all such taxes attributable to the period prior to the Closing Date regardless of when due and payable and Buyer shall be responsible for all such taxes attributable to the period from and after the Closing Date.

11.7. Other. Such other items as are customarily prorated in transactions of this nature shall be ratably prorated.

For purposes of calculating prorations, Buyer shall be deemed to be in title to the Property, and therefore entitled to the income therefrom and responsible for the expenses thereof, for the entire day upon which Closing occurs. All such prorations shall be made on the basis of the actual number of days of the year and month that shall have elapsed as of the Closing Date. The amount of such prorations shall be adjusted in cash after Closing, as and when complete and accurate information becomes available. Seller and Buyer agree to cooperate and use their good faith efforts to make such adjustments no later than thirty (30) days after Closing, or as soon as is reasonably practicable if and to the extent that the required final proration information is not available within such thirty (30) day period. Items of income and expense for the period prior to the Closing Date will be for the account of Seller and items of income and expense for the period on and after the Closing Date will be for the account of Buyer, all as determined by the accrual method of accounting. Bills received after Closing that relate to expenses incurred, services performed or other amounts allocable to the period prior to the Closing Date shall be paid by Seller. Any amounts not so paid by Seller may be set off against amounts (if any) otherwise due Seller hereunder. The obligations of the parties pursuant to this **Section 11** shall survive Closing.

12. CLOSING EXPENSES. Buyer will pay the cost of the Survey, any expenses relating to the assignment of the existing warranties to Buyer, the cost of the Endorsements, one-half of the escrow costs hereunder and the cost of recording the Deed. Seller shall pay the cost of the Title Commitment, the entire cost of the basic premium for the Title Policy, any prepayment penalties or similar fees associated with the payment of any indebtedness encumbering the Property, including, without limitation, all costs and expenses relating to the Defeasance, and one-half of the escrow costs hereunder.

13. DESTRUCTION, LOSS OR DIMINUTION OF PROJECT. If, prior to Closing, all or any portion of the Land or the Improvements are damaged by fire or other natural casualty (collectively "**Casualty Damage**"), or are taken or made subject to condemnation or eminent domain (collectively "**Eminent Domain**"), then the following procedures shall apply (all in lieu of the rights set forth in Texas Property Code Section 5.007 which are hereby waived by Buyer):

- (a) If the aggregate cost of repair or replacement of the Casualty Damage (collectively, "**repair and/or replacement**") is \$300,000.00 or less, in the reasonable opinion of Buyer's and Seller's respective engineering consultants, Buyer shall close and take the Property as diminished by such events, subject to an assignment of Seller's casualty insurance proceeds (plus the amount of any unpaid deductible) or an assignment of any condemnation award, as applicable.
- (b) If the aggregate cost of repair and/or replacement of the Casualty Damage is greater than \$300,000.00, in the reasonable opinion of Buyer's and Seller's respective engineering consultants, or in the event of an Eminent Domain that would in Buyer's reasonable judgment adversely affect the Project in a material

manner, then Buyer, at its sole option, may elect either to (i) terminate this Agreement by Notice to Seller in which event the provisions of **Section 19.7** governing a permitted termination by Buyer of this Agreement shall apply; or (ii) proceed to close subject to an assignment of the proceeds of Seller's casualty insurance for all Casualty Damage plus the amount of any unpaid deductible (or condemnation awards for any Eminent Domain). In such event, Seller shall fully cooperate with Buyer in the adjustment and settlement of the insurance claim. The benefits under any rent loss or business interruption policies attributable to the period following Closing shall likewise be transferred and paid over (and, if applicable, likewise credited on an interim basis) to Buyer.

- (c) In the event of a dispute between Seller and Buyer with respect to the cost of repair and/or replacement for the matters set forth in this **Section 13**, an engineer designated by Seller and an engineer designated by Buyer shall select an independent engineer licensed to practice in the jurisdiction where the Property is located who shall resolve such dispute. All fees, costs and expenses of such third engineer so selected shall be shared equally by Buyer and Seller.

14. DEFAULT.

14.1. Default by Seller. If any of Seller's Representations contained herein are not true and correct on the Effective Date and continuing thereafter through and including the Closing Date, or if Seller fails to perform any of the agreements contained herein to be performed by Seller within the time for performance as specified herein, Buyer shall, as its sole and exclusive remedy, either (i) terminate Buyer's obligations under this Agreement by Notice to Seller with a copy to Escrowee, in which event the Deposit shall be returned immediately to Buyer; or (ii) file an action for specific performance. Seller hereby covenants and agrees that in the event that a default on the part of Seller hereunder is willful in nature, Buyer may (in addition to any and all other remedies of Buyer hereunder) file an action for damages actually incurred by Buyer by reason of Seller's default hereunder (including, but not limited to, reasonable attorneys' fees). The provisions of the immediately preceding sentence shall survive any termination of this Agreement. Nothing in this **Section 14.1** shall be deemed to in any way to limit or prevent Buyer from exercising any right of termination provided to Buyer elsewhere in this Agreement. Notwithstanding the foregoing, in the event Seller defaults in any of its post-Closing obligations, Buyer shall have all of its remedies at law and in equity on account of such default.

14.2. Default by Buyer. IF BUYER DEFAULTS IN ITS OBLIGATION TO CLOSE THE PURCHASE OF THE PROPERTY, SELLER'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO RECOVER THE DEPOSIT AS LIQUIDATED DAMAGES, IT BEING UNDERSTOOD THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF SUCH DEFAULT ARE DIFFICULT TO ASCERTAIN AND THAT THE DEPOSIT REPRESENTS THE PARTIES' BEST CURRENT ESTIMATE OF SUCH DAMAGES. SELLER SHALL HAVE NO OTHER REMEDY FOR ANY DEFAULT BY BUYER; PROVIDED, HOWEVER THAT, NOTWITHSTANDING THE FOREGOING, IF BUYER DEFAULTS IN ANY OF ITS POST-CLOSING OBLIGATIONS, OR ANY MATTER THAT EXPRESSLY SURVIVES A TERMINATION HEREOF, SELLER SHALL HAVE ALL OF ITS REMEDIES AT LAW OR IN EQUITY ON ACCOUNT OF SUCH DEFAULT.

15. SUCCESSORS AND ASSIGNS; TAX-DEFERRED EXCHANGE.

15.1. Assignment. This Agreement shall be binding upon and benefit the parties and their successors and assigns. Buyer may only assign its rights under this Agreement to (i) any third party intermediary ("**Intermediary**") in connection with a tax-deferred exchange under Section 1031 of the

Internal Revenue Code (an "**Exchange**"); and (ii) any affiliate of Buyer; provided, however, in the case of an assignment made pursuant to clause (ii), Seller must have received Notice of the assignment at least five (5) days before the assignment is binding on Seller (with the Notice accompanied by an executed assignment and assumption document). The assignor shall not be released from liability hereunder.

15.2. Tax-Deferred Exchange. If either party elects to assign this Agreement to an Intermediary as an Exchange, each party shall reasonably cooperate with the other party (without incurring any additional liability or expense) in connection with the Exchange, including executing an acknowledgment of the exchanging party's assignment of this Agreement to the Intermediary.

16. NOTICES. Any notice, demand or request (a "**Notice**") which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to Seller and Buyer as follows:

Seller: _____

Fax: _____

With a copy to
its attorneys: _____

Fax: _____

Buyer: _____

Fax: _____

With a copy to
its attorneys: _____

Fax: _____

Notices shall be deemed properly delivered and received: (i) the same day when personally delivered; or (ii) one day after deposit with Federal Express or other comparable commercial overnight courier; or (iii) the same day when sent by confirmed facsimile.

17. BENEFIT. This Agreement is for the benefit only of the parties hereto and their successors and assignees as permitted in **Section 15** and no other person or entity shall be entitled to receive any benefit herefrom or enforce against any party hereto any provision hereof.

18. BROKERAGE. Each party hereto represents and warrants to the other that it has dealt with no real estate brokers or agents in connection with this transaction other than _____ ("**Seller's Broker**"). Seller shall pay a commission to Seller's Broker in the event of Closing, but not otherwise, pursuant to a separate agreement between Seller and Seller's Broker. Seller and Buyer each hereby indemnify, defend and hold the other harmless from and against all Losses, resulting from the claims of any broker or agent, claiming by, through or under the acts or agreements of the indemnifying party. The provisions of this **Section 18** shall survive Closing or any termination of this Agreement.

19. MISCELLANEOUS.

19.1. Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the transaction described herein, and all prior or contemporaneous oral agreements or understandings, with respect to the transaction contemplated herein, are hereby superseded and rendered of no further force and effect. Neither this Agreement nor any provisions hereof may be waived or amended except by an instrument in writing signed by the party against which the enforcement of such waiver, amendment or termination is sought.

19.2. Time of the Essence. Time is of the essence of this Agreement.

19.3. Legal Holidays. If any deadline set forth herein for the performance of any obligation or for the delivery of any document or Notice should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. "**Legal holiday**" means any state or federal holiday for which banks are generally closed for observance thereof in the State of Texas.

19.4. Construction. This Agreement shall not be construed more strictly against one party than the other by it having been prepared by counsel for one of the parties, it being recognized that both Seller and Buyer have contributed substantially and materially to the preparation of this Agreement.

19.5. Governing Law. This Agreement shall be governed by the laws of the State of Texas.

19.6. Partial Invalidity. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity of any one provision shall not affect the validity or enforceability of any other provision hereof.

19.7. Permitted Termination. If Buyer properly exercises any termination right under this Agreement, the Deposit shall be immediately returned to Buyer and neither party shall have any further obligation or liability under this Agreement except as otherwise expressly provided hereunder.

[SIGNATURES AND EXHIBITS OMITTED]