

## ENVIRONMENTAL AGREEMENT AND INDEMNITY

**THIS RIDER** is made this <f29> and is incorporate into and shall be deemed to amend and supplement the Deed of Trust of even date given by the undersigned (the "Borrower" to secure Borrower's promissory note to <f80>, (a California corporation), as Trustee for the benefit of <f200><f201><f202><f203>, as to an undivided \$<f43> interest; (collectively, "Lender") and covering the Property described in the Deed of Trust and located at <f18>, <f19>.

### RECITALS

**A.** Lender has made a loan (the "Loan") to Borrower in the principal amount of \$<f20>, which Loan is evidenced by a Promissory Note ("Note") of even date herewith given by borrower in favor of Lender. The Loan is secured by, among other things, that certain Deed of Trust (the "Deed of Trust") of even date herewith given by Borrower, as trustor, for the benefit of Lender, as, encumbering certain real property located in the County of <f63>, State of California, more particularly described in Exhibit A attached hereto (together with any buildings and improvements now or hereafter located thereon, the "Property")

**B.** Lender has required that Borrower execute and deliver this Agreement as a condition precedent to the making of, and in order to induce Lender to make, the Loan.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing and in order to induce Lender to make the Loan, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby covenants and agrees as follows:

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

**(a) Hazardous Substance.** The term "Hazardous Substance" means (i) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws (as hereinafter defined) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic waste", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or "EP toxicity" and (ii) any petroleum, natural gas, natural gas liquid, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources.

**(b) Hazardous Substance Activity.** The term "Hazardous Substance Activity" means any actual, proposed or threatened storage, holding, existence or suspected existence, released or suspected release, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous Substance from, under, into, on or across the Property of surrounding property or any other use of or operation on the Property or the surrounding property that creates a risk of Hazardous Substance contamination of the Property. "Hazardous Substance Activity" includes, without limitation, any use of the Property involving any of the following activities: leather tanning; metal plating; salvage operations of any type (including, but not limited to, automobiles, electrical equipment or transformers, surplus military equipment or lead batteries); fertilizer or pesticide manufacture, packaging or bulk storage; wood or pole treatment facilities; paint manufacturing; drum or tank recycling or salvage; oil reclamation; petroleum blending, packaging or bulk storage; chemical manufacturing, processing, blending, bulk storage, packaging or distribution; manufacturing of electronic components or analytical laboratory equipment; ceramics manufacturing or painting; dry cleaning; printing biological or chemical research; precious metal recovery; gas station operations; automobile painting; or automotive service center.

**(c) Environmental Laws.** The term "Environmental Laws" means any and all present and future federal, state and local laws (whether under common law, statute, ordinance, rule, regulation or otherwise), court or administrative orders or decrees, requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environment or to any Hazardous Substance or Hazardous Substance Activity (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601, et. seq.), as heretofore or hereafter amended from time to time ("CERCLA"), and the applicable provisions of the California Health and Safety Code and the California Water Code).

**(d) Hazardous Substance Claims.** The term clean-up, removal, remedial or other governmental or regulatory actions, agreements, or orders threatened, instituted or completed pursuant to any Environmental Laws and any and all other actions, proceedings, claims, demands or causes of action, whether meritorious or not (including, without limitation, third party claims for contribution, indemnity personal injury or real or personal property damage), which directly or indirectly relate to, arise from or are based in whole or in part on: (i) the occurrence or alleged occurrence of any Hazardous Substance Activity; (ii) any violation or alleged violation of any applicable Environmental Laws relating to the Property or to the ownership, use, occupation or operation thereof; or (iii) any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity.

**(e) Remedial Work.** The term "Remedial Work" shall mean all investigation, monitoring, restoration, abatement, detoxification, containment, handling, treatment, removal, storage, decontamination, clean-up, transport, disposal or other ameliorative work or response action required by (i) any Environmental Law. (ii) any judgment, consent decree, settlement or compromise with respect to any Hazardous Substance Claims.

**(f) Losses.** The term "Losses" means any and all losses, liabilities, damages, punitive damages, demands, claims, actions, judgments, causes of action, assessments, penalties, costs and expenses (including sums paid in settlement of claims), liens, interest, fines or penalties, including, without limitation, the reasonable fees and disbursements of outside legal counsel, paralegal and accountants and the reasonable charges of in-house legal counsel, paralegal and accountants, consultant fees, expert fees, and all other costs and expenses of any kind or nature. "Losses" include, but are not limited to, (a) capital, operating and maintenance costs incurred in connection with any Remedial Work required or performed by or on behalf of any federal, state or local governmental agency or political subdivision or performed by or on behalf of any nongovernmental entity or person because of the presence, suspected presence, release or suspected release of any Hazardous Substance in or into the air, soil, groundwater or surface water at, on, about, under or within the Property (or any portion thereof), and any claims of third parties for loss or damage due to such Hazardous Substance; and (b) all Losses sustained by Lender or its directors, officers, shareholders, employees and agents, due to any Hazardous Substance (i) that is present or suspected to be present in the air, soil, groundwater or surface water at, on, about, under or within the Property (or any portion thereof) on or before the date of this Agreement, or (ii) that migrates, flows, percolates, diffuses or in any way moves onto, into or under the air, soil, groundwater or surface water at, on about, under or within the Property (or any portion thereof) after the date of this Agreement, irrespective of whether such Hazardous Substance shall be present or suspected to be present in the air, soil, groundwater or surface water at, on, about, under or within the Property (or any portion thereof) as a result of any release, discharge, disposal, dumping, spilling, or leaking (accidental or otherwise) onto the Property (or any portion thereof) occurring before, on or after the date of this Agreement or caused by any person or entity.

**(g) Environmental Losses.** The term "Environmental Losses" means Losses suffered or incurred by Lender or its directors, officers, shareholder, employees and agents with respect to the Property arising out of or as a result of: (i) the occurrence of any Hazardous Substance Activity; (ii) any violation of any applicable Environmental Laws relating to the Property or to the ownership, use, occupancy or operation thereof; (iii) any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency in connection with any Hazardous Substance Claims brought, asserted, or alleged against Lender or any of its directors, officers, shareholders, employees or agents; (v) any actions taken by Lender to enter and inspect the Property pursuant to California Civil Code Section 2929.5; (vi) any actions taken by Lender to appoint a receiver pursuant to California Code of Civil Procedure Section 564; (vii) any actions taken by Lender pursuant to California Code of Civil Procedure Section 726.5; and (viii) any actions taken by Lender pursuant to California Code of Civil Procedure Section 736.

**2. Representations and Warranties.** Borrower hereby represents and warrants that: (a) no Hazardous Substances currently are or have been present, used, generated, manufactured, stored, released, discharged on or transported to, from or across the Property and no other Hazardous Substance Activity current is or has been conducted on the Property; (b) Borrower has not received any notice that the Property is in violation of any Environmental Laws; and (c) Borrower is not received any notice of any Hazardous Substance Claims.

**3. Covenants.** Borrower shall (a) comply and cause all tenants and other persons on or occupying the Property to comply with all Environmental Laws; (b) without limiting the generality of clause (a) above, not engage in, permit nor acquiesce to any Hazardous Substance Activity on, under or about the Property; (c) immediately advise Lender in writing of (i) the receipt by Borrower of notice of any and all Hazardous Substance Claims; (ii) any knowledge by Borrower that the Property does not comply with any Environmental Laws, (iii) any remedial action taken by Borrower in response to any Hazardous Substances or Hazardous Substance Activity on, under or about the Property, or to any Hazardous Substance Claims, and (iv) Borrower's discovery of the presence of any Hazardous Substances or Hazardous Substances Activity on, under or about the Property or any real property immediately adjacent to the Property whether or not the same requires notice to be given to any governmental entity or agency under Environmental Laws; (d) submit to Lender, promptly upon receipt or preparation, copies of any and all reports, studies, analyses, correspondence, governmental comments, or approvals, proposed removal or other Remedial Work contracts and similar information prepared or received by Borrower in connection with any Remedial Work or Hazardous Substances relating to the Property; (3) maintain property management services at the Property which shall provide for periodic inspections of the Property (subject to access restrictions under leases and at law) and for periodic meetings with representatives of Borrower and, upon request, Lender to review the results of such inspection; and (f) use reasonable efforts to negotiate leases which provide (i) that periodic entry and inspection by Borrower, Borrower's representatives, property manager and/or upon request, Lender or Lender's representatives, is authorized and (II) that Borrower is authorized under the lease to perform Remedial Work after a failure by a tenant to respond to Borrower's request for Remedial Work by such tenant.

**4. Remedial Work.** As soon as possible, but no later than sixty (60) day after receipt by Borrower of any Hazardous Substance Claim, Borrower shall perform or cause others qualified to do so to perform any and all necessary Remedial Work in response to any Hazardous Substance Claim. Subject to the terms of any leases and applicable laws, in response to Borrower's knowledge of the presence of any Hazardous Substance on or under the Property or real property immediately adjacent to the Property, Borrower shall immediately perform or cause tenants to immediately perform all Remedial Work. All Remedial Work shall be performed in accordance with all applicable Environmental Laws and any other applicable laws, rules, regulations or orders. All costs and expenses of any Remedial Work shall be paid by Borrower, it being understood that Lender shall incur no cost, expense or liability in connection with any Remedial Work. Lender shall have the right, but no obligation, to join and participate in, as a party if it so elects at Lender's cost, any legal proceedings or

actions initiated in connection with any Hazardous Substance Claims, provided, however, Borrower shall reimburse to Lender its attorneys' fees and costs incurred if such participation is deemed reasonably necessary by Lender to protect its security interest in the Property.

**5. Remedies.** In addition to any other rights or remedies Lender may have under this Agreement, at law or in equity, in the event that Borrower shall fail to timely comply with the provisions hereof or in the event that any representation or warranty made herein proves to be intentionally or materially false or misleading, then, in such event and after (a) delivering written notice to Borrower, which notice specifically states that Borrower has failed to comply with the provisions of this Agreement; and (b) the expiration of the cure period, if any, permitted under the applicable laws, rules, regulations or orders with which Borrower shall have failed to comply; Lender may (i) declare that an Event of Default (as defined in the Deed of Trust) has occurred under the Deed of Trust and exercise any and all remedies provided for therein, (ii) institute an action against Borrower for specific performance of the action which Borrower has failed to perform, (iii) do or cause to be done whatever is necessary to cause the Property to comply with all Environmental Laws and other applicable laws, rules, regulations or orders and the costs thereof shall become immediately due and payable from Borrower to Lender as Environmental Losses, (iv) enter into and inspect the Property pursuant to California Civil Code Section 2929.5, (v) appoint a receiver pursuant to California Code of Civil Procedure Section 564, and/or (vi) commence an action as provided in California Code of Civil Procedure Section 736.

**6. Indemnification.** Borrower agrees to indemnify, protect, defend (with counsel reasonably approved by Lender) and hold Lender, and the directors, officers, shareholders, employees and agents of Lender, and each of them (collectively, the "Indemnified Parties"), harmless from and against any and all Environmental Losses, to the fullest extent permitted by applicable law. The indemnification provided for in this paragraph shall specifically apply to and include any Environmental Losses incurred by Lender and the other Indemnified Parties in connection with the exercise of Lender's right (i) to enter and inspect the Property pursuant to California Civil Code Section 2929.5, including, without limitation, the cost of repair of and physical injury to the Property caused by such entry and inspection; (ii) to appoint a receiver pursuant to California Code of Civil Procedure Section 564; (iii) pursuant to California Code of Civil Procedure Section 726.5, including, without limitation, costs incurred to determine the value of the Property and to establish the degree to which the Property is environmentally impaired, as required by California Code of Civil Procedure Section 726.5(b); and (vi) to commence an action pursuant to California Code of Civil Procedure Section 736. The indemnification provided for in this paragraph shall also specifically apply to and include claims or actions brought by or on behalf of employees of the Borrower, and Borrower hereby expressly waives any immunity to which Borrower may otherwise be entitled under any industrial or worker's compensation laws. In the event any of the Indemnified Parties shall suffer or incur any such Environmental Losses, Borrower shall pay to such Indemnified Party the total of all such Environmental Losses suffered or incurred by such Indemnified Party upon demand therefore by such Indemnified Party.

**7. Subrogation of Indemnity Rights.** If Borrower fails to perform its obligations under this Agreement, Lender shall be subrogated to any rights Borrower may have under any indemnifications from any present, future or former owners, tenants or other occupants or users of the Property (or any portion thereof), relating to the matters covered by this Agreement.

**8. Joint and Several Liabilities; Contribution.** If this Agreement is executed and entered into by more than one person or entity as "Borrower", then:

- (a) Each of such persons or entities shall be jointly and severally liable for each and all of the obligations of Borrower hereunder;
- (b) Each Borrower agrees that it shall have no right of contribution (including, without limitation, any rights of contribution under CERCLA) or subrogation against any other Borrower hereunder unless and until all obligations of such Borrower have been satisfied; and
- (c) Each Borrower further agrees that, to the extent that the waiver of its rights of subrogation and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation of contribution such Borrower may have shall be junior and subordinate to the rights of Lender against any Borrower hereunder.

**9. Inspection.** Borrower shall permit Lender to enter the Borrower's (office and) Property during all reasonable (business) hours (after giving reasonable notice to Borrower) to conduct environmental testing and, in the event of Borrower's failure undertake Remedial Work, to perform Remedial Work, and Borrower hereby grants to Lender (and its employees and agents) an irrevocable and non-exclusive license of the purpose of conducting such testing and/or Remedial Work. Lender's right to enter and inspect the Borrower's (office and) Property shall include all rights conferred upon Lender by California Civil Code Section 2929.5

**10. Assignment by Lender.** No consent by Borrower shall be required for any assignment or reassignment of the rights of Lender hereunder to one or more purchasers of the Loan or the Property, or any portion thereof.

**11. Interest.** Any costs and other payments required to be paid by Borrower to Lender or the other Indemnified Parties under this Agreement which are not paid on demand shall thereupon be considered delinquent. All such cost and other payments shall bear interest at the Default Interest Rate (as defined in the Note) from the date such costs and payments become delinquent through and including the date all such costs and payments are paid in full. Notwithstanding the foregoing, interest on all such costs and other payments shall not exceed the maximum rate of interest, if any, permitted by law to be contracted for between Borrower and Lender.

**12. Recourse Obligations.** The obligations of Borrower under this Agreement shall be exceptions to any limitations on Lender's recourse against Borrower or any so called "nonrecourse" or "exculpatory" provisions set forth in the Deed of Trust, the Note or in any

other document referred to therein and evidencing or securing the repayment of the Loan, such that Borrower shall be fully and personally liable on a full recourse basis for all of Borrower's obligations hereunder, and such liability shall not be limited to the original principal amount of the Loan.

**13. Secured Obligations; Survival.** Borrower's obligations hereunder shall be secured by the Deed of Trust for so long as the Deed of Trust shall remain a lien upon the Property, provided, however, that any termination of the lien of the Deed of Trust shall not terminate or otherwise affect Borrower's obligations hereunder and Borrower's obligations hereunder shall survive (i) any foreclosure, deed in lieu of foreclosure or reconveyance of the Deed of Trust, and (ii) any sale or other transfer of the Property by either Borrower or Lender. The rights of Lender under this Agreement shall be in addition to any other rights and remedies of Lender against Borrower under any other document of instrument now or hereafter executed by Borrower, or at law or in equity (including, without limitation, any right of reimbursement or contribution pursuant to CERCLA), and shall not in any way be deemed a waiver of any of such rights. The obligations of Borrower under this Agreement shall be personal to each Borrower and their respective representatives, administrators, executors, successors and assigns, and shall not run, and shall not be deemed to run, with the land.

**14. Miscellaneous.** If any term or condition of this Agreement or any application thereof shall be invalid, illegal or unenforceable, the remainder of the Agreement and any other application of such term or condition shall not be affected thereby. No delay or omission in exercising any right hereunder shall operate as a waiver of such right or any other right. This Agreement shall be binding upon, inure to the benefit of and be enforceable by Borrower and Lender, and their respective representatives, administrators, executors, successors and assigns, including, without limitations, any assignee or purchaser of all or any portion of the Lender's interest in the Loan or the Property. No failure of delay on the party of Lender to exercise any power, right or privilege under this Agreement shall impair any such power, right or privilege, or be construed to be a waiver of any default or an acquiescence therein, not shall any single or partial exercise of such power, right or privilege. No provision of the Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of this charge, waiver, discharge or termination is sought. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**15. Attorneys' Fees.** Borrower hereby agrees to pay all attorneys' and paralegal's fees and other costs and expenses which may be incurred by the Lender in the enforcement of this Agreement including, without limitation, those incurred in any case, action, proceeding, claim or otherwise under Chapters 7, 11, or 13 of the United States Bankruptcy Code or any successor statute or statutes thereof.

**16. Notices.** Any notice to be given by Borrower or Lender hereunder shall be given as provided in the Deed of Trust.

**IN WITNESS WHEREOF**, Borrower has executed this Agreement as of the date and year first above written.

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«f5» «f6» «f7» - Borrower

Date

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«f10» «f11» «f12» - Borrower

Date