

«f80»  
«f81»  
«f82», «f83»

## HAZARDOUS MATERIAL CERTIFICATE AND IDEMNITY AGREEMENT

THIS HAZARDOUS MATERIALS CERTIFICATE AND INDEMNITY AGREEMENT is made as of by «f5» «f6» «f7» «f8» «f10» «f11» «f12» ("Borrower") in favor of «f38» «f39» ("Lender").

### RECITALS

A. Borrower is the owner of the real property located at: «f18», «f19», in the county of «f63», more particularly described as (said real property, together with any real property hereafter encumbered by the lien of the "Trust Deed" (as defined below), being herein collectively called the "Land"; the Land, together with all improvements now or hereafter located on the Land, being herein collectively called the "Property@).

B. Lender is prepared to make and Borrower will accept a loan in the amount of, «f206»(\$«f20») (the "Loan") secured by a Trust Deed from Borrower to Lender which will encumber the property.

C. As a condition to making the Loan, Lender requires Borrower to provide certain warranties and indemnities concerning existing and future "Hazardous Materials" (as defined in Paragraph 17 below).

D. To induce Lender to consummate the above-described transaction and to lend the indicated amount to Borrower, Borrower has agreed to enter into this Agreement.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt sufficiency of which are hereby acknowledged, Borrower hereby agrees as follows:

1. Borrower represents, warrants and covenants that Borrower has not used Hazardous Materials on, or affecting the Property in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage or disposal of Hazardous Materials and, to the best of Borrower's knowledge after having conducted an inquiry into the previous uses and ownerships of the Property, no prior owner of the Property or any existing or prior tenant, subtenant or occupant of the Property has used Hazardous Materials on, from or affecting the Property in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

2. Borrower represents, warrants and covenants that Borrower has never received any notice of any violation (and is not aware of any existing violations) of federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials at the Property and, to the best of Borrower's knowledge, there have been no actions commenced or threatened by any party for noncompliance which affects the Property.

3. Borrower represents and warrants that the Property is not shown on the list of contaminated properties maintained by any public or government agency of competent jurisdiction.

4. Borrower shall keep or cause the Property to be kept free of Hazardous Materials except to the extent that such Hazardous Materials are approved by all applicable governmental agencies of competent jurisdiction for bulk general consumer retail distribution and which are stored, distributed, disposed of and/or used in compliance with federal, state or local laws, ordinances, rules, regulations or policies governing said storage, distribution, disposal or use. Borrower shall not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, dispose of, transfer, produce or process Hazardous Materials. In addition, Borrower shall not cause or permit, as a result of an intentional or unintentional act or omission on the part of Borrower, any tenant, subtenant or occupant to release any Hazardous Materials onto the Property or onto adjacent property.

5. Borrower shall immediately notify Lender in writing upon the occurrence of any of the following:

- (i) the release of any Hazardous Material(s) on or about the Property;
- (ii) receipt by Borrower or any tenant, subtenant or occupant of the Property of any notice concerning the Property of any, violation of federal, state or local laws, ordinances, rules, regulations or policies relating to any Hazardous Material(s); and
- (iii) any violation affecting the Property of any federal, state or local laws, ordinances, rules regulations or policies relating to any Hazardous Material(s).

6. Borrowers shall conduct and complete all investigations, studies, sampling and testing, and all removal and other actions necessary to clean up and remove all Hazardous Materials on, under, from or affecting the Property if required by and in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies to the satisfaction of Lender, in accordance with the orders and directives of all federal, state and local governmental authorities.

7. Borrower shall indemnify, defend and hold harmless Lender, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind of nature, including attorney fees, fees of environmental consultants and laboratory fees, known or unknown, contingent or otherwise, arising out of or in any way related to

- (i) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from or affecting the Property or the soil, water, vegetation, buildings, personal property, persons or animals therein;
- (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials;
- (iii) any lawsuit brought or threatened, settlement reached or governmental order relating to such Hazardous Materials with respect to Property;
- (iv) any violation of laws, orders regulations, requirements or demands of government authorities or any policies or requirements of Lender, which are based upon or in any way related to such Hazardous Materials; and/or
- (v) the breach of any warranty, representation or covenant of Borrower contained in this Agreement.

The provisions of this Paragraph 7 shall remain in full force and effect notwithstanding the transfer of the Property or Lender's security interest herein to any wholly-owned subsidiary of Lender, any transferee pursuant to a power of sale or any transfer of Lender or its wholly-owned subsidiary.

8. Borrower agrees that in the event that the Trust Deed is foreclosed (whether judicially or by power of sale) or Borrower tenders a deed in lieu of foreclosure, Borrower shall deliver the Property to (or shall cause all tenants of the Property to deliver, to the extent required by applicable law) free of any and all Hazardous Materials, so that the condition of the Property shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Property. Borrower's obligation as set forth in this Paragraph 8 is made strictly for the benefit of Lender and shall not in any way impair or affect Lender's right to foreclosure against the Property.

9. Lender's rights under this Agreement shall be in addition to all rights to Lender under the Trust Deed, the note secured by the Trust Deed (the "Note") and any guaranty or guaranties (whether of payment and/or performance) given to Lender in connection with the Loan and under any other documents or instruments evidencing or securing the Loan (the Trust Deed, the Note any such guaranty or guaranties and such other documents or instruments, as amended or modified from time to time, being herein called the "Loan Documents"), and payments by Borrower under this Agreement shall not reduce Borrower's obligations and liabilities under any of the Loan Documents. Borrower's obligations under this Agreement are not secured by the Trust Deed or any other Loan Documents, but any default by Borrower under this Agreement (including without limitation, any breach of any of Borrower's representations and warranties herein) shall, at Lender's option, constitute a default under the Note, the Trust Deed or any of the other Loan Documents.

10. The liability of Borrower under this Agreement shall in no way be limited or impaired by, and Borrower hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents to or with Lender by Borrower or any person who succeeds Borrower as owner of the Property. In addition, the liability under this Agreement shall in no way be limited or impaired by

- (i) any extensions or time for performance required by any of the Loan Documents;
- (ii) any sale, assignment or foreclosure of the Note or Trust Deed or any sale or transfer of all or part of the Property;
- (iii) the discharge of the Note and/or the reconveyance of the Trust Deed;
- (iv) any exculpatory provisions in any of the Loan Documents limiting Lender's recourse to property encumbered by the Trust Deed or to any other security, or limiting Lender's rights to a deficiency judgment against Borrower;
- (v) the accuracy or inaccuracy of the representations and warranties made by Borrower under any of the Loan Documents;
- (vi) the release of Borrower or any other person from performance or observance of any of the Loan Documents by operations of Law, Lender's voluntary act or otherwise;
- (vii) Lender's failure to record the Trust Deed or file any UCC financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Note; and, in any such case, whether with or without notice to Borrower and with or without consideration.

11. No delay on Lender's part in exercising any right, power or privilege under this Agreement shall operate as a waiver of any such privilege, power or right.

12. The obligations hereunder of the persons and/or entities constituting Borrower and/or executing below are joint and several. Any one or more of Borrower's shareholders, or any other party liable upon or in respect of this Agreement or the Loan, may be released without affecting the liability of any party not so released.

13. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when sent by registered or certified mail, to the addresses set forth below, or such other address of which a party shall have notified the other party by giving such notice in writing in accordance with the foregoing requirements.

14. No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

15. Except as herein provided, this Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, Borrower, without the prior written

consent of Lender in each instance, may not assign, transfer or set over to another, in whole or in part, all or any including, but not limited to, performance of and compliance with conditions hereof.

16. No party to this Agreement shall seek a jury trial in any lawsuit, proceeding, counterclaim or any other litigation procedure based upon or arising out of this Agreement, or the dealings or the relationship between or among the parties, or any of them. No party shall seek to consolidate any such action in which a jury trial has been waived, with any other action in which a jury trial cannot or has been waived. The provisions of this paragraph have been dully discussed by the parties hereto. No party has in any way agreed with or represented to any other party that the provisions of this paragraph will not be fully enforced in all instances.

17. For purposes of this Agreement, "Hazardous Materials" include, without limitation, urea-formaldehyde, radon asbestos, polychlorinated biphenyls, petroleum products, any flammable explosives, radioactive materials, hazardous materials, hazardous waste, hazardous or toxic substance or related materials defined in the comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC S9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 USC S1801, et seq.), the Resource Conservation and Recovery Act, as amended ("RCRA"), (42 USC S6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local governmental law, ordinance, rule or regulation.

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement as of the day and year first above written.

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«f5» «f6» «f7» - Borrower/Date

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«f10» «f11» «f12» - Borrower/Date