

UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION		PROOF OF CLAIM	
In re: <b>TAYLOR, BEAN &amp; WHITAKER MORTGAGE CORP.</b>		Case Number: <b>3:09-bk-07047-JAF</b>	
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.	
Name of Creditor and Address: the person or other entity to whom the debtor owes money or property If necessary, please cross out or printed address and write in change of address.			
NL Ventures VII Magnolia L.L.C. c/o Steve A. Peirce, Fulbright & Jaworski LLP 300 Convent Street, Suite 2200 San Antonio, TX 78205		JUN 14 2010	
Creditor Telephone Number (210) 224-5575		<input type="checkbox"/> Check box if address is where Notice is to be sent.	
Name and address where payment should be sent (if different from above): c/o Tom Cramer 8080 North Central Expressway, Suite 1220 Dallas, TX 75206-1864		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
Payment Telephone Number (214) 292-4246		Claim Number (if known): Filed on:	
1. AMOUNT OF CLAIM AS OF DATE CASE FILED \$ See Exhibit A			
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5.			
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.			
2. BASIS FOR CLAIM: Lease		(See instructions #2 and #3a on reverse side.)	
3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:		3a. Debtor may have scheduled account as:	
4. SECURED CLAIM (See instruction #4 on reverse side.)			
Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information		Secured Claim Amount: \$	
Nature of property or right of setoff: Describe:		Unsecured Claim Amount: \$	
<input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other		Amount of arrearage and other charges as of time case filed included in secured claim.	
Value of Property: \$		Annual Interest Rate: % if any: \$	
Basis for Perfection:		DO NOT Include the priority portion of your claim here.	
5. PRIORITY CLAIM			
<input type="checkbox"/> Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.		Unsecured Priority Claim Amount: \$	
You MUST specify the priority of the claim:		Include ONLY the priority portion of your unsecured claim here.	
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).		<input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).	
<input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).	
<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).		<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) ( ):	
* Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			
6. CREDITS: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.			
7. SUPPORTING DOCUMENTS: Attach redacted copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of evidence of perfection of a security interest. (See definition of "redacted" on reverse side.)			
If the documents are not available, please explain.			
DATE-STAMPED COPY To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.			
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.			
The original of this completed proof of claim form must be sent by mail, hand, courier or overnight delivery (facsimile, teletype or other electronic means NOT accepted), so that it is actually received on or before 5:00 p.m. prevailing Eastern Time on June 15, 2010, the Bar Date (as defined in the Bar Date Notice).		THIS SPACE FOR COURT USE ONLY	
By Regular Mail to: BMC Group, Inc. Attn: Taylor, Bean & Whitaker Mortgage Corp. Claim Processing PO Box 3020 Chanhassen, MN 55317-3020		By Hand, Courier, Or Overnight Delivery to: BMC Group, Inc. Attn: Taylor, Bean & Whitaker Mortgage Corp. Claim Pr 18750 Lake Drive East Chanhassen, MN 55317	
T, B & W Mortgage Corp.		02625	
DATE 6/10/2010		SIGNATURE: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. Peter S. Carlsen, Authorized Representative	

## INSTRUCTIONS FOR PROOF OF CLAIM FORM

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.*

### ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM (IF NOT ALREADY PROPERLY FILLED IN)

<p><b>Court, Name of Debtor, and Case Number:</b> Use this proof of claim form only if you are asserting a claim against the Debtor, Taylor, Bean &amp; Whitaker Mortgage Corp. If you received a notice of the case from the Claims Agent, BMC Group, some or all of this information may have been already completed.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <th style="text-align: left;">DEBTOR</th> <th style="text-align: left;">CASE NO</th> <th style="text-align: left;">PETITION DATE</th> </tr> <tr> <td>Taylor, Bean &amp; Whitaker Mortgage Corp.</td> <td>3:09-bk-07047-JAF</td> <td>8/24/2009</td> </tr> </table> <p><b>Creditor's Name and Address:</b> Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).</p> <p><b>1. Amount of Claim as of Date Case Filed:</b> State the total amount (in lawful US currency) owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete item 4. Check the box if interest or other charges are included in the claim.</p> <p><b>2. Basis for Claim:</b> State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.</p> <p><b>3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:</b> State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.</p> <p><b>3a. Debtor May Have Scheduled Account As:</b> Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.</p> <p><b>4. Secured Claim:</b> Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.)</p>	DEBTOR	CASE NO	PETITION DATE	Taylor, Bean & Whitaker Mortgage Corp.	3:09-bk-07047-JAF	8/24/2009	<p>State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.</p> <p><b>5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).</b> If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.</p> <p><b>6. Credits:</b> An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.</p> <p><b>7. Supporting Documents:</b> Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary if documentation is voluminous or an explanation if documentation is not available. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.</p> <p><b>Date and Signature:</b> The person filing this proof of claim <u>must</u> sign and date it. FRBP 9011. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.</p> <p><b>Date-Stamped Copy:</b> <b>Return claim form and attachments.</b> If you wish to receive an acknowledgement of your claim, please enclose a self-addressed stamped envelope and a second copy of the proof of claim form with any attachments to the Claims Agent, BMC Group, at the address on the front of this form.</p> <p><i>Please read – important information: upon completion of this claim form, you are certifying that the statements herein are true.</i></p> <p>Be sure all items are answered on the claim form. If not applicable, insert "Not Applicable."</p>
DEBTOR	CASE NO	PETITION DATE					
Taylor, Bean & Whitaker Mortgage Corp.	3:09-bk-07047-JAF	8/24/2009					

### DEFINITIONS

### INFORMATION

#### DEBTOR

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

#### CREDITOR

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

#### CLAIM

A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

#### PROOF OF CLAIM

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the court-appointed Claims Agent, BMC Group, at the address listed on the reverse side of this page

#### SECURED CLAIM Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors.

The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

#### UNSECURED NONPRIORITY CLAIM

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

#### UNSECURED PRIORITY CLAIM Under 11 U.S.C. §507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

#### Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other

document showing that the lien has been filed or recorded.

#### Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

#### Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(c), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.

ONCE YOUR CLAIM IS FILED YOU CAN OBTAIN OR VERIFY YOUR CLAIM NUMBER BY VISITING [www.bmcgroup.com/tbw/mortgage](http://www.bmcgroup.com/tbw/mortgage)

**EXHIBIT A TO PROOF OF CLAIM OF NL VENTURES VII MAGNOLIA, L.L.C.  
AGAINST TAYLOR, BEAN & WHITAKER MORTGAGE CORP.**

**I.  
DEBTOR**

This claim is against Taylor, Bean & Whitaker Mortgage Corp, a debtor in Case No. 09-07047, United States Bankruptcy Court, Middle District of Florida, Jacksonville Division.

**II.  
CREDITOR**

The creditor is NL Ventures VII Magnolia, L.L.C. ("Landlord"), a landlord on nonresidential real property and improvements located at 1417 N. Magnolia Avenue, Ocala, Marion County, Florida 34475 (the "Premises").

**III.  
PETITION DATE**

The Petition Date for this bankruptcy case is August 24, 2009.

**IV.  
SUPPORTING DOCUMENTS**

<b>Exhibit</b>	<b>Description</b>
NL1	Lease Agreement dated May 26, 2009 ("Lease")

**V.  
PREPETITION CLAIM UNDER 11 U.S.C. § 502(B)(6)(B)**

The amounts owed to Landlord as of the August 24, 2009 Petition Date as Prepetition Obligations under 11 U.S.C. § 502(b)(6)(B) is none. The debtor is current on the Lease.

**VI.  
SECURITY**

This claim is secured by a security deposit in the amount of \$353,385.82.

**VII.  
RESERVATION OF RIGHTS**

This is a "placeholder" proof of claim, because, as of this writing, the estate has neither assumed nor rejected the Lease. Landlord reserves the right to amend and supplement this proof of claim, if, for example, the estate rejects the Lease. This proof of claim does NOT operate as

an election of remedies by Landlord and is not intended to, nor shall it, limit Landlord's ability to collect from any third party guarantors the full obligation less any collected amounts.

**LEASE AGREEMENT**

between

**NL VENTURES VII MAGNOLIA, L.L.C.**

as Lessor

and

**TAYLOR, BEAN & WHITAKER MORTGAGE CORP.**

as Lessee

**EXHIBIT**

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**NLI**

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## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") dated as of May 26, 2009, is made and entered into between NL VENTURES VII MAGNOLIA, L.L.C., a Delaware limited liability company ("Lessor"), and TAYLOR, BEAN & WHITAKER MORTGAGE CORP., a Florida corporation ("Lessee").

### ARTICLE I

**Section 1.01 Lease of Premises; Title and Condition.** Upon and subject to the terms and conditions herein specified, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the premises (the "Premises") consisting of the following:

(a) those parcels of land more particularly described in Exhibit A attached hereto and made a part hereof for all purposes having the following address: 1417 N. Magnolia Avenue, Ocala, Marion County, Florida 34475, together with all of Lessor's right, title and interest, if any, in and to all easements, rights-of-way, appurtenances and other rights and benefits associated with such parcel(s) of land and to all public or private streets, roads, avenues, alleys or pass ways, open or proposed, on or abutting such parcel(s) of land (collectively, the "Land"); and

(b) all of the buildings, structures, fixtures, facilities, installations and other improvements of every kind and description now or hereafter in, on, over and under the Land and all plumbing, gas, electrical, ventilating, lighting and other utility systems, ducts, hot water heaters, oil burners, domestic water systems, elevators, escalators, canopies, air conditioning systems and all other building systems and fixtures attached to or comprising a part of the buildings, including, but not limited to, all other building systems and fixtures necessary to the ownership, use, operation, repair and maintenance of the buildings, structures, fixtures, facilities, installations and other improvements of every kind, but excluding all Severable Property (as defined in Section 3.01 hereof) (collectively, the "Improvements").

The Premises are leased to Lessee in their present condition without representation or warranty by Lessor and subject to the rights of parties in possession, to the existing state of title, to all applicable Legal Requirements (as defined in Section 5.02(b)) now or hereafter in effect and to liens and encumbrances listed in Exhibit B attached hereto and made a part hereof (collectively, "Permitted Exceptions") for all purposes. Lessee has examined the Premises and title to the Premises and has found all of the same satisfactory for all purposes. LESSOR LEASES AND WILL LEASE AND LESSEE TAKES AND WILL TAKE THE PREMISES "AS IS", "WHERE-IS" and "WITH ALL FAULTS". LESSEE ACKNOWLEDGES THAT LESSOR (WHETHER ACTING AS LESSOR HEREUNDER OR IN ANY OTHER CAPACITY) HAS NOT MADE NOR SHALL LESSOR BE DEEMED TO HAVE MADE, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE PREMISES, INCLUDING ANY WARRANTY OR REPRESENTATION AS TO (i) ITS FITNESS, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE, (ii) THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, (iii) THE EXISTENCE OF ANY DEFECT, LATENT OR PATENT, (iv) VALUE, (v) COMPLIANCE WITH SPECIFICATIONS, (vi) LOCATION, (vii) USE, (viii) CONDITION,

(ix) MERCHANTABILITY, (x) QUALITY, (xi) DESCRIPTION, (xii) DURABILITY, (xiii) OPERATION, (xiv) THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, HAZARDOUS CONDITION OR HAZARDOUS ACTIVITY OR (xv) COMPLIANCE OF THE PREMISES WITH ANY LAW; AND ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY LESSEE. LESSEE ACKNOWLEDGES THAT THE PREMISES ARE OF ITS SELECTION AND TO ITS SPECIFICATIONS AND THAT THE PREMISES HAVE BEEN INSPECTED BY LESSEE AND ARE SATISFACTORY TO LESSEE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY IN ANY OF THE PREMISES OF ANY NATURE, WHETHER LATENT OR PATENT, LESSOR SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO OR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT). The provisions of this paragraph have been negotiated and are intended to be a complete exclusion and negation of any warranty by Lessor, express or implied, with respect to any of the Premises, arising pursuant to the Uniform Commercial Code or any other law now or hereafter in effect or arising otherwise.

**Section 1.02 Use.** Lessee may use the Premises for any purpose allowed under current zoning requirements and for no other purpose. Lessee shall not knowingly use or occupy or permit any of the Premises to be used or occupied, nor knowingly do or permit anything to be done in or on any of the Premises, in a manner which would (i) make void or voidable or cause any insurer to cancel any insurance required by this Lease, or make it difficult or impossible to obtain any such insurance at commercially reasonable rates, (ii) make void or voidable, cancel or cause to be canceled or release any warranty, guaranty or indemnity running to the benefit of the Premises or Lessor, (iii) cause structural injury to any of the Improvements, (iv) constitute a public or private nuisance or waste, or (v) violate any Legal Requirements (as defined below).

**Section 1.03 Term.** This Lease shall be for an Interim Term, if any, beginning as of the date hereof and ending at 11:59 p.m. on the last day of the current month including the date hereof and a Primary Term of twenty (20) years beginning on June 1, 2009, and ending at 11:59 p.m. on May 31, 2029. The time period during which this Lease shall actually be in effect, including the Interim Term and the Primary Term, as any of the same may be terminated prior to their scheduled expiration pursuant to the provisions hereof, is referred to herein as the "Term." The term "Lease Year" shall mean, with respect to the first Lease Year, the period commencing on the date hereof and ending at 11:59 p.m. on May 31, 2010, and each succeeding twelve (12) month period thereafter during the Term.

**Section 1.04 Rent.** In consideration of this Lease, during the Term, Lessee shall pay to Lessor the amounts set forth in Exhibit C as annual basic rent for the Premises ("Basic Rent"). Lessee shall pay Basic Rent and all other sums payable to Lessor hereunder to Lessor (or, upon Lessor's request, to any mortgagee(s) or beneficiary(ies) identified by Lessor (whether one or more, the "Mortgagee") under any mortgages, deeds of trust or similar security instruments creating a lien on the interest of Lessor in the Premises (whether one or more, the "Mortgagee")) by wire transfer, in immediately available funds, as follows:

The PrivateBank and Trust Company  
Chicago, Illinois  
ABA#: 071 006 486  
Account#: 000 315 0587  
Acct Name: NL Ventures VII, L.P.  
Attention: Jake Noble (312) 564-1249,

or at such other address or to such other person as Lessor from time to time may designate. Lessor shall give Lessee not less than thirty (30) days prior written notice of any change in the address to which such payments are to be made. If the party entitled to receive Basic Rent or such party's address shall change, Lessee may, until receipt of notice of such change from the party entitled to receive Basic Rent or other sums payable hereunder immediately preceding such change, continue to pay Basic Rent and other sums payable hereunder to the party to which, and in the manner in which, the preceding installment of Basic Rent or other sums payable hereunder, as the case may be, was paid. Such Basic Rent shall be paid in equal monthly installments in advance on the first day of each month, except for any Basic Rent due for the rental of the Premises during the Interim Term which shall be payable in advance on or before the date hereof. Any rental payment made in respect of a period which is less than one month shall be prorated by multiplying the then applicable monthly Basic Rent by a fraction the numerator of which is the number of days in such month with respect to which rent is being paid and the denominator of which is the total number of days in such month. Lessee shall perform all its obligations under this Lease at its sole cost and expense, and shall pay all Basic Rent, and other sums payable hereunder when due and payable, without notice or demand.

## ARTICLE II

### Section 2.01 Maintenance and Repair.

(a) Lessee acknowledges that it has received the Premises in the condition disclosed in the Property Condition Report (the "Property Condition Report"), prepared by Global Realty Services and dated May 1, 2009. Lessee, at its own expense, agrees to repair or cause to be repaired all of the Immediate Repairs cited in the Property Condition Report within ninety (90) days after the date hereof. Lessee, at its own expense, will maintain all parts of the Premises in good repair, appearance and condition and will take all action and will make all structural and nonstructural, foreseen and unforeseen and ordinary and extraordinary changes and repairs which may be required to keep all parts of the Premises in good repair and condition (including, but not limited to, all painting, glass, utilities, conduits, fixtures and equipment, foundation, roof, exterior walls, heating and air conditioning systems, wiring, plumbing, sprinkler systems and other utilities, and all paving, sidewalks, roads, parking areas, curbs and gutters and fences). Lessee, at its own expense, will retain an independent consultant reasonably approved by Lessor to conduct annual inspections of the roof and the heating and air conditioning systems of the Premises and to provide Lessee and Lessor with a written report of its findings. Lessee shall promptly cause a licensed contractor to perform any recommended or necessary repairs or maintenance measures reflected in such report. Lessor, its contractors, subcontractors, servants, employees and agents, shall have the right to enter upon the Premises with prior notice (except in the event of an emergency, in which case no notice shall be required) to inspect same to ensure

that all parts of the Premises are maintained in as good repair and condition as when received, and Lessee shall not be entitled to any abatement or reduction in rent by reason thereof. Lessor shall not be required to maintain, repair or rebuild all or any part of the Premises. Lessee waives the right to require Lessor to maintain, repair or rebuild all or any part of the Premises or make repairs at the expense of Lessor pursuant to any Legal Requirements, agreement, contract, covenant, condition or restrictions at any time.

(b) If all or any part of the Improvements shall encroach upon any property, street or right-of-way adjoining or adjacent to the Premises, or shall violate the agreements or conditions affecting the Premises or any part thereof, or shall hinder, obstruct or impair any easement or right-of-way to which the Premises are subject, or any improvement located on an adjoining or adjacent property to the Premises shall encroach onto the Premises, then, promptly after written request of Lessor (unless such encroachment, violation, hindrance, obstruction or impairment is a Permitted Exception) or of any person so affected, Lessee shall, at its expense, either (i) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting therefrom or (ii) if Lessor consents thereto, make such changes, including alteration or removal, to the Improvements and take such other action as shall be necessary to remove or eliminate such encroachments, violations, hindrances, obstructions or impairments. To the extent any easements are, in Lessor's good faith judgment, necessary for Lessee's use and occupancy of the Premises as contemplated by this Lease, upon Lessee's written request, Lessor will execute such easements.

**Section 2.02 Alterations, Replacements and Additions.** Lessee may, at its expense, make additions to and alterations of the Improvements, and construct additional Improvements, provided that (i) the fair market value, the utility, the square footage or the useful life of the Premises shall not be lessened thereby, (ii) such work shall be expeditiously completed in a good and workmanlike manner and in compliance with all applicable Legal Requirements and the requirements of all insurance policies required to be maintained by Lessee hereunder, (iii) no structural alterations shall be made to the Improvements or structural demolitions conducted in connection therewith unless Lessee shall have obtained Lessor's consent and furnished Lessor with such surety bonds or other security acceptable to Lessor as shall be reasonably acceptable to Lessor (but in no event greater than the cost of such alterations or demolitions), (iv) no additions, replacements or alterations (other than cosmetic, interior or nonstructural alterations) which cost in excess of \$250,000 shall be made unless prior written consent from Lessor and Mortgagee shall have been obtained, and (v) no Event of Default exists. Cosmetic, interior or nonstructural alterations (including demolition or construction of interior demising walls that are non-structural and non load-bearing) that cost \$250,000 or less shall not require prior written consent from Lessor or Mortgagee. All additions and alterations of the Premises, without consideration by Lessor, shall be and remain part of the Premises (not subject to removal upon termination) and the property of Lessor and shall be subject to this Lease. To the extent that Lessor shall fail to respond to any request for consent by Lessee pursuant to this Section 2.02 within fifteen (15) days after receipt of such request, Lessee may make a second request for consent. If such second request states on its face that the consent of Lessor will be deemed given if not responded to within fifteen (15) days after receipt of such second request, Lessor's consent will be deemed given fifteen (15) days after Lessor receives such second request.

### ARTICLE III

**Section 3.01 Severable Property.** Lessee may, at its expense, install, assemble or place on the Premises and remove and substitute any severable property used or useful in Lessee's business, including, but not limited to, the severable property owned by Lessee which is currently on the Premises, as more particularly described in Exhibit D attached hereto and made a part hereof for all purposes, and all replacements and supplements thereto (collectively, the "Severable Property"). Upon the written request of Lessee, Lessor will subordinate any of its claims or interests in the Severable Property to the lienholders or lessors of such Severable Property.

**Section 3.02 Removal.** So long as no Event of Default exists, Lessee may remove the Severable Property at any time during the Term. Any of Lessee's Severable Property not removed by Lessee prior to the expiration of this Lease or thirty (30) days after an earlier termination shall be considered abandoned by Lessee and may be appropriated, sold, destroyed or otherwise disposed of by Lessor without obligation to account therefor. Lessee will repair at its expense all damage to the Premises necessarily caused by the removal of Lessee's Severable Property, whether effected by Lessee or by Lessor.

**Section 3.03 License of Incidental Rights.** During the Term, Lessor hereby grants a license to Lessee for the use of the "Incidental Rights," "Plans" and "Property Agreements" that were conveyed to Lessor by and as defined in that certain Bill of Sale and Assignment of Incidental Rights and Plans of even date herewith.

### ARTICLE IV

**Section 4.01 Lessee's Assignment and Subletting.** Lessee may, for its own account, assign this Lease or sublet the use of all or any part of the Premises for the Term of this Lease so long as no Event of Default shall exist hereunder and Lessee shall have obtained Lessor's and, if Mortgagee shall require, such Mortgagee's prior written consent to such assignment or sublease, which consent shall not be unreasonably withheld. Any transfer of all or substantially all of the assets or stock of Lessee, any merger of Lessee into another entity or of another entity into Lessee, or any transfer occurring by operation of law shall be deemed to constitute an assignment by Lessee of its interest hereunder for the purposes hereof. Lessor's determination as to whether or not to consent to any proposed assignment or sublease will be made in Lessor's commercially reasonable discretion taking into account, among other factors, the following: (i) the business reputation and credit-worthiness of the proposed subtenant or assignee, (ii) the intended use of the Premises by the proposed subtenant or assignee, (iii) the nature of the business conducted by such subtenant or assignee and whether such business would be deleterious to the condition or reputation of the Premises or Lessor, (iv) the estimated pedestrian and vehicular traffic in and about the Premises that would be generated by the proposed subtenant or assignee, and (v) whether the proposed subtenant or assignee is a department, representative, agency or instrumentality of any governmental body, foreign or domestic. Each such assignment or sublease shall expressly be made subject to the provisions hereof. No such assignment or sublease shall modify or limit any right or power of Lessor hereunder or affect or reduce any obligation of Lessee hereunder, and all such obligations shall be those of Lessee and shall continue in full effect as obligations of a principal and not of a

guarantor or surety, as though no subletting or assignment had been made, such liability of the Lessee named herein to continue notwithstanding any subsequent modifications or amendments of this Lease; provided, however, that (other than with respect to any modifications required by law or on account of bankruptcy or insolvency) if any modification or amendment is made without the consent of Lessee named herein, such modification or amendment shall be ineffective as against Lessee named herein to the extent, and only to the extent, that the same shall increase the obligations of Lessee, it being expressly agreed that Lessee named herein shall remain liable to the full extent of this Lease as if such modification had not been made. Neither this Lease nor the Term hereby demised shall be mortgaged by Lessee, nor shall Lessee mortgage or pledge its interest in any sublease of the Premises or the rentals payable thereunder. Any sublease made otherwise than as expressly permitted by this Section 4.01 and any assignment of Lessee's interest hereunder made otherwise than as expressly permitted by this Section 4.01 shall be void. Lessee shall, within twenty (20) days after the execution of any assignment or sublease, deliver a conformed copy thereof to Lessor.

**Section 4.02 Transfer by Lessor.** Lessor shall be free to transfer its fee interest in the Premises or any part thereof or interest therein, subject, however, to the terms of this Lease. Any such transfer shall relieve the transferor of all liability and obligation hereunder (to the extent of the interest transferred) accruing after the date of the transfer, and any transferee shall be bound by the terms and provisions of this Lease and shall assume all of Lessor's obligations hereunder, including, but not limited to, Lessor's obligations regarding any Security Deposit.

**Section 4.03 Assignment/Subletting Exceptions.** Notwithstanding the provisions of Section 4.01, Lessee shall have the right to assign its interest in this Lease or sublet all or any portion of the Premises at any time without the consent of Lessor or Mortgagee to (i) the surviving entity of any merger or consolidation between Lessee and its parent, (ii) any Affiliate of Lessee, or (iii) to any person or entity who purchases substantially all of the assets or stock of Lessee, so long as any proposed assignee or sublessee has a tangible net worth equal to or greater than the greater of (i) the tangible net worth of Lessee at such time, or (ii) \$20,000,000.00, as shown on such prospective assignee's or sublessee's balance sheet prepared in accordance with GAAP within three (3) months prior to such assignment or sublease.

The exceptions afforded Lessee above in this Section shall be conditioned on the following:

- (a) Lessee is not then in default beyond applicable notice and cure periods hereunder;
- (b) Lessor is provided a copy of such assignment or sublease;
- (c) Any subletting or assignment of the Premises shall be subject to the terms of this Lease and Lessee shall remain liable hereunder, as same may be amended from time to time;
- (d) Each sublease permitted under this Section shall contain provisions to the effect that (i) such sublease is only for actual use and occupancy by the sublessee; (ii) such sublease is subject and subordinate to all of the terms, covenants and conditions of this Lease and to all of the rights of Lessor hereunder; (iii) that any security deposit paid by sublessee shall be pledged to Lessor subject to the terms of the sublease and subject to Lessee's right to apply the security

deposit in accordance with the sublease; and (iv) in the event this Lease shall terminate before the expiration of such sublease, the sublessee thereunder will, at Lessor's option, attorn to Lessor and waive any rights the sublessee may have to terminate the sublease or to surrender possession thereunder, as a result of the termination of this Lease;

(e) Lessee agrees to pay, or to cause the assignee or sublessee, as applicable, to pay, on behalf of Lessor any and all reasonable costs of Lessor, including reasonable attorneys' fees paid or payable to outside counsel, occasioned by such subletting or assignment. Further, Lessee agrees that Lessor shall in no event be liable for any leasing commissions, finish-out costs, rent abatements or other costs, fees or expenses incurred by Lessee in subleasing or assigning or seeking to sublease or assign its leasehold interest in the Premises, and Lessee agrees to indemnify, defend and hold harmless Lessor and its partners, and their respective officers, directors, shareholders, agents, employees and representatives from, against and with respect to any and all such commissions, costs, fees and expenses; and

(f) Such assignee agrees in writing to honor and perform all of the obligations of Lessee hereunder from and after the date of such assignment.

For the purposes of this Section, "Affiliate" shall be defined as with respect to any Person, any other Person that, directly or indirectly, controls or is controlled by or is under common control with such Person, and shall include the spouse of any natural person, with the term "control" and any derivatives thereof meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise. "Person" shall mean an individual, partnership, association, corporation or other entity.

## ARTICLE V

### Section 5.01 Net Lease.

(a) It is expressly understood and agreed by and between the parties that this Lease is an absolute net lease, and the Basic Rent and all other sums payable hereunder to or on behalf of Lessor shall be paid without notice or demand and without setoff, counterclaim, abatement, suspension, deduction or defense.

(b) Except as otherwise expressly provided in this Lease, this Lease shall not terminate, nor shall Lessee have any right to terminate this Lease or be entitled to the abatement of any rent or any reduction thereof, nor shall the obligations hereunder of Lessee be otherwise affected, by reason of any damage to or destruction of all or any part of the Premises from whatever cause, the taking of the Premises or any portion thereof by condemnation or otherwise, the prohibition, limitation or restriction of Lessee's use of the Premises, any default on the part of Lessor, any latent or other defect in any of the Premises, the breach of any warranty of any seller or manufacturer of any of the Improvements or Severable Property, any non-material violation of any provision of this Lease by Lessor, the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or winding-up of, or other proceeding affecting Lessor, the exercise of any remedy, including foreclosure, under any mortgage or collateral assignment, any action with respect to this Lease (including the disaffirmance hereof)

which may be taken by Lessor, any trustee, receiver or liquidator of Lessor or any court under the Federal Bankruptcy Code or otherwise, and market or economic changes, or interference with such use by any private person or corporation, or by reason of any eviction by paramount title resulting by a claim from Lessor's predecessor in title, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rent and all other charges payable hereunder to or on behalf of Lessor shall continue to be payable in all events and the obligations of Lessee hereunder shall continue unaffected, unless the requirement to pay or perform the same shall be terminated pursuant to an express provision of this Lease. Nothing contained in this Section 5.01 shall be deemed a waiver by Lessee of any rights that it may have to bring a separate action with respect to any default by Lessor hereunder or under any other agreement.

(c) The obligations of Lessee hereunder shall be separate and independent covenants and agreements. Lessee covenants and agrees that it will remain obligated under this Lease in accordance with its terms, and that Lessee will not take any action to terminate, rescind or avoid this Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Lessor or any assignee of Lessor in any such proceeding and notwithstanding any action with respect to this Lease which may be taken by any trustee or receiver of Lessor or of any assignee of Lessor in any such proceeding or by any court in any such proceeding.

(d) Except as otherwise expressly provided in this Lease, Lessee waives all rights now or hereafter conferred by law (i) to quit, terminate or surrender this Lease or the Premises or any part thereof or (ii) to any abatement, suspension, deferment or reduction of the rent, or any other sums payable hereunder to or on behalf of Lessor, regardless of whether such rights shall arise from any present or future constitution, statute or rule of law.

#### **Section 5.02 Taxes and Assessments; Compliance With Law.**

(a) Lessee shall pay, as additional rent, prior to delinquency, the following (collectively, "Taxes"): (i) all taxes, assessments, levies, fees, water and sewer rents and charges and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time prior to or during the Term imposed or levied upon or assessed against or which arise with respect to (A) the Premises, (B) any Basic Rent, additional rent or other sums payable hereunder, (C) this Lease or the leasehold estate hereby created or (D) the operation, possession or use of the Premises; (ii) all gross receipts or similar taxes (i.e., taxes based upon gross income which fail to take into account deductions with respect to depreciation, interest, taxes or ordinary and necessary business expenses, in each case relating to the Premises) imposed or levied upon, assessed against or measured by any Basic Rent, additional rent or other sums payable hereunder; (iii) all sales, value added, ad valorem, use and similar taxes at any time levied, assessed or payable on account of the leasing, operation, possession or use of the Premises; and (iv) all charges of utilities, communications and similar services serving the Premises. Notwithstanding the foregoing, "Taxes," as used herein, shall not include, and Lessee shall not be required to pay any franchise, estate, inheritance, transfer, income, capital gains or similar tax of or on Lessor unless such tax is imposed, levied or assessed in substitution for any other tax, assessment, charge or levy which Lessee is required to pay



pursuant to this Section 5.02(a); provided, however, that if, at any time during the Term, the method of taxation shall be such that there shall be assessed, levied, charged or imposed on Lessor a capital levy or other tax directly on the rents received therefrom, or upon the value of the Premises or any present or future improvement or improvements on the Premises, then all such levies and taxes or the part thereof so measured or based shall be included in the term "Taxes" and payable by Lessee, and Lessee shall pay and discharge the same as herein provided. Lessee will furnish to Lessor, promptly after request therefor, proof of payment of all items referred to above which are payable by Lessee. If any such assessment may legally be paid in installments, Lessee may pay such assessment in installments; in such event, Lessee shall be liable only for installments which become due and payable with respect to any tax period occurring in whole or in part during the Term hereof; provided, however, that all amounts referred to in this Section 5.02(a) for the fiscal or tax year in which the Term shall expire shall be apportioned so that Lessee shall pay those portions thereof which correspond with the portion of such year as are within the Term hereby demised.

(b) Lessee shall comply with and cause the Premises to comply with and shall assume all obligations and liabilities with respect to (i) all laws, ordinances and regulations and other governmental rules, orders and determinations presently in effect or hereafter enacted, made or issued, whether or not presently contemplated (collectively, "Legal Requirements"), as applied to the Premises or the ownership, operation, use or possession thereof, including, but not limited to, maintaining an adequate number of vehicular parking spaces, and (ii) all contracts, insurance policies (including, without limitation, to the extent necessary to prevent cancellation thereof and to insure full payment of any claims made under such policies), agreements, covenants, conditions and restrictions now or hereafter applicable to the Premises or the ownership, operation, use or possession thereof (other than covenants, conditions and restrictions imposed by Lessor subsequent to the date of this Lease without the consent of Lessee), including, but not limited to, all such Legal Requirements, contracts, agreements, covenants, conditions and restrictions which require structural, unforeseen or extraordinary changes; provided, however, that, with respect to any of the obligations of Lessee in clause (ii) above which are not now in existence, Lessee shall not be required to so comply unless Lessee is either a party thereto or has given its written consent thereto, or unless the same is occasioned by Legal Requirements or Lessee's default (including any failure or omission by Lessee) under this Lease. Nothing in clause (ii) of the immediately preceding sentence shall modify the obligations of Lessee under Section 5.04 of this Lease.

(c) On the date hereof and promptly after any future date on which the Taxes are increased by an applicable taxing authority, Lessee shall pay to Lessor that amount necessary to ensure there will be on deposit with Lessor an amount which when added to the Tax Escrow Payments will result in there being an amount on deposit sufficient to pay the Taxes at least two (2) months prior to the due date thereof ("Initial Tax Escrow Payment"). Thereafter, Lessee shall, in addition to and concurrently with the payment of Basic Rent as required in Section 1.04 hereof, pay one-twelfth of the amount (as estimated by Lessor) of the annual Taxes (each such payment, a "Tax Escrow Payment," and together with the Initial Tax Escrow Payment, hereinafter collectively referred to as the "Tax Escrow Payments") next becoming due and payable with respect to the Premises. Lessee shall also pay to Lessor on demand therefor the amount by which the actual Taxes exceed the payment by Lessee required in this subsection.

Notwithstanding anything to the contrary contained in this Lease, so long as Lessee shall have complied with its obligations under this Section 5.02(c), Lessor shall be solely liable for the application of the Tax Escrow Payments to the actual payment of Taxes as and when the same become due. Absent an Event of Default, any excess Tax Escrow Payments remaining at the expiration of the Term shall be refunded to Lessee.

**Section 5.03 Liens.** Lessee will remove and discharge any charge, lien, security interest or encumbrance upon the Premises or upon any Basic Rent, additional rent or other sums payable hereunder which arises for any reason, including, without limitation, all liens which arise out of the possession, use, occupancy, construction, repair or rebuilding of the Premises or by reason of labor or materials furnished or claimed to have been furnished to Lessee or for the Premises, but not including (i) the Permitted Exceptions, (ii) this Lease and any assignment hereof or any sublease permitted hereunder and (iii) any mortgage, charge, lien, security interest or encumbrance created or caused by or through Lessor or its agents, employees or representatives without the consent of Lessee. Lessee may provide a bond or other security reasonably acceptable to Lessor (but in no event greater in amount than the amount of such encumbrance) to remove or pay all costs associated with the removal of any such lien, provided the conditions of Section 5.05 shall be satisfied. Nothing contained in this Lease shall be construed as constituting the consent or request of Lessor, express or implied, to or for the performance (on behalf of or for the benefit of Lessor) by any contractor, laborer, materialman or vendor, of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Premises or any part thereof. NOTICE IS HEREBY GIVEN THAT LESSOR WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING AN INTEREST IN THE PREMISES OR ANY PART THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LESSOR IN AND TO THE PREMISES UNLESS BY OR THROUGH LESSOR OR ITS AGENTS, EMPLOYEES OR REPRESENTATIVES.

**Section 5.04 Indemnification.**

(a) Except for the gross negligence or willful misconduct of any Indemnified Party (as defined herein), Lessee shall defend all actions against Lessor and any partner, officer, director, member, employee or shareholder of the foregoing (collectively, "Indemnified Parties"), with respect to, and shall pay, protect, indemnify and save harmless the Indemnified Parties from and against, any and all liabilities, losses, damages, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from (i) injury to or death of any person, or damage to or loss of property, on or about the Premises, or connected with the use, condition or occupancy of any thereof, (ii) default by Lessee under this Lease, (iii) use, act or omission of Lessee or its agents, contractors, licensees, sublessees or invitees, (iv) contest referred to in Section 5.05 of this Lease, and (v) liens against the Premises in violation of Section 5.03 of this Lease. LESSEE UNDERSTANDS AND AGREES THAT THE FOREGOING INDEMNIFICATION OBLIGATIONS OF LESSEE ARE EXPRESSLY INTENDED TO AND SHALL INURE TO THE BENEFIT OF THE INDEMNIFIED PARTIES EVEN IF SOME OR

ALL OF THE MATTERS FOR WHICH SUCH INDEMNIFICATION IS PROVIDED ARE CAUSED OR ALLEGED TO HAVE BEEN CAUSED BY THE SOLE, SIMPLE, JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF ANY OF THE INDEMNIFIED PARTIES, BUT NOT TO THE EXTENT CAUSED BY THE INDEMNIFIED PARTIES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. The obligations of Lessee under this Section 5.04 shall survive any termination, expiration, rejection in bankruptcy, or assumption in bankruptcy of this Lease.

(b) The rights and obligations of Lessor and Lessee with respect to claims by Lessor against Lessee brought pursuant to this Section 5.04 and Section 5.06 shall be subject to the following conditions:

(i) If Lessor receives notice of the assertion of any claim for which it intends to seek indemnification under this Section 5.04 or Section 5.06, Lessor shall promptly provide written notice of such assertion to Lessee; provided that failure of Lessor to give Lessee prompt notice as provided herein shall not relieve Lessee of any of its obligations hereunder, except to the extent the Lessee is prejudiced by such failure. The notice shall describe in reasonable detail the nature of the claim and the basis for an indemnification claim under Section 5.04 or Section 5.06, and shall be accompanied by all papers and documents which have been served upon Lessor and such other documents and information as may be appropriate to an understanding of such claim and the liability of Lessee to indemnify Lessor hereunder. Except as required by law, the Lessor shall not answer or otherwise respond to such claim or take any other action which may prejudice the defense thereof unless and until Lessee has been given the opportunity to assume the defense thereof as required by this Section 5.04 and refused to do so.

(ii) Upon receipt of an indemnification notice under this Section 5.04, the Lessee shall have the right, but not the obligation, to promptly assume and take exclusive control of the defense, negotiation and/or settlement of such claim; provided, however, that if the representation of both parties by Lessee would be inappropriate due to actual or potential differing interests between them, then the Lessee shall not be obligated to assume such defense, but such conflict shall not lessen Lessee's indemnity obligation hereunder. In the event of a conflict of interest or dispute or during the continuance of an Event of Default, Lessor shall have the right to select counsel, and the cost of such counsel shall be paid by Lessee. The parties acknowledge that, with respect to claims for which insurance is available, the rights of the parties to select counsel for the defense of such claims shall be subject to such approval rights as the insurance company providing coverage may have.

(iii) The party controlling the defense of a claim shall keep the other party reasonably informed at all stages of the defense of such claim. The party not controlling the defense of any claim shall have the right, at its sole cost and expense, to participate in, but not control, the defense of any such claim. Each party shall reasonably cooperate with the other in the defense, negotiation and/or settlement of any such claim. In connection with any defense of a claim undertaken by Lessee, Lessor shall provide Lessee, and its counsel, accountants and other representatives, with reasonable access to relevant books and records and make available such personnel of Lessor as Lessee may reasonably request.

#### **Section 5.05 Permitted Contests.**

(a) Lessee, at its expense, may contest, by appropriate legal proceedings conducted in good faith and with due diligence, any Legal Requirements with which Lessee is required to comply pursuant to Section 5.02(b) or any Environmental Law under Section 5.06, or the amount or validity or application, in whole or in part, of any tax, assessment or charge which Lessee is obligated to pay or any lien, encumbrance or charge not permitted by Sections 2.01, 2.02, 5.02(a), 5.03 and 6.01, provided that unless Lessee has already paid such tax, assessment or charge (i) the commencement of such proceedings shall suspend the enforcement or collection thereof against or from Lessor and against or from the Premises, (ii) neither the Premises nor any rent therefrom nor any part thereof or interest therein would be in any danger of being sold, forfeited, attached or lost, (iii) Lessee shall have furnished such security, if any, as may be required in the proceedings and as may be reasonably required by Lessor, and (iv) if such contest be finally resolved against Lessee, Lessee shall promptly pay the amount required to be paid, together with all interest and penalties accrued thereon. Lessor, at Lessee's expense, shall execute and deliver to Lessee such authorizations and other documents as reasonably may be required in any such contest. Lessee shall indemnify and save Lessor harmless against any cost or expense of any kind that may be imposed upon Lessor in connection with any such contest and any loss resulting therefrom. Notwithstanding any other provision of this Lease to the contrary, Lessee shall not be in default hereunder in respect to the compliance with any Legal Requirements with which Lessee is obligated to comply pursuant to Section 5.02(b), any Environmental Law under Section 5.06, or in respect to the payment of any tax, assessment or charge which Lessee is obligated to pay or any lien, encumbrance or charge not permitted by Section 2.01, 2.02, 5.02(a), 5.03 and 6.01 which Lessee is in good faith contesting.

(b) Without limiting the provisions of Section 5.05(a), so long as no Event of Default exists and the conditions set forth in Section 5.05(a) are satisfied, Lessor hereby irrevocably appoints Lessee as Lessor's attorney-in-fact solely for the purpose of prosecuting a contest of any tax, assessment or charge which Lessee is obligated to pay. Such appointment is coupled with an interest. Notwithstanding the foregoing appointment, if Lessee determines it to be preferable in prosecution of a contest of a tax, assessment or charge, upon Lessee's prior request, Lessor shall execute the real estate tax complaint and/or other documents reasonably needed by Lessee to prosecute the complaint as to such tax, assessment or charge and return same to Lessee within ten (10) days. In such event, Lessee shall pay all of Lessor's costs and expenses in connection therewith, including, without limitation, reasonable attorneys' fees and Lessee shall arrange for preparation of such documentation at Lessee's sole cost and expense.

#### **Section 5.06 Environmental Compliance.**

(a) For purposes of this Lease:

(i) the term "Environmental Laws" shall mean and include the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act and all applicable federal, state and local environmental laws, ordinances, rules, requirements, regulations and publications, as any of the

foregoing may have been or may be from time to time amended, supplemented or supplanted and any and all other federal, state or local laws, ordinances, rules, requirements, regulations and publications, now or hereafter existing, relating to (i) the preservation or regulation of the public health, welfare or environment, (ii) the regulation or control of toxic or hazardous substances or materials, or (iii) any wrongful death, personal injury or property damage that is caused by or related to the presence, growth, proliferation, reproduction, dispersal, or contact with any biological organism or portion thereof (living or dead), including molds or other fungi, bacteria or other microorganisms or any etiologic agents or materials; and

(ii) the term "Regulated Substance" shall mean and include any, each and all substances, biological and etiologic agents or materials now or hereafter regulated pursuant to any Environmental Laws, including, but not limited to, any such substance, biological or etiological agent or material now or hereafter defined as or deemed to be a "regulated substance," "pesticide," "hazardous substance" or "hazardous waste" or included in any similar or like classification or categorization thereunder.

(b) Lessee shall:

(i) not cause or permit any Regulated Substance to be placed, held, located, released, transported or disposed of on, under, at or from the Premises in violation of Environmental Laws;

(ii) contain at or remove from the Premises, or perform any other necessary remedial action regarding, any Regulated Substance in any way affecting the Premises if, as and when such containment, removal or other remedial action is required under any Legal Requirements and, whether or not so required, shall perform any containment, removal or remediation of any kind involving any Regulated Substance in any way materially adversely affecting the Premises in compliance with all Legal Requirements and, upon reasonable request of Lessor after consultation with Lessee (which request may be given only if Lessor has received information such that it reasonably believes that environmental contamination exists which may have a material adverse effect on the Premises), shall arrange a Site Assessment (as such term is defined in Section 5.06(c)), or such other or further testing or actions as may be required by Legal Requirements or as may be mutually agreed to by Lessor and Lessee, to be conducted at the Premises by qualified companies retained by Lessee specializing in environmental matters and reasonably satisfactory to Lessor in order to ascertain compliance with all Legal Requirements and the requirements of this Lease, all of the foregoing to be at Lessee's sole cost and expense;

(iii) provide Lessor with written notice (and a copy as may be applicable) of any of the following within ten (10) days of receipt thereof: (A) Lessee's obtaining knowledge or notice of any kind of the material presence, or any actual or threatened release, of any Regulated Substance in any way materially adversely affecting the Premises; (B) Lessee's receipt or submission, or Lessee's obtaining knowledge or notice of any kind, of any report, citation, notice or other communication from or to any federal, state or local governmental or quasi-governmental authority regarding any Regulated Substance in any way materially adversely affecting the Premises; or (C) Lessee's obtaining knowledge or notice of any kind of the incurrence of any cost or expense by any federal, state or local governmental or quasi-

governmental authority or any private party in connection with the assessment, monitoring, containment, removal or remediation of any kind of any Regulated Substance in any way materially adversely affecting the Premises, or of the filing or recording of any lien on the Premises or any portion thereof in connection with any such action or Regulated Substance in any way materially adversely affecting the Premises; and

(iv) in addition to the requirements of Section 5.04 hereof, defend all actions against the Indemnified Parties and Mortgagee and pay, protect, indemnify and save harmless the Indemnified Parties and Mortgagee from and against any and all liabilities, losses, damages, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature relating to any Environmental Laws, Regulated Substances or other environmental matters concerning the Premises; except to the extent caused by or through Lessor, Mortgagee, or their agents, employees or representatives. The indemnity contained in this Section 5.06 shall survive the expiration or earlier termination of this Lease, unless at such time Lessee provides Lessor a Site Assessment (as defined below) acceptable to Lessor showing the Premises to be free of Regulated Substances and not in violation of Environmental Laws and that there exists no condition which could result in any violations of Environmental Laws.

(c) Upon reasonable cause and prior written notice from Lessor, Lessee shall permit such reasonably qualified persons as Lessor may designate ("Site Reviewers") to visit the Premises and perform environmental site investigations and assessments ("Site Assessments") on the Premises for the purpose of determining whether there exists on the Premises any Regulated Substance or violation of Environmental Laws or any condition which could result in any violations of Environmental Laws. Such Site Assessments may include both above and below the ground environmental testing for violations of Environmental Laws and such other tests as may be necessary, in the reasonable opinion of the Site Reviewers, to conduct the Site Assessments. Lessee shall supply to the Site Reviewers such historical and operational information regarding the Premises as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments, and shall make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. The cost of performing and reporting a Site Assessment shall be paid by Lessee.

(d) If any violation of Environmental Laws occurs or is found to exist and, in Lessor's reasonable judgment based upon the written bids of reputable environmental professionals, the cost of remediation of, or other response action with respect to, the same is likely to exceed \$100,000, Lessee shall provide to Lessor, within ten (10) days after Lessor's request therefor, adequate financial assurances that Lessee will effect such remediation in accordance with applicable Environmental Laws. Such financial assurances shall be a bond or letter of credit reasonably satisfactory to Lessor in form and substance and in an amount equal to one hundred fifty percent (150%) of Lessor's reasonable estimate of the anticipated cost of such remedial action, based upon a Site Assessment performed pursuant to Section 5.06(c). Notwithstanding any other provision on this Lease, if a violation of Environmental Laws occurs or is found to exist and the Term would otherwise terminate or expire, and the Premises cannot be rented to another lessee on commercially reasonable terms during the remedial action, then, at the option of Lessor, the Term shall be automatically extended beyond the date of termination or expiration

and this Lease shall remain in full force and effect beyond such date until the earlier to occur of (i) the completion of all remedial action in accordance with applicable Environmental Laws, or (ii) the date specified in a written notice from Lessor to Lessee terminating this Lease.

(e) If Lessee fails to correct any violation of Environmental Laws which occurs or is found to exist, Lessor shall have the right (but no obligation) to take any and all actions as Lessor shall reasonably deem necessary or advisable in order to cure such violation of Environmental Laws.

(f) All future leases, subleases or concession agreements permitted by this Lease relating to the Premises entered into by Lessee shall contain covenants of the other party not to knowingly at any time (i) cause any violation of Environmental Laws to occur or (ii) permit any Person occupying the Premises through said subtenant or concessionaire to knowingly cause any violation of Environmental Laws to occur.

## ARTICLE VI

### Section 6.01 Condemnation and Casualty.

(a) **General Provisions.** Except as provided in Section 6.01(b) and (c), Lessee hereby irrevocably assigns to Lessor any award, compensation or insurance payment to which Lessee may become entitled by reason of Lessee's interest in the Premises, other than separate Compensation as referenced hereinbelow (i) if the use, occupancy or title of the Premises or any part thereof is taken, requisitioned or sold in, by or on account of any actual or threatened eminent domain proceeding or other action by any person having the power of eminent domain ("Condemnation") or (ii) if the Premises or any part thereof is damaged or destroyed by fire, flood or other casualty ("Casualty"). All awards, compensations and insurance payments on account of any Condemnation or Casualty are herein collectively called "Compensation." Lessee may not unilaterally negotiate, prosecute or adjust any claim for any Compensation. Lessee must consult with and obtain Lessor's consent thereto, which consent shall not be unreasonably withheld. If the parties are unable to so agree, then they shall appoint an entity or individual that specializes in such negotiations who shall negotiate, prosecute and adjust a claim for Compensation. Lessor and Lessee shall be entitled to participate in any such proceeding, action, negotiation, prosecution, appeal or adjustment as contemplated herein. Notwithstanding anything to the contrary contained in this Article VI, if permissible under applicable law, any separate Compensation made to Lessee for its moving and relocation expenses, anticipated loss of business profits, loss of goodwill or fixtures and equipment paid for by Lessee and which are not part of the Premises (including, without limitation, the Severable Property) shall be paid directly to and shall be retained by Lessee (and shall not be deemed to be "Compensation"). All other Compensation shall be applied pursuant to this Section 6.01, and all such Compensation (less the expense of collecting such Compensation) is herein called the "Net Proceeds." Except as specifically set for herein, all Net Proceeds shall be paid to the Proceeds Trustee (as defined herein) and applied pursuant to this Section 6.01. If the Premises or any part thereof shall be damaged or destroyed by Casualty, and if the estimated cost of rebuilding, replacing or repairing the same shall exceed \$50,000, Lessee promptly shall notify Lessor thereof.

(b) **Substantial Condemnation During the Term.** If a Condemnation shall, in Lessee's good faith judgment, affect all or a substantial portion of the Premises and shall render the Premises unsuitable for restoration for continued use and occupancy in Lessee's business, then Lessee may, not later than sixty (60) days after a determination has been made as to when possession of the Premises must be delivered with respect to such Condemnation, deliver to Lessor (i) notice of its intention ("Notice of Intention") to terminate this Lease on the next rental payment date which occurs not less than thirty (30) days after the delivery of such notice (the "Condemnation Termination Date"), and (ii) a certificate of an authorized officer of Lessee describing the event giving rise to such termination and stating that Lessee has determined that such Condemnation has rendered the Premises unsuitable for restoration for continued use and occupancy in Lessee's business. This Lease shall terminate on the Condemnation Termination Date, except with respect to obligations and liabilities of Lessee hereunder, actual or contingent, which have accrued on or prior to the Condemnation Termination Date, upon payment by Lessee of (1) all Basic Rent, additional rent and other sums due and payable hereunder up to and including the Condemnation Termination Date, and (2) an amount equal to the excess, if any, of (a) all Basic Rent which would be payable under this Lease, from the Condemnation Termination Date for what would be the then unexpired Term in the absence of such Condemnation, discounted at the rate equal to the then current yield on United States Treasury Notes having a maturity as of the stated date for expiration of the then existing Term of this Lease, over (b) the Net Proceeds. The Net Proceeds shall belong to Lessor.

(c) **Substantial Casualty During the Last Two Years of the Term.** If an insured Casualty shall, in Lessee's good-faith judgment, affect all or a substantial portion of the Premises during the last two (2) years of the Term and shall render the Premises unsuitable for restoration for continued use and occupancy in Lessee's business, then Lessee may, not later than one hundred and fifty (150) days after such Casualty, deliver to Lessor (i) notice of its intention to terminate this Lease on the next rental payment date which occurs not less than thirty (30) days after the delivery of such notice (the "Casualty Termination Date"), (ii) a certificate of an authorized officer of Lessee describing the event giving rise to such termination and stating that Lessee has determined that such Casualty has rendered the Premises unsuitable for restoration for continued use and occupancy in Lessee's business, and (iii) documentation to the effect that termination of this Lease will not be in violation of any agreement then in effect with which Lessee is obligated to comply pursuant to this Lease. Upon payment by Lessee of all Basic Rent, additional rent and other sums then due and payable hereunder to and including the Casualty Termination Date, this Lease shall terminate on the Casualty Termination Date except with respect to obligations and liabilities of Lessee hereunder, actual or contingent, which have accrued on or prior to the Casualty Termination Date, and the Net Proceeds shall belong to Lessor.

(d) **Less Than Substantial Condemnation or Any Casualty.** If, after a Condemnation or Casualty, Lessee does not give or does not have the right to give notice of its intention to terminate this Lease as provided in subsection 6.01(b) or (c), then this Lease shall continue in full force and effect and Lessee shall, at its expense, rebuild, replace or repair the Premises in conformity with the requirements of subsections 2.01, 2.02 and 5.03 so as to restore the Premises (in the case of Condemnation, as nearly as practicable) to the condition, and character thereof immediately prior to such Casualty or Condemnation; provided that Lessee and



Lessor shall use reasonable efforts to consider modifications which would make the Improvements a more contemporary design. To the extent the Net Proceeds with respect to any Casualty are less than \$100,000, such amount shall be paid to Lessee to be used to rebuild, replace or repair the Premises in a lien free and good and workmanlike manner. To the extent the Net Proceeds from any Casualty are \$100,000 or greater, such amount shall be paid to the Proceeds Trustee and prior to any such rebuilding, replacement or repair, Lessee shall determine the maximum cost thereof (the "Restoration Cost"), which amount shall be reasonably acceptable to Lessor. The Restoration Cost shall be paid first out of Lessee's own funds to the extent that the Restoration Cost exceeds the Net Proceeds payable in connection with such occurrence, after which expenditure Lessee shall be entitled to receive the Net Proceeds from the Proceeds Trustee, but only against (i) certificates of Lessee delivered to Lessor and the Proceeds Trustee from time to time but no more often than monthly as such work of rebuilding, replacement and repair progresses, each such certificate describing the work for which Lessee is requesting payment and the cost incurred by Lessee in connection therewith and stating that Lessee has not theretofore received payment for such work and (ii) such additional documentation or conditions as Lessor or the Proceeds Trustee may reasonably require, including, but not limited to, copies of all contracts and subcontracts relating to restoration, architects' certifications, title policy updates and lien waivers or releases. Any Net Proceeds remaining after final payment has been made for such work and after Lessee has been reimbursed for any portions it contributed to the Restoration Cost with respect to any Casualty shall be paid to Lessee and with respect to any Condemnation shall be paid to Lessor. In the event of any temporary Condemnation, this Lease shall remain in full effect and Lessee shall be entitled to receive the Net Proceeds allocable to such temporary Condemnation, except that any portion of the Net Proceeds allocable to the period after the expiration or termination of the Term shall be paid to Lessor. If the cost of any rebuilding, replacement or repair required to be made by Lessee pursuant to this subsection 6.01(d) shall exceed the amount of such Net Proceeds, the deficiency shall be paid by Lessee.

(e) Notwithstanding anything to the contrary in this Lease, all of the foregoing provisions of this Section 6.01 shall be subject and subordinate to any provisions to the contrary contained in any Subordination, Non-Disturbance and Attornment Agreement, Mortgage or other document evidencing or securing a loan made by Mortgagee to Lessor.

#### Section 6.02 Insurance.

(a) Lessee will maintain insurance on the Premises of the following character:

(i) Insurance (on an occurrence basis) against all risks of direct physical loss ("Causes of Loss - Special Form"), including loss by fire, lightning, flooding (if the Premises are in a flood zone), earthquakes (if the Premises are in an earthquake zone), and other risks which at the time are included under "extended coverage" endorsements, on ISO form CP1030, or its equivalent, in amounts sufficient to prevent Lessor and Lessee from becoming a coinsurer of any loss but in any event in amounts not less than 100% of the actual replacement value of the Improvements, exclusive of foundations and excavations, without any exclusions other than standard printed exclusions and without exclusion for terrorism and with deductibles of not more

than \$25,000 per occurrence, unless Lessee posts a bond, letter of credit, or other suitable security reasonably acceptable to Lessor for any deductible in excess of \$25,000;

(ii) Commercial general liability insurance and/or umbrella liability insurance (on an occurrence basis), on ISO form CG 0001 0798, or its equivalent, against claims for bodily injury, death or property damage occurring on, in or about the Premises in the minimum amounts of \$5,000,000 for bodily injury or death to any one person, \$10,000,000 for any one accident and \$5,000,000 for property damage to others or in such greater amounts as are then customary for property similar in use to the Premises, with deletions of contractual liability exclusions with respect to personal injury and with defense to be provided as an additional benefit and not within the limits of liability and with deductibles of not more than \$25,000 per occurrence, unless Lessee posts a bond, letter of credit, or other suitable security reasonably acceptable to Lessor for any deductible in excess of \$25,000;

(iii) Rent loss insurance or business interruption insurance in an amount sufficient to cover loss of rents from the Premises pursuant to this Lease for a period of at least twelve (12) months, with endorsements to cover interruption of utilities outside of the Premises;

(iv) Worker's compensation insurance to the extent required by the law of the state in which the Premises are located;

(v) Boiler and machinery insurance in respect of any boilers and similar apparatus located on the Premises in the minimum amount of \$500,000 or in such greater amounts as to adequately insure the Premises;

(vi) During any period of construction on the Premises, builder's risk insurance on a completed value, non-reporting basis for the total cost of such alterations or improvements, and workers' compensation insurance as required by applicable law. This coverage may be provided by Lessee's all risk property insurance pursuant to Section 6.02(a)(i) herein; and

(vii) Such other insurance in such kinds and amounts, with such deductibles and against such risks, as Mortgagee may require or as is commonly obtained in the case of property similar in use to the Premises and located in the state in which the Premises are located by prudent owners of such property.

Such insurance shall be written by companies authorized to do business in the state where the Premises are located and carrying a claims paying ability rating of at least A:XII by A.M. Best or A by Standard and Poor's, as applicable, and with the exception of workers' compensation insurance, shall name Lessor as an additional insured as its interest may appear.

(b) Every such policy provided pursuant to Section 6.02(a)(i), above shall (i) bear a mortgagee endorsement in favor of Mortgagee under any Mortgage, and any loss under any such policy shall be payable to the Mortgagee which has a first lien on such interest (if there is more than one first Mortgagee, then to the trustee for such Mortgagees) to be held and applied by Mortgagee toward restoration pursuant to Section 6.01, and (ii) contain an ordinance or law coverage endorsement. Every such policy with the exception of workers' compensation

insurance, shall name the Mortgagee as an additional insured as its interest may appear. Every policy referred to in subsection 6.02(a) shall provide that it will not be cancelled or amended except after thirty (30) days written notice to Lessor and the Mortgagee and that it shall not be invalidated by any act or negligence of Lessor, Lessee or any person or entity having an interest in the Premises, nor by occupancy or use of the Premises for purposes more hazardous than permitted by such policy, nor by any foreclosure or other proceedings relating to the Premises, nor by change in title to or ownership of the Premises. The "Proceeds Trustee" shall be a financial institution selected by Lessor and reasonably approved by Lessee and may be the Mortgagee.

(c) Lessee shall deliver to Lessor and Mortgagee (i) upon request copies of the applicable insurance policies and (ii) original or duplicate certificates of insurance, satisfactory to Lessor and Mortgagee evidencing the existence of all insurance which is required to be maintained by Lessee hereunder and payment of all premiums therefor, such delivery to be made (i) upon the execution and delivery hereof and (ii) at least ten (10) days prior to the expiration of any such insurance. Lessee shall not obtain or carry separate insurance concurrent in form or contributing in the event of loss with that required by this Section 6.02 unless Lessor is named an additional insured therein and unless there is a mortgagee endorsement in favor of Mortgagee with loss payable as provided herein. Lessee shall immediately notify Lessor whenever any such separate insurance is obtained and shall deliver to Lessor and Mortgagee the policies or certificates evidencing the same. Any insurance required hereunder may be provided under blanket policies, provided that the Premises are specified therein.

(d) If required by Mortgagee at any time during the Term, or if an Event of Default shall occur, upon the request of Lessor, Lessee shall, in addition to and concurrently with the payment of Basic Rent as required in Section 1.04 hereof, pay one-twelfth of the amount (as estimated by Lessor or Mortgagee, as applicable) of the annual premiums for insurance (collectively, the "Insurance Escrow Payments") required under this Section 6.02 next becoming due and payable with respect to the Premises. Notwithstanding the foregoing, Lessee shall also be required to pay into escrow any other amounts required by Mortgagee. Lessee shall also pay to Lessor on demand therefor the amount by which the actual insurance premiums exceed the payment by Lessee required in this subsection.

(e) Notwithstanding anything to the contrary contained herein, Lessor shall have the right, but not the obligation, to perform Lessee's obligations hereunder with respect to the maintenance of insurance as set forth in Section 6.02(a)(i) and to charge Lessee as additional rent for all costs and expenses incurred in connection therewith, including, but not limited to, all insurance premiums owed to the company that issues the insurance policies.

(f) The requirements of this Section 6.02 shall not be construed to negate or modify Lessee's obligations under Section 5.04.

(g) Notwithstanding anything contained in this Lease to the contrary, each party hereto hereby waives any and all rights of recovery, claim, action or cause of action, against the other party and its agents, officers, and employees, for any loss or damage that may occur to the Premises, including the Improvements, regardless of cause or origin, including the negligence of the other party and its agents, officers, and employees, without prejudice to any waiver or

indemnity provisions applicable to Lessee and any limitation of liability provisions applicable to Lessor hereunder, of which provisions Lessee shall notify all insurers. Lessor and Lessee agree that any policies presently existing or obtained on or after the date hereof (including renewals of present policies) shall include a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the insured to recover thereunder and that the insurer expressly waives its rights of subrogation against Lessor or Lessee, as the case may be, with respect to any claims under any such policies.

## **ARTICLE VII**

### **Section 7.01 Conditional Limitations; Default Provisions.**

(a) Any of the following occurrences or acts shall constitute an Event of Default under this Lease:

(i) If Lessee shall (1) fail to pay any Basic Rent, recurring additional rent or other recurring sum when due (provided that Lessor shall not exercise any of its remedies hereunder for such failure to pay unless such monetary Event of Default continues to exist after Lessor has provided Lessee with five (5) business days written notice of Lessee's failure to timely pay such sums and provided that Lessor is obligated to provide such written notice no more than two times for any consecutive twelve (12) month period before exercising its remedies) or (2) fail to observe or perform any other non-monetary provision hereof and such non-monetary failure shall continue for thirty (30) days after written notice to Lessee of such failure (provided that, in the case of any such failure which cannot be cured by the payment of money and cannot with diligence be cured within such thirty (30) day period, if Lessee shall commence promptly to cure the same and thereafter prosecute the curing thereof with diligence, the time within which such failure may be cured shall be extended for such period not to exceed one hundred and eighty (180) days as is necessary to complete the curing thereof with diligence);

(ii) If any representation or warranty of Lessee set forth in any certificate provided by Lessee pursuant to this Lease, shall prove to be incorrect in any material adverse respect as of the time when the same shall have been made in a way adverse to Lessor and Lessor shall suffer a loss or detriment as a result thereof, including, without limitation, the taking of any action (including, without limitation, the demise of the Premises to Lessee herein) in reliance upon such representation or warranty and, in each case, the facts shall not be conformed to the representation and warranty as soon as practicable in the circumstances (but in no event to exceed thirty (30) days) after written notice to Lessee from Lessor of such inaccuracy and Lessor restored to the position it would have enjoyed had such representation or warranty been accurate at the time it was made;

(iii) If Lessee shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any federal or state law or shall be adjudicated a bankrupt or become insolvent or shall make an assignment for the benefit of creditors, or if a petition proposing the adjudication of Lessee as a bankrupt or its reorganization pursuant to any federal or state bankruptcy law or any similar federal or state law shall be filed in any court and Lessee shall consent to or acquiesce in the filing thereof or such petition shall not be discharged or denied within ninety (90) days after the filing thereof;

(iv) If a receiver, trustee or conservator of Lessee or of all or substantially all of the assets of Lessee or of the Premises or Lessee's or estate therein shall be appointed in any proceeding brought by Lessee, or if any such receiver, trustee or conservator shall be appointed in any proceeding brought against Lessee and shall not be discharged within ninety (90) days after such appointment, or if Lessee shall consent to or acquiesce in such appointment;

(v) If the Premises shall have been abandoned for a period of ten (10) consecutive days;

(vi) If a Letter of Credit has been posted as the Security Deposit or other security hereunder, and the issuer of the Letter of Credit cancels, terminates or refuses to honor it, or if the issuer is subsequently declared insolvent by a regulatory authority or is closed for any reason, and Lessee shall fail to renew the Letter of Credit within thirty (30) days or shall fail to post a cash equivalent amount of the Letter of Credit or a replacement letter of credit within fifteen (15) days after notice of such cancellation, termination or refusal; and

(vii) If a material Event of Default occurs under this Lease more than three (3) times within any consecutive twelve (12) month period, irrespective of whether or not such Event of Default is cured; and

(b) If an Event of Default shall have happened and be continuing, Lessor shall have the right to give Lessee notice of Lessor's termination of the Term. Subject to any applicable notice or grace provision, upon the giving of such notice, the Term and the estate hereby granted shall expire and terminate on such date as fully and completely and with the same effect as if such date were the date herein fixed for the expiration of the Term, and all rights of Lessee hereunder shall expire and terminate, but Lessee shall remain liable as hereinafter provided.

(c) If an Event of Default shall have happened and be continuing, subject to any applicable notice or grace provision, Lessor shall have the immediate right, whether or not the Term shall have been terminated pursuant to subsection 7.01(b), to reenter and repossess the Premises and the right to remove all persons and property (subject to Section 3.02) therefrom by summary proceedings, ejectment or any other legal action or in any lawful manner Lessor determines to be necessary or desirable. Lessor shall be under no liability by reason of any such reentry, repossession or removal. No such reentry, repossession or removal shall be construed as an election by Lessor to terminate the Term unless a notice of such termination is given to Lessee pursuant to subsection 7.01(b) or unless such termination is decreed by a court.

(d) At any time or from time to time after a reentry, repossession or removal pursuant to subsection 7.01(c), whether or not the Term shall have been terminated pursuant to subsection 7.01(b), Lessor may relet the Premises for the account of Lessee, in the name of Lessee or Lessor or otherwise. Lessor may collect any rents payable by reason of such reletting. Lessor shall not be liable for any failure to relet the Premises or for any failure to collect any rent due upon any such reletting. Notwithstanding the foregoing, Lessor agrees to make reasonable efforts to mitigate its damages under this Lease in the event Lessee actually vacates or advises Lessor that it is, as of a specified date, to vacate the Premises. The phrase "reasonable efforts," as it relates to Lessor's duty to attempt to relet the Premises, shall require Lessor to do only the following: (i) notify Lessor's management company, if any, in writing of the availability of the

Premises for reletting and authorize same to advertise as appropriate, (ii) post Lessor's leasing contact telephone number in an appropriate area of the Premises, and (iii) show the Premises to any prospective lessee interested in the Premises and to any prospective lessee specifically referred to Lessor by Lessee. Under any requirement of Lessor to use "reasonable efforts" as described herein, (i) Lessor shall not be required to relet the Premises ahead of any other properties in the same market not producing any income to Lessor; (ii) Lessor shall be entitled to consider lessee quality, lessee-mix, the financial condition of any prospective lessee, the nature of the Premises, the proposed use of the Premises by any prospective lessee, and any rights of existing sublessees located in the Premises, in making any leasing decision without being deemed to have violated its mitigation requirement hereunder; and (iii) under any new lease entered into by Lessor, Lessor may relet all or any portion of the Premises to create an appropriate block of space for a new lessee, may relet for a greater or lesser term than that remaining at that time under this Lease, and may include free rent, concessions, inducements, alterations and upgrades in the new lease. If a reletting occurs, Lessor shall recoup all of its expenses of reletting (including, without limitation, all expenses relating to remodeling, alterations, repairs, capital improvements, brokerage fees, decorating fees, and fees for architects, designers, space planners and attorneys) before Lessee is entitled to a credit on the damages owed by Lessee hereunder. If Lessor shall do all the foregoing then, anything in this Lease, or any statute, or common law rule to the contrary notwithstanding, Lessor shall be deemed to have met its duty (if any) to mitigate its damages hereunder.

(e) No expiration or termination of the Term pursuant to subsection 7.01(b), by operation of law or otherwise, and no reentry, repossession or removal pursuant to subsection 7.01(c) or otherwise, and no reletting of the Premises pursuant to subsection 7.01(d) or otherwise, shall relieve Lessee of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, reentry, repossession, removal or reletting.

(f) In the event of any expiration or termination of the Term or reentry or repossession of the Premises or removal of persons or property therefrom by reason of the occurrence of an Event of Default, Lessee shall pay to Lessor all Basic Rent, additional rent and other sums required to be paid by Lessee, in each case to and including the date of such expiration, termination, reentry, repossession or removal, and, thereafter, Lessee shall, until the end of what would have been the Term in the absence of such expiration, termination, reentry, repossession or removal and whether or not the Premises shall have been relet, be liable to Lessor for, and shall pay to Lessor, as liquidated and agreed current damages: (i) all Basic Rent, all additional rent and other sums which would be payable under this Lease by Lessee in the absence of any such expiration, termination, reentry, repossession or removal, together with all expenses of Lessor in connection with such reletting (including, without limitation, all repossession costs, brokerage commissions, reasonable attorneys' fees and expenses (including, without limitation, fees and expenses of appellate proceedings), employee's expenses, alteration costs and expenses of necessary preparation for such reletting), less (ii) the net proceeds, if any, of any reletting effected for the account of Lessee pursuant to subsection 7.01(d). Lessee shall pay such liquidated and agreed current damages on the dates on which rent would be payable under this Lease in the absence of such expiration, termination, reentry, repossession or removal, and Lessor shall be entitled to recover the same from Lessee on each such date.

(g) At any time after any such expiration or termination of the Term or reentry or repossession of the Premises or removal of persons or property therefrom by reason of the occurrence of an Event of Default, whether or not Lessor shall have collected any liquidated and agreed current damages pursuant to subsection 7.01(f), Lessor shall be entitled to recover from Lessee, and Lessee shall pay to Lessor on demand, as and for liquidated and agreed final damages for Lessee's default and in lieu of all liquidated and agreed current damages beyond the date of such demand (it being agreed that it would be impracticable or extremely difficult to fix the actual damages), an amount equal to the excess, if any, of (a) the aggregate of all Basic Rent, additional rent and other sums which would be payable under this Lease, in each case from the date of such demand (or, if it be earlier, to date to which Lessee shall have satisfied in full its obligations under subsection 7.01(f) to pay liquidated and agreed current damages) for what would be the then unexpired Term in the absence of such expiration, termination, reentry, repossession or removal, discounted at the rate equal to the then current yield on United States Treasury Notes having a maturity as of the stated date for expiration of the then existing Term of this Lease plus 2% per annum, over (b) the then fair rental value of the Premises, discounted at the same rate for the same period. If any law shall limit the amount of liquidated final damages to less than the amount above agreed upon, Lessor shall be entitled to the maximum amount allowable under such law.

#### **Section 7.02 Bankruptcy or Insolvency.**

(a) If Lessee shall become a debtor in a case filed under Chapter 7 or Chapter 11 of the Bankruptcy Code and Lessee or Lessee's trustee shall fail to elect to assume this Lease within sixty (60) days after the filing of such petition or such additional time as provided by the court within such sixty (60) day period, this Lease shall be deemed to have been rejected. Immediately thereupon, Lessor shall be entitled to possession of the Premises without further obligation to Lessee or Lessee's trustee, and this Lease, upon the election of Lessor, shall terminate, but Lessor's right to be compensated for damages (including, without limitation, liquidated damages pursuant to any provision hereof) or the exercise of any other remedies in any such proceeding shall survive, whether or not this Lease shall be terminated.

(b) Neither the whole nor any portion of Lessee's interest in this Lease or its estate in the Premises shall pass to any trustee, receiver, conservator, assignee for the benefit of creditors or any other person or entity, by operation of law or otherwise under the laws of any state having jurisdiction of the person or property of Lessee, unless Lessor shall have consented to such transfer. No acceptance by Lessor of rent or any other payments from any such trustee, receiver, assignee, person or other entity shall be deemed to constitute such consent by Lessor nor shall it be deemed a waiver of Lessor's right to terminate this Lease for any transfer of Lessee's interest under this Lease without such consent.

#### **Section 7.03 Additional Rights of Lessor.**

(a) Except as provided in Section 7.01(g), no right or remedy hereunder shall be exclusive of any other right or remedy, but shall be cumulative and in addition to any other right or remedy hereunder or now or hereafter existing. Failure to insist upon the strict performance of any provision hereof or to exercise any option, right, power or remedy contained herein shall not constitute a waiver or relinquishment thereof for the future. Receipt by Lessor of any Basic

Rent, additional rent or other sums payable hereunder with knowledge of the breach of any provision hereof shall not constitute waiver of such breach, and no waiver by Lessor of any provision hereof shall be deemed to have been made unless made in writing. Lessor shall be entitled to injunctive relief in case of the violation, or attempted or threatened violation, of any of the provisions hereof, or to a decree compelling performance of any of the provisions hereof, or to any other remedy allowed to Lessor by law or equity.

(b) Lessee hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have to redeem the Premises or to have a continuance of this Lease after termination of Lessee's right of occupancy by order or judgment of any court or by any legal process or writ, or under the terms of this Lease, or after the termination of the Term as herein provided, (ii) the benefits of any law which exempts property from liability for debt and (iii) Lessee specifically waives any rights of redemption or reinstatement available by law or any successor law.

(c) If an Event of Default on the part of Lessee shall have occurred hereunder and be continuing, then, without thereby waiving such default, Lessor may, but shall be under no obligation to, take all action, including, without limitation, entry upon the Premises, to perform the obligation of Lessee hereunder immediately and without notice in the case of any emergency as may be reasonably determined by Lessor and upon five (5) business days notice to Lessee in other cases. All reasonable expenses incurred by Lessor in connection therewith, including, without limitation, attorneys' fees and expenses (including, without limitation, those incurred in connection with any appellate proceedings), shall constitute additional rent under this Lease and shall be paid by Lessee to Lessor upon demand.

(d) If Lessee shall be in default in the performance of any of its obligations under this Lease beyond any applicable grace or cure period hereunder, Lessee shall pay to Lessor, on demand, all expenses incurred by Lessor as a result thereof, including, without limitation, reasonable attorneys' fees and expenses (including, without limitation, those incurred in connection with any appellate proceedings) and any additional sums (including any late charge, default penalties, interest and fees of the counsel of Mortgagee) which are payable by Lessor to its Mortgagee by reason of Lessee's late payment or non-payment of Basic Rent. If Lessor shall be made a party to any litigation commenced against Lessee and Lessee shall fail to provide Lessor with counsel approved by Lessor and pay the expenses thereof, Lessee shall pay all costs and reasonable attorneys' fees and expenses in connection with such litigation (including, without limitation, fees and expenses incurred in connection with any appellate proceedings).

(e) If Lessee shall fail to pay when due any Basic Rent, additional rent or other sum required to be paid by Lessee hereunder, Lessor shall be entitled to collect from Lessee as additional rent and Lessee shall pay to Lessor, in addition to such Basic Rent, additional rent or other sum, annual interest on the delinquency equal to the Late Rate from the date due until paid. The Late Rate shall be the lesser of (i) fifteen percent (15%) per annum or (ii) the maximum rate permitted by applicable law. In addition to all other remedies Lessor has hereunder, if Lessee shall fail to pay any Basic Rent, additional rent or other sum, as and when required to be paid by Lessee hereunder prior to the expiration for the period of payment pursuant to subsection 7.01(a)(i)(1), Lessor shall be entitled to collect from Lessee, and Lessee shall pay to



Lessor, as additional rent, a late payment charge in an amount equal to 1% of the amount shown in the notice as unpaid.

## ARTICLE VIII

**Section 8.01 Notices and Other Instruments.** All notices, offers, consents and other instruments given pursuant to this Lease shall be in writing and shall be validly given when hand delivered or sent by a courier or express service guaranteeing overnight delivery or by telecopy, with original being promptly sent as otherwise provided above, addressed as follows:

If to Lessor:	NL Ventures VII Magnolia, L.L.C. c/o AIC Ventures 8080 North Central Expressway, Suite 1220 Dallas, TX 75206 Attention: Peter S. Carlsen Telephone: (214) 363-5620 Facsimile: (214) 363-4968
With a copy to:	AIC Ventures 301 Congress Avenue, Suite 320 Austin, Texas 78701 Attention: Heath D. Esterak, Acquisitions Counsel Telephone: (512) 476-5009 Facsimile: (512) 476-7779
If to Lessee:	Taylor, Bean & Whitaker Mortgage Corp. 1417 N. Magnolia Avenue Ocala, Florida 34475 Attention: Lee Farkas Telephone: (352) 351-1109 Facsimile: (352) 732-8023
With copy to:	R. William Futch, Esq. 610 SE 17 <sup>th</sup> Street Ocala, Florida 34471 Telephone: (352) 732-8080 Facsimile: (352) 732-8023

Lessor and Lessee each may from time to time specify, by giving fifteen (15) days notice to each other party, (i) any other address in the United States as its address for purposes of this Lease and (ii) any other person or entity in the United States that is to receive copies of notices, offers, consents and other instruments hereunder. Notice under the terms of this Lease shall be deemed delivered, whether or not actually received, upon the earlier of (i) the date of actual receipt by such party, or (ii) the day after said notice is either deposited with such overnight delivery service, transmitted by telecopier, or personally delivered, as applicable, pursuant to the above provisions.

#### **Section 8.02 Estoppel Certificates; Financial Information.**

(a) Lessee will, upon ten (10) business days written notice at the request of Lessor, execute, acknowledge and deliver to Lessor a certificate of Lessee, stating that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and setting forth such modifications) and stating the dates to which Basic Rent, additional rent and other sums payable hereunder have been paid and either stating that to the knowledge of Lessee no default exists hereunder or specifying each such default of which Lessee has knowledge and whether or not Lessee is still occupying and operating the Premises and such other information as Lessor shall reasonably request. Any such certificate may be relied upon by any actual or prospective mortgagee or purchaser of the Premises. Lessor will, upon ten (10) business days written notice at the request of Lessee, execute, acknowledge and deliver to Lessee a certificate of Lessor, stating that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and setting forth such modifications) and the dates to which Basic Rent, additional rent and other sums payable hereunder have been paid, and either stating that to the knowledge of Lessor no default exists hereunder or specifying each such default of which Lessor has knowledge. Any such certificate may be relied upon by Lessee or any actual or prospective assignee or sublessee of the Premises.

(b) Lessee shall deliver to Lessor within ninety (90) days of the close of each fiscal year, annual audited financial statements of Lessee (which, at a minimum, shall include a balance sheet of Lessee and its consolidated subsidiaries, if any, as of the end of such year, a statement of profits and losses of Lessee and its consolidated subsidiaries, if any, for such year and a statement of cash flows of Lessee and its consolidated subsidiaries, if any, for such year, setting forth in each case, in comparative form, the corresponding figures for the preceding fiscal year in reasonable detail and scope) prepared by a firm of independent certified public accountants approved by Lessor. Lessee shall also furnish to Lessor within thirty (30) days after the end of each quarter unaudited internal financial statements and all other quarterly reports of Lessee (which, at a minimum, shall include a balance sheet of Lessee and its consolidated subsidiaries, if any, as of the end of such quarter and statements of profits and losses of Lessee and its consolidated subsidiaries, if any, for such quarter, setting forth in each case, in comparative form, the corresponding figures for the similar quarter of the preceding year in reasonable detail and scope) certified by Lessee's chief financial officer. Lessee shall also provide audited financial statements at any other time upon Lessor's written request. All annual financial statements shall be accompanied (i) by an opinion of said accountants stating that (A) there are no qualifications as to the scope of the audit except as specifically enumerated and (B) the audit was performed in accordance with GAAP, and (ii) by the affidavit of the president or a vice president of Lessee, dated within five (5) days of the delivery of such statement, stating that (1) the affiant knows of no Event of Default, or event which, upon notice or the passage of time or both, would become an Event of Default, which has occurred and is continuing hereunder, or, if any such event has occurred and is continuing, specifying the nature and period of existence thereof and what action Lessee has taken or proposes to take with respect thereto and (2) except as otherwise specified in such affidavit, to the best of such affiant's knowledge, Lessee has fulfilled all of its obligations under this Lease which are required to be fulfilled on or prior to the date of such affidavit. [Notwithstanding anything to the contrary in this Section 8.02(b), Lessee

shall be obligated to meet the requirements of this Section 8.02(b) only if Guarantor fails to provide the financial statements required under the Guaranty of Lease.]

(c) Lessor and its agents and designees may enter upon and examine the Premises and examine the records and books of account and discuss the finances and business with the officers of the Lessee at reasonable times during normal business hours and on reasonable advance written notice. Lessee shall provide the requesting party with copies of any information to which such party would be entitled in the course of a personal visit. Except in the event of emergency, Lessee may designate an employee to accompany Lessor, its agents and designees on such examinations. Lessee will provide, upon Lessor's request, all information regarding the Premises, including, but not limited to, a current rent roll, an operating statement reflecting all income from subleases and all operating expenses for the Premises. Lessor and its agents and designees may enter upon and examine the Premises and show the Premises to prospective mortgagees and/or purchasers at reasonable times during normal business hours and on reasonable advance written notice.

#### ARTICLE IX

**Section 9.01 No Merger.** There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises by reason of the fact that the same person acquires or holds, directly or indirectly, this Lease or the leasehold estate hereby created or any interest herein or in such leasehold estate, as well as the fee estate in the Premises or any interest in such fee estate.

**Section 9.02 Surrender.** Upon the expiration or termination of this Lease, Lessee shall surrender the Premises to Lessor in as good repair and condition as received under Section 2.01(a) except for any damage resulting from Condemnation or Casualty or normal wear and tear not required to be repaired by Lessee. The provisions of this Section shall survive the expiration or other termination of this Lease.

**Section 9.03 Time.** Time is of the essence with respect to this Lease, and the respective time periods set forth herein.

**Section 9.04 Separability; Binding Effect; Governing Law.** Each provision hereof shall be separate and independent, and the breach of any provision by Lessor shall not discharge or relieve Lessee from any of its obligations hereunder. Each provision hereof shall be valid and shall be enforceable to the extent not prohibited by law. If any provision hereof or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. All provisions contained in this Lease shall be binding upon, inure to the benefit of and be enforceable by the successors and assigns of Lessor to the same extent as if each such successor and assign were named as a party hereto. All provisions contained in this Lease shall be binding upon the successors and assigns of Lessee and shall inure to the benefit of and be enforceable by the permitted successors and assigns of Lessee in each case to the same extent as if each successor and assign were named as a party hereto. This Lease shall be

governed by and interpreted in accordance with the laws of the state in which the Premises are located.

**Section 9.05 Table of Contents and Headings; Internal References.** The table of contents and the headings of the various paragraphs and exhibits of this Lease have been inserted for reference only and shall not to any extent have the effect of modifying the express terms and provisions of this Lease. Unless stated to the contrary, any references to any Section, subsection, Exhibit and the like contained herein are to the respective Section, subsection, Exhibit and the like of this Lease.

**Section 9.06 Counterparts.** This Lease may be executed in two or more counterparts and shall be deemed to have become effective when and only when one or more of such counterparts shall have been executed by or on behalf of each of the parties hereto (although it shall not be necessary that any single counterpart be executed by or on behalf of each of the parties hereto, and all such counterparts shall be deemed to constitute but one and the same instrument) and shall have been delivered by each of the parties to the other.

**Section 9.07 Lessor's Liability.** Notwithstanding anything to the contrary provided in this Lease, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Lease by Lessor, that there shall be absolutely no personal liability on the part of any partner, director, member, officer or shareholder of Lessor, its successors or assigns with respect to any of the terms, covenants and conditions of this Lease, and any liability on the part of Lessor shall be limited solely to Lessor's interest in the Premises, such exculpation of liability to be absolute and without any exception whatsoever.

**Section 9.08 Amendments and Modifications.** Except as expressly provided herein, this Lease may not be modified or terminated except by a writing signed by Lessor and Lessee.

**Section 9.09 Additional Rent.** All amounts other than Basic Rent which Lessee is required to pay or discharge pursuant to this Lease, including the charge provided for by Section 7.03(e) hereof, shall constitute additional rent which shall include, but not be limited to all reasonable costs and expenses of Lessee and Lessor which are incurred in connection or associated with (A) the use, occupancy, possession, operation, condition, design, construction, maintenance, alteration, repair or restoration of any of the Premises, (B) the performance of any of Lessee's obligations under this Lease, (C) the prosecution, defense or settlement of any litigation involving or arising from any of the Premises or this Lease, (D) the enforcement by Lessor, its successors and assigns, of any of its rights under this Lease, (E) any amendment to or modification of this Lease made at the request of Lessee, (F) costs of Lessor's counsel incurred in connection with any act undertaken by Lessor (or its counsel) at the request of Lessee, or incurred in connection with any act of Lessor performed on behalf of Lessee pursuant to this Lease.

**Section 9.10 Consent of Lessor.** Except as specifically set forth in this Lease, all consents and approvals to be granted by Lessor shall not be unreasonably withheld or delayed, and Lessee's sole remedy against Lessor for the failure to grant any consent shall be to seek injunctive relief. In no circumstance will Lessee be entitled to damages with respect to the failure to grant any consent or approval.

**Section 9.11 Quiet Enjoyment.** Lessor agrees that, subject to the rights of Lessor under this Lease, Lessee shall hold and enjoy the Premises during the term of this Lease, free from any hindrance or interference from Lessor or any party claiming by, through or under Lessor.

**Section 9.12 Holding Over.** If Lessee remains in possession of the Premises, or any part thereof, after the expiration or other termination of the Term, without Lessor's express written consent, Lessee shall be guilty of an unlawful detention of the Premises and shall be liable to Lessor for damages for use of the Premises during the period of such unlawful detention at a rate equal to 1.5 times the Basic Rent and all other amounts which would be payable during the Term hereof (collectively, "Holdover Rent"), plus any consequential damages suffered by Lessor. In the event of such unlawful detention, Lessee shall indemnify and hold Lessor harmless from and against any and all claims, suits, proceedings, losses, damages, liabilities, costs and expenses, including, without limitation, attorneys' fees and disbursements, asserted against or incurred by Lessor, as a result of such unlawful detention. Notwithstanding the foregoing, Lessor shall be entitled to such other remedies and damages provided under this Lease or at law or in equity.

**Section 9.13 Compliance with Terrorism Laws.** Lessee represents and warrants that neither Lessee nor any Person controlling Lessee (i) is included on any Government List (as hereinafter defined); (ii) has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 133224 (September 23, 2001) or in any enabling or implementing legislation or other Presidential Executive Orders in respect thereof; (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any offense under the criminal laws against terrorists, the criminal laws against money laundering, the Bank Secrecy Act, as amended, the Money Laundering Control Act of 1986, as amended, or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorists (USA PATRIOT ACT) Act of 2001, Public Law 107-56 (October 26, 2001), as amended; (iv) is currently under investigation by any governmental authority for alleged criminal activity; or (v) has a reputation in the community for criminal or unethical behavior. For purposes of this Lease, the term "Government List" means (1) the Specialty Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control, United States Department of the Treasury ("OFAC"), (2) the Denied Persons List and the Entity List maintained by the United States Department of Commerce, (3) the List of Terrorists and List of Disbarred Parties maintained by the United States Department of State, (4) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the lists, laws, rules and regulations maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation, (5) any other similar list maintained by the United States Department of State, the United States Department of Commerce or any other governmental authority or pursuant to any Executive Order of the President of the United States of America and (6) any list or qualification of "Designated Nationals" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, as all such Government Lists may be updated from time to time.

**Section 9.14 Financing and Subordination, Non-Disturbance and Attornment.** Notwithstanding anything to the contrary in this Lease, this Lease and Lessee's interest

hereunder shall be subject, subordinate and inferior to any mortgage or other security instrument granted or entered into by Lessor in connection with the loan by which Lessor acquired the Premises from Lessee, and any mortgage or other security instrument hereafter placed upon the Premises by Lessor, and to any and all advances made or to be made thereunder, to the interest thereon, and all renewals, replacements and extensions thereof, provided that any such mortgage (or a separate non-disturbance agreement entered into between Lessee and the Mortgagee in whose favor such mortgage was granted) shall provide for the recognition of this Lease and all Lessee's rights hereunder unless and until an Event of Default. If Lessor desires to obtain or refinance any loan, Lessee shall execute any and all documents that such Mortgagee reasonably requires in connection with such financing, so long as the same do not materially adversely affect any right, benefit or privilege of Lessee under this Lease or materially increase Lessee's obligations under this Lease.

**Section 9.15 Disclaimer of Purchase Rights.** Nothing in this Lease is intended or shall operate to grant to Lessee any right of first refusal, right of first offer, purchase option, or similar right to elect to purchase or acquire the Premises or any portion thereof, and Lessee hereby expressly waives any and all such rights.

**Section 9.16 Security Deposit.** Lessee will deposit or cause to be deposited with Lessor or Mortgagee, as Lessor shall designate, on or before the date hereof, Three Hundred Forty-Nine Thousand Three Hundred Seventy-Five and no/100 Dollars (\$349,375.00) as a "Security Deposit" for its full and faithful performance of the terms of this Lease, it being expressly understood that such Security Deposit shall not be considered an advance payment of any Basic Rent, additional rent or other sums payable under this Lease or a measure of Lessor's damages in case of an Event of Default. Upon each occurrence of an Event of Default, Lessor may use all or part of the Security Deposit to pay delinquent payments due under this Lease, and the cost of any damage, injury, expense or liability caused by such Event of Default, without prejudice to any other remedy provided herein or provided by law. Lessor's obligation respecting the Security Deposit is that of a debtor, not a trustee, and no interest shall accrue thereon. If Lessor transfers its interest in the Premises during the Term to a transferee who assumes Lessor's obligations hereunder and to whom the Security Deposit is transferred, provided that Lessee is notified of such transferee's receipt of the Security Deposit, Lessor may assign the Security Deposit to the transferee and, thereafter, Lessor shall have no further liability for the return of such Security Deposit to Lessee.

**Section 9.17 Intentionally Deleted.**

**Section 9.18 Short Form Memorandum of Lease.** Upon Lessor's or Lessee's request, the parties shall record a "short form" Memorandum of Lease identifying the Term granted to Lessee by this Lease, and any other terms to which the parties may agree. Any recording costs associated with the memorandum or short form of this Lease shall be borne by Lessee. Upon the expiration or earlier termination of this Lease, Lessee shall promptly execute and deliver to Lessor an instrument, in recordable form, wherein Lessee acknowledges the expiration or earlier termination of this Lease. Upon transfer or conveyance of the Premises by Lessor, Lessee agrees to execute an amendment to the memorandum indicating the change of Lessor.

**Section 9.19 Intentionally Deleted.**

**Section 9.20 Brokers.** Lessor and Lessee mutually represent and warrant to each other that it dealt with no real estate brokers in the transactions contemplated by this Lease, and that no brokerage fees, commissions, or other remuneration of any kind are due in connection herewith. Lessor shall forever indemnify and hold harmless Lessee against and in respect of any and all claims, losses, liabilities and expenses, including, without limitation, reasonable attorney's fees and court costs, which Lessee may incur on account of any claim by any broker or agent or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Lessor in respect to the transactions herein contemplated. Lessee shall forever indemnify and hold harmless Lessor against and in respect of any and all claims, losses, liabilities and expenses, including, without limitation, reasonable attorney's fees and court costs, which Lessor may incur on account of any claim by any broker or agent or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Lessee in respect to the transactions herein contemplated. The provisions of this Section shall survive expiration or termination of this Lease.

**Section 9.21 Waiver of Jury Trial.** Lessor and Lessee each hereby expressly, irrevocably, fully and forever release, waive and relinquish any and all right to trial by jury.

**Section 9.22 No Partnership.** Nothing herein contained shall be deemed or construed either by the parties hereto, or by a third party, to create a relationship between the parties of principal and agent, partnership, or joint venture. None of computation of rent, or any other provision contained herein, or any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

**Section 9.23 No Construction Against Drafter.** Each of the parties hereto acknowledges that it is sophisticated and experienced in transactions of the nature contemplated hereby and that it has been represented by counsel of its choosing in connection herewith; accordingly, each party hereto waives to the fullest extent permitted by law the application of any law or rule of construction requiring that this Lease be construed or interpreted against the drafting party or in favor of the non-drafting party.

**Section 9.24 Security Interest and Security Agreement.** This Lease shall also create a security interest in, and Lessee hereby grants to Lessor a security interest in, all sums on deposit with Lessor (or Lessor's Mortgagee, as applicable) pursuant to the provisions of this Lease, including, but not limited to, the Tax Escrow Payments, the Insurance Escrow Payments, and the Security Deposit (said funds and accounts are hereinafter referred to collectively as the "Collateral"). This Lease constitutes a security agreement between Lessee and Lessor with respect to the Collateral in which Lessor is granted a security interest hereunder, and, cumulative of all other rights and remedies of Lessor hereunder, Lessor shall have all of the rights and remedies of a secured party under the Uniform Commercial Code. "Uniform Commercial Code" means the Uniform Commercial Code as now or hereafter in effect in the state where the Premises is located; provided that, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, the Lessor's security interest in any Collateral is governed by the Uniform Commercial Code as enacted and

in effect in a jurisdiction other than such state, the term "Uniform Commercial Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions. Lessee hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Lessor the attorney-in-fact of Lessee to execute and deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Lessor may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Lessee hereby authorizes Lessor at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of Lessee as authorized by applicable law, as applicable to all or part of the Collateral. For purposes of such filings, Lessee agrees to furnish any information requested by the Lessor promptly upon request therefor by Lessor. Lessee also ratifies its authorization for the Lessor to have filed any like initial financing statements, amendments thereto or continuation statements, if filed prior to the date of this Lease. Lessee agrees to furnish Lessor with notice of any change in the name, identity, organizational structure, residence, state of incorporation, state of organization or state of formation or principal place of business or mailing address of Lessee within ten (10) days of the effective date of any such change. Upon the occurrence of any Event of Default, Lessor shall have the rights and remedies as prescribed in this Lease, or as prescribed by general law, or as prescribed by any applicable Uniform Commercial Code, all at Lessor's election.

**Section 9.25 Characterization of Lease.** The following expressions of intent, representations, warranties, covenants, agreements, stipulations and waivers are a material inducement to Lessor and Lessee to enter into this lease:

(a) Lease Characterization. Lessor and Lessee intend that (a) this Lease is a "true lease" for federal and state income tax purposes and is not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, and the economic realities of this Lease are those of a true lease; and (b) the business relationship created by this Lease and any related documents is solely that of a long-term commercial lease between Lessor and Lessee, the Lease has been entered into by both parties in reliance upon the economic and legal bargains contained herein, and none of the agreements contained herein is intended, nor shall the same be deemed or construed, to create a partnership (de facto or de jure) between Lessor and Lessee, to make them joint venturers, to make Lessee an agent, legal representative, partner, subsidiary or employee of Lessor, or to make Lessor in any way responsible for the debts, obligations or losses of Lessee.

(b) Waiver. Lessee and Lessor each waive any claim or defense based upon the characterization of this Lease as anything other than as a "true lease." Lessee and Lessor each stipulate and agree (i) except as may be required by local, state or federal laws or a governmental authority (it being understood that Lessee and Lessor each agree that under current U.S. federal income tax law, this Lease is a "true lease"), not to assert or take, or omit to take, any action if such omission would be inconsistent with the agreements and understandings set forth in this section, and (ii) that, in the event that its separate existence from another person is disregarded for U.S. federal income tax purposes, it shall not permit such person to assert or take, or omit to



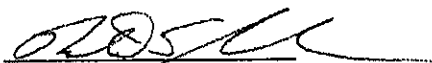
take, any action if such omission would be inconsistent with the agreements and understandings set forth in this section (determined as though such person had been a party hereto).

[Signatures of Lessor and Lessee Follow on Next Pages]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date first above written.


LESSOR:

NL VENTURES VII MAGNOLIA, L.L.C.,  
a Delaware limited liability company

By:   
Name: Peter S. Carlsen  
Title: President

LESSEE:

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,  
a Florida corporation

By:   
Name: Lee B. Barks  
Title: Chairman

**EXHIBIT A**  
**LEGAL DESCRIPTION**

The South 270 feet of the West 325 feet of Lot 12, PINE CREST, according to the plat thereof, recorded in Plat Book A, Page 30, Public Records of Marion County, Florida.

**LESS AND EXCEPT**

Right of Way Taking: Commencing at the Southwest corner of the NW 1/4 of Section 8, Township 15 South, Range 22 East, Marion County, Florida; thence proceed N.00°16'20"E. along the West boundary of said NW 1/4 a distance of 60.00 feet; thence departing said West boundary S.89°41'05"E., a distance of 40.00 feet to the East right of way line of North Magnolia Avenue and the Point of Beginning of the following described Taking Parcel; from said Point of Beginning, proceed N.00°16'20"E. along said East right of way a distance of 25.00 feet; thence departing said right of way S.44°42'23"E. a distance of 35.37 feet to the North right of way of N.E. 14th Street; thence N.89°41'05"W. along said North right of way a distance of 25.00 feet to the Point of Beginning.

ALSO LESS AND EXCEPT that portion deeded to the City of Ocala as recorded in Book 2777, Page 1498, Public Records of Marion County, Florida.

AND ALSO Lots 12 through 22 inclusive, Block 3, PINECREST UNIT NO.1, as recorded in Plat Book D, Page 73, of the Public Records of Marion County, Florida.

AND ALSO the South 270 feet of the 20 foot wide alley west and adjacent to Lots 17 through 22, Block 3, Pinecrest Unit No.1, as recorded in Plat Book D, Page 73, of the Public Records of Marion County, Florida. Note: Said alley vacated by Resolution No. 2003-42 recorded February 27, 2003 in Official Records Book 3354, Page 252, of the Public Records of Marion County, Florida.

Tax Parcel ID No: 26176-000-00 and 26153-000-00

Street Address: 1417 N. Magnolia Avenue, Ocala, Florida 34475

TBW (FL)  
Exhibit A  
Legal Description

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**EXHIBIT B**  
**PERMITTED EXCEPTIONS**

1. Property taxes for 2009, a lien not yet due and payable, together with taxes/assessments due and payable in subsequent years.
2. Grant of General Utility Easement in favor of the City of Ocala, a Florida municipal corporation, recorded July 26, 2006 in Official Records Book 4513, Page 1385, of the Public Records of Marion County, Florida (Affects Lot 17, Block 3 and a portion of adjacent vacated alley).
3. Grant of Ingress and Egress Easement in favor of the City of Ocala, a Florida municipal corporation, recorded July 26, 2006 in Official Records Book 4513, Page 1388, of the Public Records of Marion County, Florida (Affects Lots 12 and 13, Block 3).

## EXHIBIT C

### BASIC RENT SCHEDULE

The annual Basic Rent for the Interim Term (as prorated) and the first Lease Year of the Term shall be **\$698,750**.

The Basic Rent shall increase annually by two and one-half percent (2.5%) for the next four (4) subsequent Lease Years of the Term; by two percent (2.0%) for the next ten (10) subsequent Lease Years of the Term; and by one and one-half percent (1.5%) the final five (5) subsequent Lease Years of the Term, all as shown below:

Lease Year	Dates	Annual Rent	Monthly Rent
Interim Term	Date of closing through May 31, 2009		prorated
1	June 1, 2009 through May 31, 2010	\$698,750	\$58,229
2	June 1, 2010 through May 31, 2011	\$716,219	\$59,685
3	June 1, 2011 through May 31, 2012	\$734,124	\$61,177
4	June 1, 2012 through May 31, 2013	\$752,477	\$62,706
5	June 1, 2013 through May 31, 2014	\$771,289	\$64,274
6	June 1, 2014 through May 31, 2015	\$786,715	\$65,560
7	June 1, 2015 through May 31, 2016	\$802,449	\$66,871
8	June 1, 2016 through May 31, 2017	\$818,498	\$68,208
9	June 1, 2017 through May 31, 2018	\$834,868	\$69,572
10	June 1, 2018 through May 31, 2019	\$851,566	\$70,964
11	June 1, 2019 through May 31, 2020	\$868,597	\$72,383
12	June 1, 2020 through May 31, 2021	\$885,969	\$73,831
13	June 1, 2021 through May 31, 2022	\$903,688	\$75,307
14	June 1, 2022 through May 31, 2023	\$921,762	\$76,814
15	June 1, 2023 through May 31, 2024	\$940,197	\$78,350
16	June 1, 2024 through May 31, 2025	\$954,300	\$79,525
17	June 1, 2025 through May 31, 2026	\$968,615	\$80,718
18	June 1, 2026 through May 31, 2027	\$983,144	\$81,929
19	June 1, 2027 through May 31, 2028	\$997,891	\$83,158
20	June 1, 2028 through May 31, 2029	\$1,012,860	\$84,405

## **EXHIBIT D**

### **SEVERABLE PROPERTY**

Severable Property shall include all apparatus, personal property, trade fixtures, inventory, equipment, machinery, fittings, furniture, furnishings, chattel, materials and supplies located on and used in, or related to Lessee's business, including, but not limited to, mainframe computers, kitchen equipment and telephone and similar systems and articles of personal property of every kind and nature whatsoever, and any additions, replacements, accessions and substitutions thereto or therefor, and all proceeds of all of the foregoing.

Severable Property shall not include the Improvements.

# FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
300 CONVENT STREET, SUITE 2200  
SAN ANTONIO, TEXAS 78205-3792  
WWW.FULBRIGHT.COM

SPEIRCE@FULBRIGHT.COM  
DIRECT DIAL: (210) 270-7179

TELEPHONE: (210) 224-5575  
FACSIMILE: (210) 270-7205

June 11, 2010

## VIA FEDERAL EXPRESS

BMC Group, Inc.  
Attn: Taylor Bean & Whitaker Mortgage Corp. Claim Processing  
18750 Lake Drive East  
Chanhassen, MN 55317

Re: *In re: Taylor, Bean & Whitaker Mortgage Corp.*, Case No. 3:09-bk-07047-JAF,  
pending in the United States Bankruptcy Court for the Middle District of Florida,  
Jacksonville Division

Dear Claims Agent:

Please accept for filing on behalf of NL Ventures VII Magnolia LLC the attached proof of claim to be filed in the above-referenced bankruptcy case.

I have enclosed a self-addressed, postage prepaid envelope for your convenience in returning a file-stamped copy of the proof of claim to me.

If you have any questions, please call me. Thank you for your attention to this matter.

Very truly yours,



Steve A. Peirce

SAP/bb  
Enclosures

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BMC Group, Inc.

June 11, 2010

Page 2

cc: Russell M. Blain (w/encl.)  
Stichter Riedel Blain & Prosser, PA  
110 East Madison Street, Suite 200  
Tampa, FL 36602

Jeffrey W. Kelley (w/encl.)  
Troutman Sanders LLP  
Bank of America Plaza  
Suite 5200  
600 Peachtree Street, NE  
Atlanta, GA 30308-2216

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